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April 6, 2017

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

FROM: Gary Taverman
Associate 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; 2014-2015

Summary

We analyzed the case and rebuttal briefs submitted by interested parties[1] 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) covering the period September 1, 2014, through August 31, 2015 (POR). 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), Xuzhou Jinjiang, Hubei Nature Agriculture Industry Co., Ltd. (Hubei Nature), and Hubei Qianjiang Aquatic Food and Product Co., Ltd. (Hubei Qianjiang). We recommend that you approve the positions we developed in the "Discussion of the Issues" section of this memorandum. Below is a complete list of the issues for which we have received comments and rebuttal comments from interested parties:

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

Comment 2: Selection of Surrogate Value for Freight, and Brokerage and Handling Expenses

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[1] *See* case brief from Xuzhou Jinjiang Foodstuffs Co., Ltd. (Xuzhou Jinjiang), dated December 16, 2016, and rebuttal brief from the petitioners, the Crawfish Processors Alliance (CPA), dated December 23, 2016.

Comment 3: Value-Added Tax Reduction

Background

On October 12, 2016, we published the preliminary results of these reviews.[2] On October 17, 2016, we issued a post-preliminary analysis memorandum.[3] On January 9, 2017, we issued a memorandum extending the time limit for the final results of these reviews to April 10, 2017.[4] On February 2, 2016, we aligned the new shipper review with the administrative review.[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 continue to use the 2001 Indonesian price quote.[7] 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.[8] Unlike for the *Preliminary Results*, as discussed below, for these final results, we used the 2014 financial statements of two Thai seafood processors to value financial ratios.[9]

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

[2] *See Freshwater Crawfish Tail Meat from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review; 2014-2015*, 81 FR 70389 (October 12, 2016) (*Preliminary Results*), and accompanying Decision Memorandum (Preliminary Decision Memorandum).
[3] *See* Memorandum to James Maeder, Senior Director, AD/CVD Operations, Office I, dated October 17, 2016.
[4] *See* Memorandum extending the Final Results, dated January 9, 2017.
[5] In accordance with 19 CFR 351.214(j)(3), the Department aligned the new shipper review with the administrative review. *See* the Memorandum to the File entitled, "Alignment of New Shipper Review 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 February 2, 2016.
[6] *See Preliminary Results,* and accompanying Preliminary Decision Memorandum at 5-7.
[7] On March 28, 2016, CPA placed on the record surrogate value information concerning the 2001 Indonesian price quote, which we have relied on to value crawfish shell or scrap in the instant case. *See* CPA's March 28, 2016, surrogate value submission at Exhibit 2.
[8] *See* Memorandum entitled, "Freshwater Crawfish Tail Meat from the People's Republic of China: Selection of a Surrogate Country," dated October 5, 2016.
[9] *See* Final Results Surrogate Value Memorandum, dated concurrently with this memorandum.

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, Xuzhou Jinjiang, Hubei Nature, and Hubei Qianjiang demonstrated their eligibility for separate rates.[10] For these final results, we continue to find that these companies are eligible for separate rates.

Separate Rate for a Non-Selected Company

Hubei Nature is the only exporter of crawfish tail meat from the PRC that demonstrated its eligibility for a separate rate which was not selected for individual examination in this review. The statute and the Department's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, we have looked to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents we did not individually examined in an administrative review.[11] Section 735(c)(5)(A) of the Act articulates a preference that we are not to calculate an all-others rate using any zero or *de minimis* margins or any margins based entirely on facts available. Accordingly, the Department's usual practice has been to average the margins for the selected companies, excluding margins that are zero, *de minimis*, or based entirely on facts available.[12] Section 735(c)(5)(B) of the Act also provides that, where all margins are zero, *de minimis*, or based entirely on facts available, we may use "any reasonable method" for assigning the rate to non-selected respondents, including "averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated."

In previous cases, the Department has determined that a "reasonable method" to use when, as here, the rates of the respondents selected for individual examination are all zero is to apply to those companies not selected for individual examination (but eligible for a separate rate in NME cases) the average of the most recently determined rates that are not zero, *de minimis*, or based entirely on facts available (which may be from a prior administrative review or a new shipper review).[13] If any such non-selected company had its own calculated rate that is contemporaneous with or more recent than such prior determined rates, however, the Department has applied such individual rate to the non-selected company in the review in question, including

[10] *See* Memorandum entitled, "Freshwater Crawfish Tail Meat from the People's Republic of China – Post-Preliminary Analysis Memorandum," dated October 17, 2016.
[11] *See, e.g., Longkou Haimeng Mach. Co. v. United States*, 581 F. Supp. 2d 1344, 1357-60 (CIT 2008).
[12] *See Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Results of New Shipper Review; 2012-2013*, 80 FR 41476 (July 15, 2015), and accompanying Issues and Decision Memorandum at Comment 17 (*Multilayered Wood Flooring from the PRC*).
[13] *See Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of Fifth Antidumping Duty Administrative Review*, 76 FR 8338, 8342 (February 14, 2011) (unchanged in *Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 51940 (August 19, 2011)).

when that rate is zero or *de minimis*.[14] The Department has also stated that it will not use its prior zeroing methodology in administrative reviews with preliminary determinations issued after April 16, 2012.[15]

In light of the Federal Circuit's decision in, *Albemarle Corp. v. United States,* 821 F.3d 1345 (Fed. Cir. 2016), we have concluded that in this case another reasonable method for determining the rate for the non-selected company, Hubei Nature, is to apply the weighted-average margin calculated for the two mandatory respondents (here, China Kingdom and Xuzhou Jinjiang) in this administrative review (*i.e.*, zero) to Hubei Nature for these final results. This is a reasonable method for calculating Hubei Nature's separate rate under section 735(c)(5)(B) of the Act.[16]

<u>Discussion of the Issues</u>

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

Xuzhou Jinjiang argues that the three Thai seafood processors' financial statements that are on the record (Sea Bonanza Foods Co., Ltd. (Sea Bonanza), Kongphop Frozen Foods Co., Ltd. (Kongphop), and Kiang Huat Sea Gull Trading Frozen Food Public Co., Ltd. (Kiang Huat)), are suitable and reliable for valuing Xuzhou Jinjiang's financial ratios. According to Xuzhou Jinjiang, all three Thai companies are seafood processors, and the financial statements of two of these Thai seafood processors provide detailed and itemized costs of raw materials and energy. Xuzhou Jinjiang argues that all three Thai seafood processors' financial statements are not distorted by export subsidies, have good quality data, are representative of the production

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[14] *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Preliminary Results of the New Shipper Review and Fourth Antidumping Duty Administrative Review and Partial Rescission of the Fourth Administrative Review*, 73 FR 52015 (September 8, 2008); *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 11349 (March 17, 2009) (changing rate for non-selected respondents because the final calculated rate for the selected respondent was above *de minimis*) (unchanged in *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Amended Final Results of the Fourth Antidumping Duty Administrative Review*, 74 FR 17816 (April 17, 2009)).

