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April 8, 2016

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

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 Reviews of Freshwater Crawfish Tail Meat from the People's Republic of China; 2013-2014.

Summary

We analyzed the case and rebuttal briefs submitted by interested parties[1] in the administrative review and new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC) covering the period September 1, 2013, through August 31, 2014. Based on our analysis of the comments received, we have made changes in the margin calculations for China Kingdom (Beijing) Import & Export Co., Ltd. (China Kingdom), Deyan Aquatic Products and Food Co., Ltd. (Deyan Aquatic), Shanghai Ocean Flavor International Trading Co., Ltd. (Shanghai Ocean), Hubei Yuesheng Aquatic Products Co., Ltd. (Hubei Yuesheng) and Weishan Hongda Aquatic Food Co., Ltd., (Hongda). We recommend that you approve the positions we developed in the "Discussion of the Issues" section of this memorandum.

Comment 1: Use of Financial Information to Value Factory Overhead, Selling, General & Administrative Expenses, and Profit
Comment 2: Selection of Surrogate Value for Water
Comment 3: Application of a Zero Margin to Unexamined Respondent
Comment 4: Clerical Error

[1] *See* case brief from the petitioners, the Crawfish Processors Alliance (CPA), dated November 6, 2015, and rebuttal brief from Weishan Hongda Aquatic Food Co., Ltd (Hongda), dated November 12, 2015.

Background

On October 7, 2015, we published the preliminary results of these reviews.[2] On January 6, 2016, we issued a memorandum extending the time limit for the final results of these reviews to April 4, 2016.[3] As we explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department of Commerce (the Department) has exercised its discretion to toll all administrative deadlines due to the closure of the Federal Government in January. All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the final results of these reviews is now April 8, 2016.[4] Pursuant to a request from CPA, we held a public hearing on February 11, 2016.[5]

Surrogate Country

In the *Preliminary Results*, we treated the PRC as a non-market economy (NME) country and, therefore, we calculated normal value in accordance with section 773(c) of the Tariff Act of 1930, as amended (the Act). We selected Thailand as the primary surrogate country, pursuant to section 773(c)(4) of the Act, because it is a significant producer of merchandise comparable to subject merchandise and is at the same level of economic development as the PRC.[6] For these final results, we continue to treat the PRC as an NME country and used the same primary surrogate country, Thailand. For the valuation of crawfish shell or scrap for these final results, we used the 2001 Indonesian price quote. For the valuation of the major input (freshwater crawfish tail meat or whole crawfish), we continue to find Spain to be a significant producer of whole processed crawfish, which we consider comparable to processed crawfish tail meat and, thus, we valued this input using Spanish import statistics.[7] Unlike for the *Preliminary Results*, as discussed below, for these final results, we used the 2014 Annual Report of a South African seafood processor, Oceana Group Limited, to value financial ratios. As a result of this change, we also calculated surrogate values for electricity and coal [8]

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[2] *See Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2013-2014*, 80 FR 60624 (October 7, 2015) (*Preliminary Results*). Also, on November 21, 2014, in accordance with 19 CFR 351.214(j)(3), the Department aligned the new shipper review with the administrative review. *See* Memorandum to the File entitled "Alignment of New Shipper Reviews of Freshwater Crawfish Tail Meat from the People's Republic of China with the concurrent administrative review of Freshwater Crawfish Tail Meat from the People's Republic of China," dated November 21, 2014.
[3] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Freshwater Crawfish Tail Meat from the People's Republic of China: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2013-2014," dated January 6, 2016.
[4] *See* Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement and Compliance, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas," dated January 27, 2016.
[5] *See* Public Hearing Transcript concerning the Administrative and New Shipper Reviews of the Antidumping Duty Order on Freshwater Crawfish Tail Meat from the People's Republic of China (February 11, 2016).
[6] *See Preliminary Results*, and accompanying Preliminary Decision Memorandum at 6-7.
[7] *See* Memorandum entitled, "Freshwater Crawfish Tail Meat from the People's Republic of China: Selection of a Surrogate Country," dated September 30, 2015.
[8] *See* Final Results Surrogate Value Memorandum, dated concurrently with this memorandum.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

In the *Preliminary Results*, we found that China Kingdom, Deyan Aquatic, Shanghai Ocean, Hubei Yuesheng and Weishan Hongda demonstrated their eligibility for separate rates. For these final results, we continue to find that these companies are eligible for separate rates.

Discussion of the Issues

Comment 1: Use of Financial Information to Value Factory Overhead, Selling, General & Administrative (SG&A) Expenses, and Profit

CPA argues that the surrogate financial ratios for the final results of this review should not be based on the two Thai seafood processors' 2012 financial statements that the Department used in the *Preliminary Results,* because both of those processors were heavily affected by the extraordinary crisis caused by Early Mortality Syndrome (EMS), a shrimp disease that affected the shrimp industry from 2012 through 2014. CPA argues further that the record indicates that the two Thai seafood processors benefit from export subsidies and their financial statements are, therefore, inappropriate sources for surrogate financial ratios. CPA asserts that rather than use the two Thai financial statements that are even less contemporaneous with the POR or any other non-record information, the Department should base the financial ratios from the annual report of a South African seafood processor (Oceana Group) that is on the record and contemporaneous with the POR.

CPA argues that, while it agrees with the Department's preliminary decision not to use the 2013 and 2014 financial statements from the two Thai seafood processors due to the effect of EMS on the shrimp industry during that time period, it believes the Department was incorrect in basing the Thai financial ratios on their 2012 financial statements. CPA contends that the Department was incorrect in its assertion in the *Preliminary Results* that the EMS disease did not begin to affect the shrimp industry in Thailand until 2013. According to CPA, the record indicates that the EMS crisis began in 2012, not 2013 as the Department asserts, which is further evidenced by Surapon Food Public Company Ltd.,'s (Surapon) 2012 annual report, in which Surapon reported that performance in the second half of 2012 was affected by EMS disease, resulting in a drastic increase in shrimp raw material prices. CPA contends that, while the record does not precisely identify the product mix of the other Thai company, Kiang Huat Sea Gull Trading Frozen Food Public Company Ltd. (Kiang Huat), it also was affected by the EMS disease as indicated by an article entitled, "*Rocketing Thai Shrimp Prices Outrun Seafish Sales Hike, Undercurrent News*, November 19, 2013, at 3.

CPA states that the same article indicates that other Thai seafood processors were losing money by 2013, including Seafresh Industry, Thai Union Frozen Products, Asian Seafoods Coldstorage, Pakfood, and Trang Seafoods. According to CPA, the fact that so much of the Thai seafood processing industry had losses in 2013, the extraordinary scourge of EMS allegedly was already on the scene, wreaking havoc with Thai processors' profitability in 2012.

CPA asserts that in describing its method of selecting surrogate values for the *Preliminary Results*, the Department acknowledges its longstanding practice of rejecting values that may be influenced by export subsidies. Citing *Utility Scale Wind Towers from Vietnam*,[9] CPA argues that, while the Department's practice refers to prices derived from import statistics, according to CPA, the policy applies also to financial ratios.

Citing the *Omnibus Trade & Competitiveness Act of 1988: Conference Report to Accompany H.R.* 3, H.R. Report No. 100-576, at 590 (*House Conference Report*), CPA argues that Congress has directed the Department to avoid using any prices which it has reason to believe or suspect may be dumped or subsidized when valuing factors of production. CPA argues further that the *House Conference Report* states that "the conferees do not intend for Commerce to conduct a formal investigation to ensure that such prices are not dumped or subsidized, but rather intend that Commerce base its decision on information generally available to it at that time." According to CPA, the Department, therefore, typically looks to its own or third-country countervailing duty determinations to indicate the existence of subsidies in a country that appear to be used generally (*i.e.*, broadly available, non-industry-specific export subsidies) as a basis to believe or suspect that prices of the inputs from the country granting the subsidies may be subsidized. CPA asserts that the Department, following this practice in this review, has already determined that Thailand provides broadly available, non-industry specific export subsidies, but has overlooked the impact of this finding on the selection of proper surrogate financial ratios.

According to CPA, the financial statements of both Surapon and Kiang Huat refer to certain government provided "promotional privileges" received under the Industrial Investment Promotion Act B.E. 2520 by the Board of Investment. CPA claims that for Kiang Huat, benefits include exemption from payment of duty on exported products, exemption from payment of import duty on machinery and equipment, and double-counting of deductions for expenses for transportation, electricity and water. CPA claims further that Surapon's 2012 financial statement refers to the same program with similar benefits.