[15] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

[16] *See Xanthan Gum From the People's Republic of China,* 82 FR 11428, (Feb. 23, 2017), and accompanying Issues and Decision Memorandum at Comment 4 (*citing* Uruguay Round Agreements Act Statement of Administrative Action, (SAA) attached to H.R. Rep. No. 103-316 Vol. I at 873 (1994), reprinted in 1994 U.S.C.C.A.N 3773, 4163 (SAA)); *see* also *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4 1/2 Inches) from Japan: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2014-2015*, 81 FR 45124 (July 12, 2016) and accompanying Preliminary Decision Memorandum at 7-8, unchanged in *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 41/2 Inches) from Japan: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015*, 81 FR 80640 (November 16, 2016). Furthermore, in a case involving individually examined respondents with only *de minimis* dumping margins, the CAFC expressed the following: The SAA thus makes clear that under the statute, when all individually examined respondents are assigned de minimis margins, Commerce is expected to calculate the separate rate by taking the average of those margins. Commerce may use "other reasonable methods," but only if Commerce reasonably concludes that the expected method is "not feasible" or "would not be reasonably reflective of potential dumping margins." *Albemarle Corp,* 821 F.3d at 1352.

experiences of Xuzhou Jinjiang and are otherwise suitable and reliable for valuing the surrogate financial ratios. Xuzhou Jinjiang contends that the Department's proffered rationale for preliminarily selecting financial ratios from South African Oceana Group Limited (Oceana) from a secondary surrogate country (South Africa), and overlooking three alternative and superior quality financial statements from within the primary surrogate country (Thailand), is unsupported by substantial record evidence and is contradicted by controlling law.

In considering which financial statements are suitable for calculating surrogate financial ratios, Xuzhou Jinjiang argues that the Department must: (1) compare the different sources of data available on the record and select the best source among the options based on the quality, specificity and contemporaneity of the data; [17] (2) select values based on publicly available information from companies that are in the surrogate country and that produce merchandise that is identical or comparable[18] to the subject merchandise and in accordance with 19 CFR 351.408(c)(4) of the regulations;[19] (3) consider whether a surrogate company's "manufacturing overhead and SG&A ratios" are "representative" of the respondent's production experience; [20] and (4) select "financial statements of surrogate producers whose production processes are not comparable to the respondent's production process." [21]

According to Xuzhou Jinjiang, it produces crawfish tail meat by simple, three-stage processing of one principal input—whole crawfish, and purchases all of its inputs (including whole crawfish and packing materials) in the local Chinese market. Further, Xuzhou Jinjiang claims that during the POR, it did not produce any non-subject merchandise at its production facility, and it did not purchase any inputs from any market economy suppliers during the POR.

In contrast, according to Xuzhou Jinjiang, Oceana is a huge multinational company whose business operations, including its production activities, are wide, varied and disparate. Xuzhou Jinjiang argues that Oceana is characterized by global sourcing of inputs and production and sale of disparate finished products, and unlike Xuzhou Jinjiang, its operational divisions are vertically integrated. Therefore, Xuzhou Jinjiang argues that record evidence indicates that Oceana Group's financial statements are not suitable for valuing Xuzhou Jinjiang's financial ratios, because Oceana's production experience is vastly dissimilar from those of Xuzhou Jinjiang.

Xuzhou Jinjiang argues that Oceana is not engaged in the production of comparable merchandise. For instance, according to Xuzhou Jinjiang, Oceana's annual report indicates that the company core fishing business is the catching, processing, marketing, and distribution of

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[17] *See Ningbo Dafa Chemical Fiber Co., Ltd. Consolidated Fibers, Inc., et al. v. United States*, 580 F. 3d 1247,1257 (Fed. Cir. 2009) (*Ningbo Dafa Chemical Fiber).*

[18] Xuzhuo Jinjiang cites to *Certain Woven Electric Blankets from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 75 FR 38,459 (July 2, 2010), and accompanying Issues and Decision Memorandum at Comment 2.

[19] *See Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 61172, 61175 (October 9, 2015), and accompanying Issues and Decision Memorandum at Comment 2 (*Activated Carbon from the PRC*).

[20] *See Folding Metal Tables and Chairs from China: Final Results of Antidumping Duty Administrative Review*, 72 FR 71355 (December 17, 2007) *(Folding Metal Tables*).

[21] *See Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from China*, 70 FR 24502 (May 10, 2005) (*Chlorinated Isocyanurates*).

canned fish, fishmeal, fish oil, lobster, horse mackerel, squid, hake, and provided refrigerated warehouse facilities and logistical support services. Xuzhou Jinjiang states that Oceana's financial statements indicate that the sale of fishmeal and fish oil are the company's second highest revenue earner, and it argues that these two products are vastly different from the subject merchandise in terms of the three-part test. Xuzhou Jinjiang asserts that record evidence shows that fishmeal is generally manufactured from wild-caught, small marine fish that contains a high percentage of bones and oil, and are usually deemed not suitable for direct human consumption and that the fishmeal caught for fishmeal purposes are termed "industrial." Xuzhou Jinjiang argues that, unlike its business operations, Oceana's principal line of business is fishing, not fish processing.

Xuzhou Jinjiang asserts that Oceana incurs a huge amount of overhead and SG&A expenditures on fishing in many different settings and uses various fishing methods. Xuzhou Jinjiang contends that, unlike Xuzhou Jinjiang, Oceana does not incur similar levels of expenditures on purchases of whole fish from the market. Xuzhou Jinjiang argues that the cost incurred by Oceana on raw materials, labor, energy, overheads, sales and general expenses, as well as its profit margins, are severely distorted by its overwhelming focus on pre-processing and post-processing (cold storage) and transportation activities.

Citing *Carbon Steel Plate from the PRC*,[22] Xuzhou Jinjiang argues that the Department has an established precedent of rejecting the choice of vertically integrated financial statements to value the financial ratios of non-integrated respondents. Specifically, Xuzhou Jinjiang argues that, as such, the Department is required to reject the financial statement of an integrated company like Oceana and, instead, select the financial statements of non-integrated Thai shrimp or seafood processors, to accurately value Xuzhou Jinjiang's financial ratios.

With respect to the Thai financial statements from Kiang Huat, Xuzhou argues that, while it contains a reference to the Thai Board of Investment (BOI) subsidy programs, there is also direct evidence on the record demonstrating that during 2015, Kiang Huat did not receive benefits from any of the said BOI programs. Citing *Golden Dragon Precise Copper Tube Group, Inc. v. United States*,[23] Xuzhou Jinjiang argues that the court affirmed the Department's policy to use a financial statement in a similar situation where the court held that, "{i}t is reasonable for Commerce not to reject financial statements that include a policy for accounting for subsidies because the receipt of a subsidy, and not the policy itself, causes the distortion in the financial statement that impacts the calculation of surrogate financial ratios"). As such, according to Xuzhou Jinjiang, Kiang Huat's 2015 financial statement is not distorted by any subsidy benefits and, therefore, should be averaged with the other two Thai seafood processors' financial

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[22] *See Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order*, 75 FR 8301, 8303 (February 24, 2010) (*Carbon Steel Plate from the PRC*).

[23] *Golden Dragon Precise Cooper Tube Group, Inc. v. United States,* Slip Op 16-80 (CIT Feb 22 2016) * 9 (*citing Dupont Teijin Films v. United States*, 896 F. Supp. 2d 1302, 1310-1313 (CIT 2013) ("[i]t is reasonable for Commerce not to reject financial statements that include a policy for accounting for subsidies because the receipt of a subsidy, and not the policy itself, causes the distortion in the financial statement that impacts the calculation of surrogate financial ratios")).

statements to determine representative, reliable and accurate financial ratios for these final results.

CPA rebuts Xuzhou Jinjiang's argument that the Department cannot use Oceana's financial statements to value financial ratios because Oceana does not produce the right products, produces too many different products, or is too integrated by citing *Rhodia, Inc. v. United States,* 240 F. Supp. 2d 1247 (CIT 2002), where it argues that, the Court has held that "the Department is not required neither to duplicate the exact production experience of respondents, nor to undergo an item-by-item analysis, in selecting surrogate financial ratios." CPA disputes Xuzhou Jinjiang's criticism of Oceana's "vertical integration," pointing out that Xuzhou Jinjiang provided information that suggests that it too has a certain "vertical integration" structure within the company. CPA asserts that Xuzhou Jinjiang's claim that Oceana's principal line of business is fishing, not fish processing, is peculiar because, according to CPA, when a factory ship is being used, the activity is both fishing and processing. Thus, according to CPA, it is, therefore, inaccurate to characterize the ship's activities as only operations that are either prior to, or post processing, of fish.

CPA asserts that Xuzhou Jinjiang's argument that the Department should not use Oceana's financial statements to value financial ratios because Oceana processes fishmeal which is not meant for human consumption is also unpersuasive, because we know that crawfish producing Chinese companies produce vast quantities of inedible crawfish shell scrap that they sell and which they claim as a byproduct.

CPA rebuts Xuzhou Jinjiang's argument that Oceana's financial statements should not be used because they have no discrete line item for raw materials. According to CPA, it is rarely the case that surrogate financial statements come conveniently pre-packaged for use in an antidumping case. CPA asserts that, although Oceana's financial statements do not have a specific line-item labeled "raw material costs," the Department was, nonetheless, able to infer value for such costs by subtracting other known, itemized costs that were not for raw materials.

With respect to Sea Bonanza's financial statements, CPA argues that they are unsuitable sources for surrogate financial ratios because it is not clear from the record whether Sea Bonanza is currently a seafood processor. Specifically, CPA asserts that the company's description indicates that the company began in 1989 as a seafood processor, but it is not clear from the record whether the company still engages in the seafood processing business. CPA contends that the only two products specifically mentioned in the financial statement, are Job's tears (a tropical plant) and roasted seaweed. CPA argues that neither of those products can fairly be called "seafood." CPA claims that Sea Bonanza does not claim to process those two products, but rather, appears to act mainly as an importer and a provider of cold storage with respect to these products.

CPA asserts that the other bit of record evidence about Sea Bonanza's activities is located under note 1.3 of the financial statements ("Main Business Operation"), where it states that Sea Bonanza is in the business of operating in manufacturing, importing and exporting of frozen seafood products, as well as importing and exporting of fruits. CPA argues that it is impossible to know what "manufacturing" might mean in this context and one cannot gauge the significance of such activities relative to the import/export operations or the company's fruit business. According to CPA, Sea Bonanza's financial statements do not provide enough information to conclude that Sea Bonanza was mainly a seafood processor during 2014.

With respect to Thai financial statements from Kongphop, CPA argues that there is no evidence on the record of this proceeding to support the notion that Kongphop was a seafood processor at any time, or to any extent whatsoever, during 2014. CPA asserts that the description provided in Xuzhou Jinjiang's September 6, 2016, submission of Kongphop's main business activity does not provide any specifics about the nature of any "processing" operations performed by Kongphop, nor does it indicate the relative significance of processing compared to exporting operations. CPA contends that, more importantly, the information is from 2007, long before the POR in this case.

CPA states that the only other information that is on the record describing Kongphop's business activities comes from a third-party website (Sea-Ex Trade Seafood Industry Directory) in which the website describes Kongphop as a manufacturer and exporter frozen seafood worldwide, *e.g.*, shrimp, squid, cuttlefish, octopus, mussels, clams, scallops, seafood mix, fish and fillets, soft shell crab, breaded seafood, dim sum, and ready meals. CPA argues that it is not clear whose description it is or whether the author knew what he or she was talking about. According to CPA, there are thousands of similar third-party aggregator sites on the Internet, harvesting information or just making it up to generate ad hits. CPA argues that what is lacking is any respect for the concepts of authentication, attribution, and genuineness.

CPA argues that the third piece of information on the record derives from Panjiva, dated December 2015, which shows a single shipment from Kongphop to the United States of squid and cuttlefish. Thus, according to CPA, this piece of information suggests that Kongphop is an exporter of squid and cuttlefish, but it does not demonstrate that Kongphop is a seafood processor. CPA argues further that the Panjiva document does not state the country of origin of the merchandise or what, if anything, Kongphop did to it, aside from exporting the seafood products. CPA contends that, based on the information provided by Xuzhou Jinjiang on the record, it is not possible to reach the conclusion that Kongphop's principal business activity during the 2014 was seafood processing and it has not met the burden of establishing a basis for that essential factual conclusion.