Consequently, CPA argues that the Department should use the 2014 annual report of a South African seafood processor it placed on the record to value the financial ratios, as this information is a superior source than the financial reports of the two Thai seafood processors. CPA argues further that South Africa is also a suitable surrogate country, as it is identified by the Department's Office of Policy as one of six suitable surrogate countries. CPA contends that, although the record does not provide information on whether South Africa is a significant producer of comparable merchandise, it is confident that the Department has already found South Africa to be a significant producer of processed seafood because the Department has, in fact,

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[9] *See Utility Scale Wind Towers From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 77 FR 75984, (December 26, 2012), and accompanying Issues and Decision Memorandum at Comment 2 (*Utility Scale Wind Towers from Vietnam*).

examined the export data for South Africa, which it believes should be made available to the parties.

CPA argues that because the surrogate financial ratios are just that—ratios, not prices—there is less of a reason to try to base all of the surrogate values with respect to financial ratios on a "single primary surrogate" country. CPA asserts that input prices are set by supply and demand within a market, where the forces driving one product may be tied to forces driving many others. CPA contends that choosing all input values from the same market might, therefore, produce some balancing or data smoothing. CPA states that, on the other hand, ratios for overhead, selling, general and administrative expenses and profit are calculated each time from the overall experience of a producer with many different transactions within a single market and are, in that sense, already balanced and smoothed. CPA argues that the fact that the Department uses Thai prices for plastic bags and cardboard boxes is not a reason to avoid using the Oceana Group's financial statements to value financial ratios.

CPA explains that the period covered by the Oceana Group 2014 Annual Report overlaps with 11 of the 12 months of the POR and is, therefore, contemporaneous with the POR. CPA argues that, even if the Department were to ignore the problems with export subsidies in Thailand, the problem with EMS would require the Department to go back to Surapon's and Kiang Huat's 2011financial statements to value the financial ratios in which case, the period ending December 31, 2011, would be nearly three years before the end of the POR. CPA asserts that, if the Department should decide to use Surapon's and Kiang Huat's 2011 financial statements to value the financial ratios, it would also need to make provisions for comments by interested parties on those older financial statements, since they are not currently on the record of this review.

Hongda argues that CPA's allegation that the 2012 Thai financial statements of Surapon and Kiang Huat are distorted by EMS is contradicted by substantial record evidence. Hongda explains that Surapon's 2012 annual report evidences that the company's overall performance in 2012 significantly improved over its 2011 performance. According to Hongda, the advent of EMS in the second half of 2012 did not affect Surapon's performance in 2012 because the company was able to manage cost-effectively production to sales orders so that the company and its subsidiaries had a net profit increase of 15.5 percent in 2012 over 2011. Hongda argues that evidence on the record indicates that Surapon and its subsidiaries posted a total revenue increase of 4.6 percent in 2012 over 2011. Therefore, Hongda argues, contrary to CPA's allegations, Surapon's production and financial performance was unaffected by EMS in 2012. As such, according to Hongda, Surapon's 2012 financial statement is undistorted by any adverse impact from EMS disease.

Hongda argues further that, with regard to Kiang Huat, the article cited by CPA discusses that the company lost profits in 2013, but any loss suffered by Kiang Huat in 2013 is irrelevant with regard to its 2012 financial statements used in the *Preliminary Results* to value financial ratios. Hongda claims that Kiang Huat's 2012 annual report shows not only that the company and its subsidiaries earned a profit before tax during 2012, but also shows that Kiang Huat's individual profit in 2012 significantly increased over its 2011 profit. Therefore, according to Hongda, Kiang Huat's financial performance in 2012 was unaffected by the EMS disease.

In summary, Hongda contends that the record evidence contradicts CPA's assertion that the 2012 annual reports of Surapon and Kiang Huat are unreliable on account of their distortion by the alleged losses attributed to the outbreak of the EMS disease in the latter half of 2012.

With regard to CPA's argument that the 2012 Thai financial statements should also be rejected because they are not contemporaneous with the POR, Hongda argues that the 2012 Thai financial statements are only slightly non-contemporaneous, outside of the review period by only eight months. Citing *Folding Metal Tables and Chairs from the PRC,*[10] Hongda argues that the Department has time and again held that financial ratios are less susceptible to change over time (than are material costs), because ratios measure the relationship between costs, expenses and prices, which do not change due to inflation. Citing *Pure Magnesium from the PRC,*[11] Hongda argues that the Department has repeatedly selected non-contemporaneous financial statements when the record has contained other less specific but contemporaneous financial statements.