With respect to the third Thai seafood processor, Kiang Huat, CPA argues that it receives export subsidies, despite Xuzhou Jinjiang's insistence that it did not. CPA contends that the subsidy benefits are discussed in Note 22 of King Huat's 2015 financial statements as "Promotional Privileges" under the Industrial Investment Promotion Act B.E. 2520, administered by the Board of Investment. According to CPA, note 22(b) to Kiang Huat's financial statements describe a "50% reduction in the normal income tax rate on the net profit derived from certain operations for a period of five years," which according to CPA, means some of the benefits were received during the 2015 calendar year.

<u>Department's Position</u>: Pursuant to section 773(c)(1)(A)-(B) of the Act, where subject merchandise is exported from an NME, as is the case here with China, we determine the normal value of the subject merchandise based on the value factors of production (FOP) utilized in producing the merchandise. The value of the FOPs is based on the "best available information" from a market-economy country. *See* section 773(c)(1)(B). In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOP in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) are significant producer of comparable merchandise.[24] Further, 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.[25] 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.[26]

Additionally, and of importance here, our practice is not to rely on financial statements where there is evidence that the company received countervailable export subsidies, and where we have alternative more reliable, while still representative data on the record for purposes of calculating the surrogate financials.[27] This practice also heeds Congress's direction that the Department, "avoid using any prices which it has reason to believe or suspect may be dumped or subsidized," when valuing factors of production in cases involving non-market economies.[28]

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."[29] In determining the suitability of

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[24] *See* Memorandum entitled, "Freshwater Crawfish Tail Meat from the People's Republic of China: Selection of a Surrogate Country," dated October 5, 2016 (Surrogate Country Memorandum). *See also e.g., Electrolytic Manganese Dioxide from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008) and accompanying Issues and Decision Memorandum at Comment 2. *See* Policy Bulletin No. 04.1, "NME Surrogate Country Selection Process" (March 1, 2004), available at *http://enforcement.trade.gov/policy/bull04-1.html* (Policy Bulletin 04.1).

[25] *See Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 70163 (November 25, 2014) and accompanying Issues and Decision Memorandum at Comment 5; *see* also Policy Bulletin.

[26] *See Xanthun Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 78 FR 33350 (June 4, 2013) and accompanying Issues and Decision Memorandum at Comment 1.

[27] *See Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2013-2014,* 81 FR 21840 (April 13, 2016), and accompanying Issues and Decision Memorandum at Comment 1. *See* also *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008), and accompanying Issues and Decision Memorandum at Comment 17 A.

[28] Omnibus Trade and Competitiveness Act of 1988, Conference Report to Accompany H.R.3, H.R. Rep. No. 576, 100th Cong., 2nd Sess., at 590-91 (1988), *as reprinted in* 1988 U.S.C.C.A.N. 1547, 1623 ("In valuing {factors of production}, Commerce shall avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices. However, 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."); *see* also section 773(c)(5), which discusses discretion to the Department to disregard certain price or cost values if it has determined that broadly available export subsidies existed or particular instances of subsidization occurred with respect to price or cost values.

[29] *See*, *e.g.*, *Pure Magnesium from the People's Republic of China: Final Results of the 2009-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 76 FR 76945 (December 9, 2011) and the accompanying Issues and Decision Memorandum at Comment 5. *See* also Policy Bulletin 04.1.

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.[30] 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.[31] 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." *See* section 773(c) of the Act. Furthermore, the court has recognized the wide discretion given to the Department in selecting the best surrogate values on the record.[32]

In the *Preliminary Results*, we relied on the 2015 Annual Report of a South African seafood processor, Oceana, because we determined that, pursuant to 773(c) of the Act, it constituted the "best available information" on the record.[33] In the *Preliminary Results*, we explained that we were unable to use the financial statement data on the record from the primary surrogate country to calculate surrogate ratios for overhead, SG&A, and profit, because the record indicated that Surapon Food Public Company Ltd., (Surapon), received countervailable export subsidies under the Investment Promotion Act (IPA).[34] We further explained in the *Preliminary Results* that our practice is not to rely on financial statements to calculate surrogate financial ratios where there is evidence that the company received countervailable export subsidies and where we have other, more reliable, and representative data on the record necessary to calculate the surrogate financial ratios.[35]

On September 6, 2016, prior to the issuance of the *Preliminary Results*, Xuzhou Jinjiang placed timely new surrogate value information on the record, including the 2014-2015 audited financial statements of three additional Thai seafood processors (Kiang Huat, Sea Bonanza, and Kongphop), requesting that the Department consider using these financial statements for purposes of calculating financial ratios.[36] In the *Preliminary Results,* we stated that we would consider such information in the context of the final results.[37]

We have reviewed each of these financial statements and agree with CPA, in part.

First, with regard to Kiang Huat's 2015 financial statements, the record indicates that it received export subsidies under the IPA,[38] which we have determined to be countervailable export

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[30] *Id.*
[31] *See Multilayered Wood Flooring from the PRC* at Comment 2.
[32] 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 CIT 240, 251 (Feb. 11, 2003), aff'd *FMC Corp. v. United States, 87 F. App'x 753* (Fed. Cir 2004). (citing *Technoimportexport, UCF. America Inc. v. United States*, 16 CIT 13, 18 (Jan. 23, 1992); *see also, Juancheng Kangtai Chem. v. United States*, 2015 WL 4999476 at *13, Slip Op. 15–93 (CIT 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").
[33] *See* Preliminary Decision Memorandum at 16.
[34] *Id.*
[35] *Id*.
[36] *See* Xuzhou Jinjiang's September 6, 2016, submission at Exhibit 7.
[37] *See* Preliminary Decision Memorandum at 16, n70.
[38] *See* Xuzhou Jinjiang's September 6, 2016, submission at Exhibit 7C.

subsidies.[39] Specifically, in *Shrimp from Thailand*, we stated that 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), which describes export subsidies.[40] Note 22 of Kiang Huat's 2015 financial statements provides for "Promotional privileges" and describes Industrial Investment Promotion Act B.E. 2520. Note 22 states that Kiang Huat was "granted privileges by the Board of Investment relating to manufacturing of frozen seafood products." Subsection (b) continues to describe that the privileges granted include a "50% reduction in the normal income tax rate on the net profit derived from certain operations for a period of five years, commencing from the expiry date."[41] Kiang Huat's 2015 financial statements identify the "expiry dates" under note 22(a) as May 2009 and November 2010, respectively, which indicates that Kiang Huat received some of the countervailable export benefits during calendar year 2015, which overlaps, in part, with the instant POR.[42] Thus, we find that Kiang Huat benefitted from countervailable export subsidies and, therefore, we have determined that Kiang Huat's 2015 financial statements are not suitable for purposes of calculating financial ratios.

Second, with respect Sea Bonanza's 2014 audited financial statements, we did not find any evidence on the record, nor did any party allege, that this company received any export subsidies during the POR. Further, in reviewing Sea Bonanza's 2014 audited financial statements, under note 1.3 of the company's financial statements, it describes the company's main business operation as, "Operating in manufacturing, importing and exporting of frozen seafood products, as well as, importing and exporting of fruits."[43] In addition, the company's profile provided by Xuzhou Jinjiang indicates that the company was established in December of 1989 and it is a manufacturer and exporter of frozen seafood products, with an "abundant source of seafood from the Gulf of Thailand."[44] In addition, although the company profile mentions two specific products that Sea Bonanza exports, Job's tears[45] and seaweed, the website explains that Sea Bonanza has continued its expansion by diversifying it foods products, adding Job's tears and seaweed to its product catalog.[46] Though CPA disagrees, we find that this statement regarding product diversification, in and of itself, does not disqualify Sea Bonanza as also being a producer of processed seafood, because the financial statements merely indicate that the company has expanded its product food line. We also point out that Oceana's 2015 Annual Report, which CPA advocates, indicates that, aside from horse mackerel, and hake, it sells canned fish, fishmeal, fish oil, lobster, squid, and French fries.[47] With the exception of horse mackerel and hake, none of the other products identified in Oceana's 2015 Annual Report are processed

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[39] *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*).
[40] *Id*. at 7.
[41] *See* Xuzhou Jinjiang's September 6, 2016, submission at Exhibit 7C.
[42] *Id*.
[43] *See* Xuzhou Jinjiang's September 6, 2016, submission at Exhibit 7A.
[44] *Id.*
[45] Job's tears is a tropical plant.
[46] *Id.*
[47] *See* CPA's March 2, 2016, submission at Exhibit 3.

seafood and yet we preliminarily determined that Oceana's 2015 Annual Report was suitable for purposes of calculating financial ratios.[48] As we point out above, the Department has wide discretion in selecting the best surrogate values on the record.[49] Thus, the fact that Sea Bonanza sells Job's tears and seaweed in addition to an already established line of frozen seafood products does not disqualify it from being considered a seafood processor and more importantly, does not render its financial statements unsuitable for purposes of calculating financial ratios.

As we indicate above, record evidence demonstrates that Sea Bonanza is a manufacturer and exporter of frozen seafood products[50] and CPA has not provided any evidence on the record to contradict that fact. Although we don't have more specific information on the record on the various types of frozen seafood Sea Bonanza processes, it is reasonable to conclude from the information provided on the record that Sea Bonanza is a frozen seafood processor and, therefore, is a producer of comparable merchandise. As we have explained in the surrogate country selection memorandum, we consider processed seafood as comparable merchandise to crawfish tail meat.[51] Thus, we consider Sea Bonanza to be a producer of comparable merchandise.

CPA argues that, based on the information on the record, the Department cannot conclude that Sea Bonanza was mainly a seafood processor during 2014. We are not persuaded by CPA's argument that there is not enough information on the record to determine whether Sea Bonanza was mainly a seafood processor during 2014, because there is no evidence on the record to the contrary, and CPA bases its arguments on speculation about Sea Bonanza's seaweed product line. The statute directs and Policy Bulletin 04.1 guides, that the Department shall utilize prices in one or more market economy countries that are "a significant producer of comparable merchandise." It does not provide that significant producers engage in business of *only* comparable merchandise. That Sea Bonanza also produces seaweed is irrelevant as to whether it is also a significant producer of processed seafood. There is no evidence on the record that Sea Bonanza's production is merely intermittent. We also point out that CPA had an opportunity to place information on the record to support its line of argument, but did not do so. Sea Bonanza's financial statements are from calendar year 2014 and, therefore, are contemporaneous with the POR.[52] Thus, absent any evidence indicating that Sea Bonanza was not a seafood processor during 2014, it is reasonable for the Department to conclude that Sea Bonanza was a seafood processor during 2014.

Finally, with regards to Kongphop's 2014 audited financial statement, we also did not find any evidence on the record, nor did any party allege, that Kongphop received any export subsidies during the POR. Further, in reviewing Kongphop's 2014 audited financial statements, under

[48] *See* Surrogate Country Selection Memorandum dated October 5, 2016, at 6.
[49] "{W}hen 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,* 27 CIT at 251(citing *Technoimportexport, UCF. America,* 16 CIT at 18 (1992)); *see also, Juancheng Kangtai Chem.* 2015 WL 4999476 at *13.
[50] *See* Xuzhou Jinjiang's September 6, 2016, submission at Exhibit 7A.
[51] *See* Surrogate Country Selection Memorandum dated October 5, 2016, at page 5, and n.13 (citing previous reviews of the order on freshwater crawfish tail meat from the PRC); and *see* n.14 citing Attachment I-A (discussing commodity: 03, fish and crustaceans, molluscs and other aquatic invertebrates.
[52] *See* Xuzhou Jinjiang's September 6, 2016, submission at Exhibit 7A.

Note 1 of the company's financial statements, it indicates that, "{t}he company has its main business operation in exporting of frozen seafood products."[53] In addition, per the company's profile provided on the record, it indicates that Kongphop has been recognized as one of Thailand's major seafood processors and exporters of frozen marine products.[54] Specifically, it states that the company is a "premier exporter of frozen seafood ranging from black tiger shrimp, white shrimp, cuttlefish, octopus, and freshwater shrimp."[55] Moreover, the information Xuzhou Jinjiang placed on the record describing Kongphop's main business operation is consistent with the information provided in the company's 2014 audited financial statements, specifically Note 1, mentioned above, which provides general information about the company, and the company's profile listing in seafood industry directories.[56] For example, Kongphop's listing in the Trade-Seafood Industry Directory states that Kongphop is a manufacturer and exporter of frozen seafood worldwide, *e.g.*, shrimps, squid, cuttlefish, octopus, mussels, clams, scallops, seafood mix, fish, fillets, soft shell crab, etc.[57] As such, we are not persuaded by CPA's arguments that there is no information on the record to "decipher" whether Kongphop was ever a seafood processor at any time, or during the POR. Rather, record evidence, including the company's financial statement, company profiles, website screenshots, sample customs record, and industry-specific directory entries for Kongphop, indicate that Kongphop is a producer of comparable merchandise.