Hongda explains that these precedents show that contemporaneity is not determinative in the selection of financial statements, as it is in the choice of surrogate values for materials, energy and packing factors. Therefore, according to Hongda, CPA's arguments concerning the lack of contemporaneity of the two 2012 Thai financial statements are misplaced and do not lend any support to their argument.

In addition, Hongda argues that the Department should reject CPA's proposal to apply a financial statement from South Africa on account of an absence of record evidence demonstrating that South Africa satisfies the threshold statutory criteria of being a significant producer of comparable merchandise.

Hongda argues that with regard to CPA's argument that the 2012 Thai financial statements should be rejected on account of countervailable export subsidies is unpersuasive because the Department only rejects a subsidy-distorted financial statement in the event that the record affords the agency with another superior choice. According to Hongda, the 2014 annual report of the Oceana Group is not a superior option because the South African company's financial statement reveals that it contains several basket category line items and entirely does not provide disaggregated expenses for raw materials or labor cost. Thus, according to Hongda, the South African seafood processor's financial statement is distorted and unsuitable for valuing financial ratios. In contrast, according to Hongda, because both the Thai 2012 financial statements provide discrete line items for costs incurred towards raw materials and labor, they yied more accurate financial ratios. Honda argues that it is the Department's established policy to reject less detailed financial statements in favor of more detailed financial statements.[12] Honda also argues

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[10] *See Folding Metal Tables and Chairs from the People's Republic of China; Final Results of Antidumping Duty Administrative Review and New Shipper Review, and Revocation of the Order in Part*, 76 FR 66036 (October 25, 2011), and accompanying Issues and Decision Memorandum, at Comment 2 (*Folding Metal Tables and Chairs from the PRC).*

[11] *See Pure Magnesium from the People's Republic of China; Final Results of the 2008-2009 Antidumping Duty Administrative Review of the Antidumping Duty Order,* 75 FR 80791 (December 23, 2010) (*Pure Magnesium from the PRC*).

[12] *See Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 4539, 4541 (January 28, 2015), and accompanying Issues and Decision Memorandum, at Comment 2C.

that the court has upheld the Department's rejection of financial statements that lacked necessary elements for the computation of accurate financial ratios.[13]

Hongda contends that, consistent with the above precedents, the Department should reject the insufficiently disaggregated Oceana Group's financial statement and continue to apply the more complete and transparent financial statements of Surapon and Kiang Huat in the final results.

Hongda argues that CPA's reasoning that selecting financial statements from another country does not lead to distortion is unpersuasive. Specifically, Hongda argues that, contrary to CPA's arguments, the "price distortion" considerations that implicitly inform the Department's regulatory preferences to apply all surrogate values from a single country equally has an impact on the choice of financial ratios. Hongda argues that, in the instant case, there is no record evidence that South Africa is a significant producer of comparable processed seafood. Hongda argues further that the record indicates the presence of only one South African seafood processor, whereas Thailand has a number of processed seafood producers. According to Hongda, this facts suggests that, as compared to the monopolistic market conditions in the South African seafood processing industry (accompanied by high overheads and high profit margins), the competitive market conditions prevalent in the Thai seafood processing market are more akin to the Chinese processed crawfish industry. Therefore, according to Hongda, unlike the financial statements of Surapon and Kiang Huat, the South African seafood processor's financial statements would not yield reliable financial ratios.

Hongda argues also that the sole South African seafood processor's financial statement does not provide the Department with a financial ratio that satisfies the broad market average criteria. Honda further argues that it is the Department's practice of preferring multiple specific financial statements from the primary surrogate country.[14]

<u>Department's Position</u>: Pursuant to section 773(c) of the Act, we value factors of production (FOP) using the "best available information" from a market-economy country. In accordance with 19 CFR 351.408(c)(4), we normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the primary surrogate country to value manufacturing overhead, general expenses, and profit.[15] While the statute does not define "comparable merchandise," in selecting surrogate financial statements, we have considered whether the products have similar production processes, end use, and physical characteristics.[16] Additionally, our practice is not to rely on financial statements where there is evidence that the company received countervailable export subsidies and where we have other more reliable and representative data on the record for purposes of calculating the surrogate financials.[17]

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[13] *See Wuhan Bee Healthy Co., v. United States*, 31 CIT, 1182, 1205 (CIT 2007).
[14] *See Certain Helical Spring Lock Washers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 29720 (May 27, 2010), and accompanying Issues and Decision Memorandum at Comment 1.
[15] *See Utility Scale Wind Towers from Vietnam.*at Comment 2.
[16] *Id*.
[17] *Id*.

In choosing surrogate financial ratios, it is our practice and regulatory preference to use data from market economy surrogate companies in the primary surrogate country, based on the "specificity, contemporaneity, and quality of the data"[18] In determining the suitability of surrogate values, we carefully consider the available evidence with respect to the particular facts of each case and evaluate the suitability of each source on a case-by-case basis.[19] Accordingly, when examining the merits of financial statements on the record, we do not have an established hierarchy that automatically gives certain characteristics (*i.e.*, contemporaneity or specificity) more weight than others. Rather, we must weigh available information with respect to each situation and make a product-and case-specific decision as to what constitutes the "best" available information. Furthermore, the court has recognized our discretion in selecting the best surrogate values on the record.[20]

In the *Preliminary Results*, we relied on two Thai seafood processors' (Surapon and Kiang Huat) 2012 financial statements for purposes of calculating surrogate financial ratios, because CPA had informed us, and we confirmed, that a disease known as EMS had affected the shrimp population in Thailand covering calendar years 2013 and 2014, which, according to CPA, sharply restricted the profitability of seafood processors in Thailand.[21]

While evidence on the record does not support CPA's assertion that the EMS disease affected the Thai seafood processors financial performance in 2012, we find that information on the record indicates that these Thai companies benefitted from countervailable export subsidies.[22] Our normal practice in such cases is not to rely on financial statements where there is evidence that companies received countervailable export subsidies, and where we have other, more reliable and representative data on the record, for purposes of calculating the surrogate financial ratios.[23] The CIT has consistently upheld this practice.[24]

In this case, the financial statements of both Thai companies show that they received export subsidies under the Investment Promotion Act (IPA), which we have determined to be countervailable export subsidies.[25] Specifically, in *Shrimp From Thailand*, we stated that

[18] *Id.*
[19] *Id.*
[20] The Court of International Trade (CIT) has held that, "when Commerce is faced with the decision to choose between two reasonable alternatives and one alternative is favored over the other in their eyes, then they have the discretion to choose accordingly." *FMC Corporation v. United States*, 27 CIT240, 251(Ct. Int'l Trade 2003) (citing *Technoimportexport, UCF. America Inc. v. United States*, 16 CIT 13, 18 (Ct. Int'l Trade 1992); *see also*, *Juancheng Kangtai Chem. v. United States*, 2015 WL 4999476 at *13, Slip Op. 15–93 (Ct. Int'l Trade 2015) ("It is not for the Court to choose between arguably untainted but incomplete data and arguable complete but tainted data, as that is Commerce's province").
[21] *See* Surrogate Value Memorandum, dated September 30, 2015, at 6. *See* also, CPA's March 18, 2015, submission at 2
[22] *See* Surapon's 2012 financial statements at note 31 and Kiang Huat's financial statement at page 34.
[23] *See Utility Scale Wind Towers from Vietnam* at Comment 2.
[24] *See Shenzhen Xinboda Indus. Co. Ltd. v. United States*, 976 F.Supp2d 1333, 1374 (Ct. Int'l Trade 2014); *see also* ("legislative history reflects a clear policy of erring on the side of rejecting financial statements with subsidies"); *Jiaxing Brother Fastener Co. Ltd. v. United States*, 34 CIT 1455 (Ct. Int'l Trade 2010) (holding that Commerce acted in accordance with law in rejecting a financial statement due to evidence that the company received a subsidy).
[25] *See Certain Frozen Warmwater Shrimp From Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379, (August 19, 2013) and accompanying Issues and Decision Memorandum at IV. A. 2 (*Shrimp From Thailand*).

benefits provided under the IPA were export contingent under sections 771(5A)(A) and (B) of the Act, because record information demonstrated that the section in the application form for promotion solicited information regarding projected or anticipated exports and we found that the inclusion of such information met the requirements under 19 CFR 351.514(a). As such, we find that both Thai seafood companies benefitted from countervailable export subsidies.