As we indicate above, the Department has a strong preference to value all FOPs in a single surrogate country pursuant to 19 CFR 351.408(c)(2), as well as a practice "to only resort to a secondary surrogate country if the data from the primary surrogate country are unavailable or unreliable."[58] Further, the courts have recognized the Department's discretion when choosing appropriate companies' financial statements to calculate surrogate financial ratios.[59]

Additionally, for purposes of selecting surrogate producers, the Department examines how similar a proposed surrogate producer's production experience is to the NME's production experience.[60] The Department, however, is not required to "duplicate the exact production experience of" an NME producer, nor must it undertake "an item-by-item analysis in calculating factory overhead."[61]

The record contains as viable options the 2014 audited financial statements of two seafood processors from Thailand (Sea Bonanza and Kongphop), and the 2015 Annual Report of a

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[53] *See* Xuzhou Jinjiang's September 6, 2016, submission at Exhibit 7B.
[54] *Id.*
[55] *Id.*
[56] *Id.*
[57] *Id.*
[58] *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 61172, 61175 (October 9, 2015), and accompanying Issues and Decision Memorandum at Comment 2.
[59] *See, e.g., FMC Corp.*, 27 CIT at 251, aff'd *FMC Corp. v. United States, 87 F. App'x 753* (Fed. Cir 2004).
[60] *See Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010) and accompanying Issues and Decision Memorandum at Comment 13.
[61] *See Nation Ford Chem. Co. v. United States, 166 F.3d 1373, 1377 (Fed. Cir. 1999); see also Magnesium Corp. of Am. v. United States, 166 F.3d 1364, 1372 (Fed. Cir. 1999).*

seafood processor from South Africa.[62] Because we do not find that the surrogate financial data from Thailand, our primary surrogate country, are unavailable or unreliable, the Department does not consider the Annual Report from South Africa to be a better surrogate value source than the two financial statements from Thailand, the primary surrogate country. In addition, we find that the financial statements of both Thai seafood companies provide sufficient detailed financial information to calculate accurate financial ratios. CPA has not alleged that the Thai seafood processors' 2014 audited financial statements are so incomplete as to render them unreliable.

Accordingly, for these final results, we will use Sea Bonanza's and Kongphop's 2014 financial statements to value financial ratios, because they are complete, contemporaneous, audited, publicly available, and from the primary surrogate country and are otherwise suitable for calculating the surrogate financial ratios.[63]

Comment 2: Selection of Surrogate Value for Freight, Brokerage and Handling Expenses

Xuzhou Jinjiang argues that the Department used an outdated surrogate value for truck freight in the *Preliminary Results*, based on information provided in the World Bank's *Doing Business 2015: Thailand report*. Xuzhou Jinjiang argues further that the record includes the World Bank's *Doing Business 2016: Thailand* report, which, according to Xuzhou Jinjiang, is contemporaneous, and provides for the computation of a more accurate surrogate value for truck freight.[64]

Citing *New Pneumatic Tires from the PRC*,[65] Xuzhou Jinjiang argues that the Department has used in several recently issued determinations the World Bank's *Doing Business 2016: Thailand* report to value truck freight surrogate value and that the Department should do so in this proceeding for the final results.

Xuzhou Jinjiang argues that, similar to valuing truck freight with the World Bank's *Doing Business 2016: Thailand* report, the Department should also value brokerage and handling with the most updated Thailand report. According to Xuzhou Jinjiang, the updated World Bank's *Doing Business 2016: Thailand* report, provides contemporaneous brokerage and handling charges for exporting a standardized shipment of goods from Thailand. Xuzhou Jinjiang argues, therefore, that, for the final results, the Department should value brokerage and handling charges by applying the information provided in the World Bank's *Doing Business 2016: Thailand* report.

CPA did not submit rebuttal comments.

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[62] As we explained in the Surrogate Country Selection Memorandum dated October 5, 2016, at 5, we did not rely on Surapon 's financial statement because we determined it benefitted from countervailable export subsidies.

[63] *See* Final Results Surrogate Value Memorandum dated concurrently with this memorandum.

[64] *See* Xuzhou Jinjiang's Case brief at 35.

[65] *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*; 2014-2015, 81 FR 71068, 71071 (October 14, 2016) *(New Pneumatic Tires from the PRC*).

Department's Position: The Department's practice when selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act is to select, to the extent practicable, SVs which are publicly available, product-specific, representative of a broad market average, tax-exclusive, and contemporaneous with the POR.[66]

On March 28, 2016, China Kingdom and Hubei Qianjiang placed on the record the World Bank's *Doing Business 2015: Thailand* report, and requested that the Department consider using the information provided in the report to value truck freight and brokerage and handling charges for the preliminary results. As we specify above, Xuzhou Jinjiang placed new surrogate value information on the record prior to the *Preliminary Results*, and we explained that we would consider the new surrogate value information for the final results.[67] Thus, for the *Preliminary Results,* we used information from the *Doing Business 2015: Thailand* report to value truck freight and brokerage and handling charges. Upon reviewing the information provided by Xuzhou Jinjiang, we agree with Xuzhou Jinjiang that the World Bank's *Doing Business 2016: Thailand* report constitutes the best information available on the record pursuant to section 773(c)(4) of the Act, to value truck freight and brokerage and handling charges. It is contemporaneous, and provides for a more accurate computation of a surrogate value for truck freight than that used in the *Preliminary Results*. Thus, for these final results, we have used the *Doing Business 2016: Thailand* report to value truck freight and brokerage and handling charges.[68]

Comment 3: Value-Added Tax Reduction

Xuzhou Jinjiang argues that the Department's preliminary decision to reduce its reported U.S. prices for the unrefunded value-added tax (VAT) amount is both contrary to the plain language of the statute and unsupported by record evidence. Xuzhou Jinjiang argues further that, consistent with judicial precedent, even if the Department rejects Xuzhou Jinjiang's argument that a VAT deduction is contrary to law, it must recalculate the applicable VAT adjustment based on the difference between the actual amount of input VAT paid by Xuzhou Jinjiang, and the actual amount of input VAT paid by Xuzhou Jinjiang and the amount of export VAT refund obtained by it.