In the instant case, CPA placed on the record the financial statements of a South African seafood processor that is contemporaneous with the POR. South Africa is one of six countries identified by the Office of Policy as being at the same level of economic development as China.[26] The record indicates that South Africa is a significant producer of comparable merchandise because the export revenues for processed seafood listed as "canned fished and fishmeal and horse mackerel and hake" outlined in the South African seafood processor's annual report are 4,289,946,000 Rand in the year ending September 30, 2014.[27] As we have explained in the surrogate country selection memo, we consider processed seafood as comparable merchandise to crawfish tail meat.[28] The Policy Bulletin 04.1 states that the characteristics of what constitutes a significant producer will necessarily vary from case to case. Furthermore, the Policy Bulletin contemplates the possibility of a wide variety of data sources that may be used to determine if a country is a significant producer. Here, we determine that the revenues listed in Oceana's financial statement sufficiently demonstrate that South Africa is a significant producer of processed seafood.

Therefore, pursuant to section 773(c)(4) of the Act, we find that South Africa satisfies both statutory requirements (*i.e.*, a country at a comparable level of economic development, which is also a significant producer of comparable merchandise). Although our preference is to value all surrogate values from a single country, we have the discretion to resort to a secondary surrogate country if the data from the primary surrogate do not provide a viable option because they do not provide sufficient reliable sources of publicly available surrogate value data, or are not suitable for use based on other reasons.[29] As we indicate above, we find that evidence on the record indicates that the two Thai seafood processors benefit from countervailing export subsidies and therefore are an unreliable source to value financial ratios. Because we have a viable alternative on the record in valuing the financial ratios, we find that, pursuant to section 773(c) of the Act, the South African seafood processor's 2014 annual report constitutes the "best available information" from a market-economy to value the financial ratios for the final results.

With regard to Hongda's argument that the South African seafood processor's financial statement does not provide disaggregated expenses for raw materials or labor cost, we find that it contains the necessary information for the Department to calculate appropriate financial ratios.[30]

[26] *See* Memorandum entitled "Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Freshwater Crawfish Tail Meat (FCTM) from the People's Republic of China (China), dated November 24, 2014.
[27] *See* Oceana Group's 2014 Annual Report at 21.
[28] *See* Surrogate Country Selection Memorandum dated September 30, 2015.
[29] *See* FMC Corp., 27 CIT at 251 (citing *Technoimportexport*, 16 CIT at 18).
[30] *See* Final Results Surrogate Value Memorandum dated concurrently with this memorandum.

Comment 2: Selection of Surrogate Value for Water

CPA asserts that the Department misapplied the rate table published by the Metropolitan Waterworks Authority of Thailand (MWA) that it used in the *Preliminary Results* to value water. CPA contends that MWA sells water at graduated rates and the unit price depends on how much water is used, and there is a minimum charge of 90 Baht per month for industrial users. CPA provides a hypothetical case where one company (Company A) may use $18m^3$ of water per month and another company (Company B) may use $450m^3$ of water per month. According to CPA, based on the MWA table used in the preliminary results, Company A's unit cost is 10.7 Baht/m^3 whereas Company B's unit cost is 15.81 Baht/m^3. CPA argues that, under the approach the Department took in the *Preliminary Results*, a surrogate value of 13.84 Baht/m^3, which is the average rate used in the *Preliminary Results*, would be applied to both Company A and B regardless of whether they consumed a low amount of water per month or whether they consumed a large amount of water per month. CPA argues that is simply a misapplication of the rate table and it has nothing to do with whether the rates are publicly available, non-export values, product specific, within the POR, duty and tax-exclusive as the Department contends in its surrogate value memorandum. According to CPA, it is a matter of correctly matching the rates from the table to the quantity of the input used by the respondent.

CPA argues that, where all of the respondents are heavy industrial users of water (*i.e.*, over $200m^3$/month), the methodology used by the Department in the *Preliminary Results* will always understate the respondents' unit cost of water. CPA asserts that, if the Department knows that all respondents use over $200m^3$ per month, there can be no rational basis for selecting any rate from the MWA table except the rate of 15.81 Baht/m^3, which is the corresponding rate for this type of water usage. CPA contends that if the Department continues to rely on the MWA rates to value water for the final results, it should apply the rate that corresponds to the known water level consumption of a particular respondent.

CPA argues that the water fees published by the Thailand Board of Investment in *Costs of Doing Business in Thailand 2014* are a superior source of surrogate values for water in this review compared to the MWA fees the Department used in the *Preliminary Results*. CPA explains that the *Costs of Doing Business in Thailand 2014* list over 50 "industrial estates and facilities" throughout Thailand. CPA explains further that, for most of the industrial estates and facilities, the document states the specific "water fee" charged to users of those facilities in Baht per cubic meter. According to CPA, this is a more detailed and more contemporaneous data base for water rates in Thailand than the 1999 MWA table used by the Department in the *Preliminary Results*. CPA asserts that the average rate for 52 rates reported is 18.5933 Baht/m^3, substantially greater than the rate of 13.8418 Baht/m^3 used by the Department in the *Preliminary Results*.

CPA argues that the calculated average rate of 18.5933 Baht/m^3 is a more suitable surrogate value for water than any figure derived from the MWA rate table for various reasons. CPA argues further that the rate is more contemporaneous with the POR and the data satisfy all of the criteria emphasized by the Department in its surrogate value memo. CPA points out that the Department's preference is to use, where possible, a publicly available value which is an average non-export value, representative of a range of prices within the POR or most contemporaneous with the POR, product-specific, and duty and tax-exclusive. CPA asserts that the rates from the report cover a broad geographical area and range of actual water users in Thailand, whereas that type of information is not on the MVA table. CPA argues, that for the above reasons, the Department should use a surrogate value of 18.5933 Baht/m^3 which is based on *Costs of Doing Business in Thailand 2014* for the final results of these reviews.

Hongda states that the Department has valued water by applying the MWA data in other proceedings, including previous administrative review segments of this proceeding. Citing *Sebacic Acid from the PRC*,[31] Hongda argues that the Department has indicated that predictability is an important consideration in factor valuation.

With regard to CPA's hypothetical scenarios, Hongda argues that the Department should reject CPA's imaginary considerations, which are not based on the respondent's actual water usage experience. Hongda argues further that CPA' proposed alternative to value water, which is based on the *Costs of Doing Business in Thailand 2014,* is unsuitable, because it mirrors the price of water charged by several industrial estates that, unlike MWA, are not a state run water authority that supplies water. According to Hongda, because these entities themselves buy water from producers like MWA and then sell to end-users, their resale prices do not provide a usable surrogate value, as the prices charged by a producer like MWA do.

Department's Position: In the *Preliminary Results,* we valued water using data published by the MWA of Thailand specific to prices charged to "Commerce, Government Agency, State Enterprise and Industry." We indicated in the *Preliminary Results,* that although this source states that the published prices are effective as of December 1999, there was no information to indicate that these prices were not still in effect. Thus, for the *Preliminary Results*, we used an average of the prices outlined in the MWA, which resulted in a POR surrogate value of 13.84 Baht/m^3.[32]

We have reconsidered our methodology of applying an average rate of 13.84 Baht/m^3 to all respondents and, instead, we have determined that it is appropriate to apply the specific water rate as outlined in the MWA tariff chart to the respondents' actual water consumption for the final results because it provides a more accurate reflection of what the respondents' water rate would be because the rate used is based on the respondents' actual water consumption. Although we have stated that our preference is to use, where possible, an average non-export value, we find that applying the actual rate to the applicable respondent yields more accurate results than applying an average rate, because it corresponds to rates specific to actual levels of water consumption. Thus, in this case, we find it reasonable to apply the MWA water specific rate that corresponds to the respondents' actual water consumption. We point out that the Department has followed this methodology in other NME cases where we have used the MWA of Thailand to value water and has applied the specific water rate that corresponds to the respondent's actual water consumption, instead of applying an average of 13.8418 Baht/m^3 to all respondents.[33]

[31] *See Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 65 FR 49537 (August 14, 2000), and accompanying Issues and Decision Memorandum at Comment 5 (*Sebacic Acid from the PRC*).
[32] *See* Surrogate Value Memorandum, dated September 30, 2015, at 5.
[33] *See, e.g.,* Multilayered Wood Flooring from the People's Republic of China: Final Surrogate Value Memorandum, dated July 8, 2015, at Attachment Ib.

With regard to CPA's suggestion that we use the water rates as outlined in *Costs of Doing Business in Thailand 2014*, we agree with Hongda that the rates found in the *Costs of Doing Business in Thailand 2014* are unsuitable because those rates mirror the price of water charged by several estates that, unlike MWA, are not state run entities that supply water. Specifically, the *Cost of Doing Business in Thailand 2014* provides information on the particular estate location within Thailand and the corresponding water fee each estate charges to end-users.[34] Because these estates buy water from a state run water authority such as MWA, and then sell to end-users, their resale prices do not provide a usable surrogate value, which the water fees charged by MWA do. As such we disagree with CPA that water rates found in the *Costs of Doing Business in Thailand 2014* are a superior source compared to the water rates found in the MWA of Thailand.

With respect to CPA's contention that the MWA water rates may not be contemporaneous with the POR, as we indicate in our Surrogate Value Memorandum, there is no information to indicate that the published water prices from MWA are not still in effect. Thus, the MWA water rates are contemporaneous with the POR, as there is no indication that the MWA water rates have been updated.[35]

Comment 3: Application of a Zero Margin to Unexamined Respondent

CPA argues that it does not agree with the Department's decision that, given the facts of this case, it is reasonable to assign Shanghai Ocean Flavor a zero rate in this administrative review, as it did in the *Preliminary Results*.

Department's Position: In our *Preliminary Results*, we explained that because the calculated preliminary margins for the respondents selected for individual examination were zero, we found that, in this case, a reasonable method for determining the rate for the non-selected company, Shanghai Ocean, was to apply the average of the zero margins calculated for the mandatory respondents. Pursuant to our consideration of comments received from interested parties, we have made changes to our *Preliminary Results* and, as a result of these changes, we have calculated above *de minimis* margins for both mandatory respondents for these final results. Accordingly, we have used these above *de minimis* margins to determine a rate to assign to Shanghai Ocean that is also above *de minimis*. All arguments raised by CPA with respect to this issue are, therefore, moot and we have not addressed them here.

Comment 4: Clerical Error

Hongda claims that, although the Department identifies the correct pounds-to-kilograms ratio in Hongda's Preliminary Results Analysis Memorandum, the margin-calculation-program log indicates that the Department converted the U.S. price and quantity from pounds to kilograms in the margin-calculation program using a ratio of 2.2026 rather than the correct ratio of 2.2046. Hongda also claims that the margin calculation program log also indicates that, in the margin

[34] *See* the *Cost of Doing Business in Thailand 2014,* at 26 through 47.
[35] *See* http://www.mwa.co.th/ewtadmin/ewt/mwa_internet_eng/ewt_news.php?nid=309.

calculation program, the Department applied surrogate financial ratios for overhead, selling, general and administrative expenses and profit other than those identified in the surrogate value memo.

Department Position: In our *Preliminary Results,* with regard to Hongda, we used the correct pounds to kilograms ratio of 2.2046 and the financial ratios identified in the surrogate value memorandum as is indicated in the computer programs that we disclosed to parties after the *Preliminary Results*. We inadvertently, however, attached the incorrect computer margin program log and margin program output to Hongda's Preliminary Results Analysis Memorandum.[36] Specifically, we attached a margin log and output that indicate that the program was run on August 13, 2015, when we should have attached the margin log and output of the margin program that indicate that the program was run on September 24, 2015. We will release the September 24, 2015, log and output to parties concurrently with this memorandum.[37]

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above position. If this recommendation is accepted, we will publish the final results of the review in the *Federal Register*.

✓
_______________ _______________
Agree Disagree

Ronald K. Lorentzen
____
Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

April 8, 2016
____
Date

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[36] *See* Memorandum to the File entitled "Administrative Review of the Antidumping Duty Order on Freshwater Crawfish Tail Meat from the People's Republic of China: Preliminary Results Analysis Memorandum for Weishan Hongda Aquatic Food Co., Ltd." dated September 30, 2015, at attachments 2 and 3.

[37] *See* Memorandum to the File entitled "Administrative Review of the Antidumping Duty Order on Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results Analysis Memorandum for Weishan Hongda Aquatic Food Co., Ltd." dated September 30, 2015, at attachment 4.