Xuzhou Jinjiang claims that the record confirms that no VAT was imposed on the subject merchandise at the point of (or due to) exportation. Xuzhou Jinjiang argues that the Interim Regulations of the People's Republic of China on Value-Added Tax (2008) (China VAT 2008) submitted by Xuzhou Jinjiang unambiguously states at Article 2.3 that "{f}or taxpayers that export goods, the tax rate shall be zero." Xuzhou Jinjiang asserts that the only tax-related event triggered by exportation is that a company is potentially entitled to a refund of certain VAT amounts previously paid on input purchases.

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[66] *See* Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, 81 FR 42314 (June 29, 2016), and accompanying Issues and Decision Memorandum, at Comment 28.
[67] *See Preliminary Results*.
[68] *See* Final Results Surrogate Value Memorandum dated concurrently with this memorandum.

Xuzhou Jinjiang contends that it paid no VAT on subject merchandise in the course of exportation and, because there is no additional VAT liability for an export sale (because the export VAT rate is zero), there is no need to credit VAT paid on input purchases against VAT owed on the export sale.

Xuzhou Jinjiang argues that, in this case, the only VAT that could be remotely associated with export of goods is the VAT that Xuzhou Jinjiang paid for its domestic purchases of inputs that were used to produce exported subject merchandise. However, according to Xuzhou Jinjiang, this is an internal tax, which is levied and paid on inputs purchased from the domestic market within China, and it is not a tax that is imposed on exportation of the subject merchandise. Citing *Globe Metallurgical Inc. v. United States*, 781 F. Supp. 2d 1340, 1346-1347 (CIT 2011), Xuzhou Jinjiang argues that the court has previously considered this very issue and concluded that Chinese VAT is a domestic tax related to production costs, rather than a "tax imposed on exportation."

Citing *Bridgestone Ams., Inc. v. United States*, 33 CIT 1040, 1048-50 (August 4, 2009), Xuzhou Jinjiang argues that the court rejected the petitioners' challenge in that case that unrefunded VAT should be included in the respondents' normal value calculation as a production cost pursuant to section 773 of the Act, noting that "{a}lthough Xugong paid VAT to acquire inputs in producing the subject goods, the Chinese VAT system is part of the 'cost or pricing structure' of China," which is disregarded under the NME methodology. According to Xuzhou Jinjiang, this precedent directly contradicts the Department's position that Chinese VAT can be considered a tax "imposed on exportation." Xuzhou Jinjiang asserts that the precedent rather confirms that Chinese VAT is an internal tax related to the cost of production within China.

Xuzhou Jinjiang argues that the Department incorrectly presumes that, in relative terms, there is a loss of input VAT credit while exporting goods as compared to when those goods are sold in the domestic market. Xuzhou Jinjiang argues further that it pays VAT in connection with its domestic purchases of material inputs, and it is at the time that Xuzhou Jinjiang makes such purchases that it incurs this cost. According to Xuzhou Jinjiang, if it makes a domestic sale, it can credit the "input VAT" paid on these material purchases against additional VAT owed on the sale of the subject merchandise, but it does not receive a refund of VAT paid for material inputs. As such, according to Xuzhou Jinjiang, there is no reason to believe that an exporter incurs an input VAT credit detriment while exporting goods as opposed to when it sells those goods domestically. Xuzhou Jinjiang argues that it is also incorrect to tie input VAT credit losses solely to the export of goods. Xuzhou Jinjiang asserts that there are other situations in which it would receive no offset or credit for input VAT that it paid. For example, according to Xuzhou Jinjiang, if it buys inputs and they are lost or damaged before it can use them in production, it will always incur the full cost of VAT paid for these inputs without any refund. Further, according to Xuzhou Jinjiang, if it uses inputs to produce products that it cannot sell, or that are lost in inventory, it will also incur the full cost of VAT paid for these inputs without any potential refund. Xuzhou Jinjiang asserts that, under these scenarios, the company bears that full cost of VAT paid on input regardless of whether there is an export sale involved. Thus, according to Xuzhou Jinjiang, any cost associated with VAT is attributable to the initial purchase of the inputs, does not arise solely from, and is not specific to, export transactions. To the contrary, according to Xuzhou Jinjiang, it is only through exportation that a potential refund of some VAT amounts previously paid on inputs would be triggered in the first place.

Citing *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-45 (1984), Xuzhou Jinjiang argues that it is well-settled that the Department's interpretation of the antidumping law cannot be contrary to the plain language of the statute or conflict with plain Congressional intent.

Xuzhou Jinjiang argues that the methodology that the Department used in the *Preliminary Results* for computing the VAT deduction based upon applying a VAT rate difference to a common value base, instead of the difference between the amount of input VAT paid and the amount of export rebate VAT received, is inaccurate. Citing *Fine Furniture (Shanghai), Ltd. v. United States*, 182 F. Supp. 3d 1350 (CIT Sept. 9, 2016) (*Fine Furniture*), Xuzhou Jinjiang argues that judicial precedent supports its arguments where the Court directed the Department to apply a methodology that achieves a result in accordance with "the amounts of irrecoverable Chinese VAT that actually were incurred." According to Xuzhou Jinjiang, *Fine Furniture* is directly applicable to the instant case, and therefore, even assuming that the "irrecoverable VAT" is an "export tax," the Department cannot simply determine the irrecoverable VAT amount by applying a convenient and simplistic formula, based on the difference between the standard VAT rate and the export refund VAT rate being applied to a common value bases, *i.e.*, FOB price.

CPA did not submit rebuttal comments.

Department's Position: For the reasons explained below, we continue to apply the un-refunded (*i.e.*, irrecoverable) VAT adjustment we applied in the *Preliminary Results*.

In 2012, we announced a change of methodology with respect to the calculation of export price (EP) or constructed export price (CEP) to include an adjustment of any (irrecoverable) VAT in certain NME countries, in accordance with section 772(c)(2)(B) of the Act.[69] In this announcement, the Department stated that when an NME government has imposed an export tax, duty, or other charge on subject merchandise or on inputs used to produce subject merchandise, from which the respondent was not exempted, the Department will reduce the respondent's EPs or CEPs accordingly by the amount of the tax, duty or charge paid, but not rebated.[70]

In a typical VAT system, companies do not incur VAT expense for exports; they receive on export a full rebate of the VAT they pay on purchases of inputs used in the production of exports (input VAT), and, in the case of domestic sales, the company can credit the VAT they pay on input purchases for those sales against the VAT they collect from customers.[71] That stands in

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[69] *See Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481, 36483-84 (June 19, 2012) (*Methodological Change*).

[70] *Id.*; *see* also *Chlorinate Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014) and accompanying Issues and Decision Memorandum at Comment 5.A.

[71] *See*, *e.g.*, explanations in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014) (*Diamond*

contrast to the PRC's VAT regime, where some portion of the input VAT that a company pays on purchases of inputs used in the production of exports is not refunded.[72] This amounts to a tax, duty or other charge imposed on exports that is not imposed on domestic sales, and thus we disagree with Xuzhou Jinjiang's assertions that irrecoverable VAT should not be deducted from their U.S. prices. Where the irrecoverable VAT is a fixed percentage of U.S. price, the Department explained that the final step in arriving at a tax-neutral dumping comparison is to reduce the U.S. price downward by this same percentage.[73]

Further, we point out that Xuzhou Jinjiang's reliance on the Chinese VAT 2008 regulation to support its position is incorrect. The record contains the Chinese Circular VAT 2012 regulation, which provides detailed information on irrecoverable VAT and the formula applicable to calculating the irrecoverable VAT incurred by companies engaged in export activities.[74] Specifically, the Chinese Circular VAT 2012 regulation describes the un-refunded or irrecoverable VAT and it provides in Article 5 of the regulation the standard formula applicable in adjusting U.S. prices.[75] In addition, Article 5 of the Chinese Circular VAT 2012 regulations provides an explanation of how un-refunded or irrecoverable VAT should be accounted for by companies in their books and records.[76] Moreover, Article 5 of the Chinese Circular VAT 2012 specifically indicates that, "{w}here the tax refund rate is lower than the applicable tax rate, the corresponding differential sum calculated shall be included into the cost of the exported goods and services."[77]

In response to Xuzhou Jinjiang's claim that the Department does not have the authority under the statute to adjust for VAT, we point out that section 772(c)(2)(B) of the Act authorizes the Department to deduct from EP or CEP the amount, if included in the price, of any "export tax, duty, or other charge imposed by the exporting country on the exportation" of the subject merchandise. Although Xuzhou Jinjiang argues that it pays no VAT upon export, it misstates the issue before the Department. The issue is the irrecoverable VAT on inputs, not VAT *per se*. Irrecoverable VAT, as defined in Chinese law, which is supported by evidence on the record, is a net VAT burden that arises solely from, and is specific to, exports.[78] It is VAT paid on inputs and raw materials (used in the production of exports) that is non-refundable and, therefore, a cost. Irrecoverable VAT is, therefore, an "export tax, duty, or other charge imposed" on exportation of the subject merchandise to the United States.[79] The statute does not define the term(s) "export tax, duty, or other charge imposed" on the exportation of subject merchandise.

Sawblades) and accompanying Issues and Decision Memorandum at Comment 6; *see* also *Methodological Change*, 77 FR at 36483.

[72] *See* Circular on Value-Added Tax and Consumption Tax Policies on Exported Goods and Services (Chinese Circular on VAT 2012) at Exhibit C-3 of Xiping Opeck Food Co., Ltd.'s questionnaire response dated January 25, 2016 (Xiping Opeck's QR).

[73] *Id*.

[74] *See* Chinese Circular on VAT 2012 at Exhibit C-3 of Xiping Opeck's QR.

[75] *Id*.

[76] *Id*.

[77] *Id*.

[78] *See Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 57508 (September 25, 2014) and accompanying Issues and Decision Memorandum at Comment 7.

[79] *See Frontseating Service Valves from the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 71385 (December 2, 2014) and accompanying Issues and Decision Memorandum at Comment 5.

We find it reasonable to interpret these terms as encompassing irrecoverable VAT because the irrecoverable VAT is a cost that arises as a result of export sales.[80] Additionally, it is set forth in Chinese law,[81] and, therefore, can be considered to be "imposed" by the exporting country on exportation of subject merchandise. Further, an adjustment for irrecoverable VAT falls under section 772(c)(2)(B) of the Act, as it reduces the gross U.S. price charged to the customer to a tax neutral net price received by the seller. This deduction is consistent with our longstanding policy, which is in turn consistent with the intent of the statute, that dumping margin calculations be tax-neutral.[82]

In addition, we point out that the record indicates that Xuzhou Jinjiang's own books and records specify that the company's irrecoverable VAT is identified as two percent (the standard VAT levy is 17 percent and the rebate rate for subject merchandise is 15 percent) and it shows that this expense is carried over in Xuzhou Jinjiang's accounting system as a cost of sale or cost of the primary business.[83]

Further, 19 CFR 351.401(c) requires that the Department rely on price adjustments that are "reasonably attributable to the subject merchandise." The PRC's VAT regime is product-specific,[84] with VAT schedules that vary by industry and even across products within the same industry. Consistent with the PRC VAT regime and our regulation, we point out that our methodology, as applied in this review, consists of performing two basic steps: (1) determining the irrecoverable VAT on subject merchandise; and (2) reducing U.S. price by the amount determined in step one. Irrecoverable VAT is: (1) the FOB value of the exported good, applied to the difference between; (2) the standard VAT levy rate; and (3) the VAT rebate rate applicable to exported goods. The first variable, export value, is unique to each respondent, while the rates in (2) and (3), as well as the formula for determining irrecoverable VAT, are each explicitly set forth in Chinese law and regulations.[85]

In this review, in step one, we determined the irrecoverable VAT on subject merchandise by first determining the amount of tax levied on inputs and raw materials (used in the production of exports). In this case, information placed on the record of this review by respondents indicates that, according to the PRC VAT schedule, the standard VAT levy is 17 percent and the rebate rate for subject merchandise is 15 percent.[86] Therefore, we removed from U.S. price the difference between the VAT rate and the rebate rate (*i.e.*, two percent), which is the irrecoverable VAT as defined under Chinese tax law and regulation. As such, we have not altered our irrecoverable VAT adjustment methodology for these final results.

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[80] *Id*.
[81] *See* Xiping Opeck's QR at C-24 and C25, and Exhibit C-3.
[82] *See Methodological Change*, 77 FR at 36483.
[83] *See* Xuzhou Jinjiang's sections C through D questionnaire response, dated May 19, 2016, at Exhibits R-3 and R-4, and appendix V at pages 1-3.
[84] *See* Xiping Opeck's QR at Exhibit C-3.
[85] *See* Xiping Opeck's QR.
[86] *See* Xiping Opeck's QR. *See* also, China Kingdom's May 16, 2016, sections C and D questionnaire response.

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

4/6/2017

X Ronald K. Lorentzen

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance