

July 30, 2010

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

FROM: Edward C. Yang
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Issues and Decision Memorandum for the Final Results of 2008 – 2009 Administrative Review

SUMMARY:

We have analyzed the comments submitted in the administrative review of certain frozen warmwater shrimp from the Socialist Republic of Vietnam (“Vietnam”). As a result of our analysis, we have made changes from the *Preliminary Results*.¹ We recommend that you approve the positions described in the “Discussion of the Issues” section of this Issues and Decision Memorandum. Below is the complete list of the issues in this review for which we received comments on the *Preliminary Results*:

I. Issues:

- Comment 1: Shrimp Surrogate Value (“SV”)
- Comment 2: Surrogate Country
- Comment 3: Surrogate Financial Ratios
 - A. Gemini’s Loading/Unloading Expenses
 - B. Gemini’s Sales Commissions
 - C. Use of the Apex Financial Statements
 - D. Use of the Beach, Gulf & Fine Foods Financial Statements
- Comment 4: Revocation
- Comment 5: Respondent Selection
- Comment 6: Exclusion of Imports from Bangladesh in SV Calculations
- Comment 7: Name Corrections for Certain Companies
- Comment 8: Separate Rate Companies
 - A. Margins for Separate Rate Companies
 - B. Fish One Margin

¹ See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results, Partial Rescission, and Request for Revocation, in Part, of the Fourth Administrative Review*, 75 FR 12206 (Mar. 15, 2010) (“*Preliminary Results*”).

- Comment 9: SV for Labor
- Comment 10: Zeroing
- Comment 11: Amanda Foods Separate Rate Certification
- Comment 12: Exclusion of Imports from Unspecified Countries in SV Calculations
- Comment 13: Assessment Rate Calculation for the Minh Phu Group
- Comment 14: Liquidation Instructions

BACKGROUND:

The period of review (“POR”) is February 1, 2008, through January 31, 2009. The Department of Commerce (“Department”) verified information submitted by: Minh Hai Joint-Stock Seafoods Processing Company (“Seaprodex Minh Hai”), Minh Phu Seafood Corporation (and its affiliates Minh Qui Seafood Co., Ltd., and Minh Phat Seafood Co., Ltd.) (collectively the “Minh Phu Group”)² from January 18, 2010, through January 22, 2010, and the Minh Phu Group’s U.S. affiliate³ from January 12, 2010, through January 14, 2010.

In accordance with 19 CFR 351.309, we invited parties to comment on our *Preliminary Results*. On April 9, 2010, the Department received publicly available information (“PAI”) to value factors of production (“FOP”) for the final results from the Ad Hoc Shrimp Trade Action Committee and its members (“Petitioner”)⁴, ASPA and LSA (“Processors”)⁵, and certain Respondents.^{6,7} On April 16, 2010, the Department received rebuttal SVs from certain

² See Memorandum to the File through Scot T. Fullerton, Program Manager, from Susan Pulongbarit, International Trade Analyst, regarding “Verification of the Sales and Factors of Production Response of the Minh Phu Group in the 2008-09 Administrative Review of Certain Warmwater Shrimp from the Socialist Republic of Vietnam,” dated March 8, 2010 (“MPG Verification Report”).

³ See Memorandum to the File through Scot T. Fullerton, Program Manager, from Susan Pulongbarit, International Trade Analyst, regarding “Verification of the CEP Sales Response of the Minh Phu Group in the 2008-09 Administrative Review of Certain Warmwater Shrimp from the Socialist Republic of Vietnam,” dated March 8, 2010 (“MPG CEP Verification Report”).

⁴ See Letter from Picard Kentz & Rowe, to Secretary of Commerce, regarding Fourth Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam (2008 – 2009): Submission of Publicly Available Information to Value FOPs, dated April 9, 2010 (“Petitioner’s Surrogate Value Submission”).

⁵ See Letter from Stewart and Stewart, to Secretary of Commerce, regarding Administrative Review of the Antidumping Duty Order Covering Frozen Warmwater From the Socialist Republic of Vietnam (2/1/08-2/1/09): Submission of Publicly Available Information to Value Factors, dated April 9, 2010.

⁶ These respondents are: the Minh Phu Group; Nha Trang Seaproduct Company (“Nha Trang Seafoods”); Camau Frozen Seafood Processing Import and Export Corporation (“Camimex”); Grobest & I-Mei Industrial (Vietnam) Co., Ltd. (“Grobest”); Bac Lieu Fisheries Joint Stock Company; C.P. Vietnam Livestock Corporation; Ca Mau Seafood Joint Stock Company; Cafatex Fishery Joint Stock Company; Can Tho Agricultural and Animal Products Import Export Company; Cuu Long Seaproducts Company; Danang Seaproducts Import Export Corporation; Investment Commerce Fisheries Corporation; Minh Hai Export Frozen Seafood Processing Joint Stock Company; Cadovimex Seafood Import-Export and Processing Joint Stock Company; Coastal Fisheries Development Corporation; Minh Hai Joint-Stock Seafoods Processing Company; Ngoc Sinh Private Enterprise; Nha Trang Fisheries Joint Stock Company; Phuong Nam Co., Ltd.; Sao Ta Foods Joint Stock Company; Soc Trang Seafood

Respondents.⁸ On April 14, 2010, the Department received a case brief from Amanda Foods (Vietnam) Limited (“Amanda Foods”).⁹ On April 21, 2010, the Department received case briefs from Petitioner¹⁰, Processors¹¹, Contessa Premium Foods, Inc. (“Contessa”)¹², Viet Hai Seafood Co., Ltd., a/k/a Vietnam Fish One Co., Ltd. (“Fish One”)¹³, and some Vietnamese Respondents.¹⁴ On April 26, 2010, the Department received rebuttal briefs from Petitioner¹⁵, Processors¹⁶, Contessa¹⁷, and certain Respondents (*i.e.*, the Minh Phu Group, Nha Trang Seafoods, Camimex, and Grobest).¹⁸

On June 16, 2010, the Department released data related to the surrogate wage rate to parties and allowed for comment.¹⁹ On June 22, 2010, the Department released additional data related to

Joint Stock Company; Thuan Phuoc Seafoods and Trading Corporation; UTXI Aquatic Products Processing Corporation; Vinh Loi Import Export Company and Viet Foods Co., Ltd. (collectively, the “Vietnamese Respondents”).

⁷ See Letter from Thompson Hine, to Secretary of Commerce, regarding Certain Frozen Warmwater Shrimp from Vietnam: Additional Surrogate Values Submission for Minh Phu Group, Nha Trang Seafoods, Camimex and Grobest.

⁸ See Letter from Thompson Hine, to Secretary of Commerce, regarding Certain Frozen Warmwater Shrimp from Vietnam: Rebuttal Surrogate Values, dated Apr. 16, 2010.

⁹ See Letter from Mayer Brown, to Secretary of Commerce, regarding Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Case Brief for Amanda Foods (Vietnam) Limited, dated April 14, 2010 (“Amanda Foods Case Brief”).

¹⁰ See Letter from Picard Kentz & Rowe, to Secretary of Commerce, regarding Antidumping Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam (2008-2009): Case Brief, dated April 21, 2010 (“Petitioner Case Brief”).

¹¹ See Letter from Stewart and Stewart and Leake and Andersson, to Secretary of Commerce, regarding Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Case Brief of ASPA and LSA, dated April 21, 2010 (“Processors Case Brief”).

¹² See Letter from Trade Pacific, to Secretary of Commerce, regarding Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam (2008-2009): Case Brief, dated April 21, 2010 (“Contessa Case Brief”).

¹³ See Letter from deKieffer & Horgan, to Secretary of Commerce, regarding Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Case Brief, dated April 21, 2010 (“Fish One Case Brief”).

¹⁴ See Letter from Thompson Hine representing the Minh Phu Group, Nha Trang Seafoods, Camimex, and Grobest, to Secretary of Commerce, regarding Certain Frozen Warmwater Shrimp from Vietnam: Case Brief on behalf of Certain Respondents, dated, April 21, 2010 (“Respondents Case Brief”).

¹⁵ See Letter from Picard Kentz & Rowe, to Secretary of Commerce, regarding Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam (2008-2009): Rebuttal Brief, dated April 26, 2010 (“Petitioner Rebuttal Brief”).

¹⁶ See Letter from Stewart and Stewart and Leake and Andersson, to Secretary of Commerce, regarding Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Rebuttal Brief of ASPA and LSA, dated April 26, 2010 (“Processors Rebuttal Brief”).

¹⁷ See Letter from Trade Pacific, to Secretary of Commerce, regarding Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, dated April 26, 2010 (“Contessa Rebuttal Brief”).

¹⁸ See Letter from Thompson Hine, to Secretary of Commerce, regarding Certain Frozen Warmwater Shrimp from Vietnam: Rebuttal Brief on behalf of Certain Respondents, dated, April 26, 2010 (“Respondents Rebuttal Brief”).

¹⁹ See Memorandum to the File, through Scot T. Fullerton, Program Manager, from Susan S. Pulongbarit, International trade Analyst, regarding Antidumping Duty Administrative Review of Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Export Data, dated June 22, 2010 (“Wage Rate Data Memorandum”).

surrogate wage rate calculation to parties and allowed for comment.²⁰ On June 25, 2010, the Department received comments on the aforementioned wage rate memorandums from Contessa, *et al.*,²¹ Petitioner,²² Processors,²³ and Vietnamese Respondents.²⁴ On July 15, 2010, the Department released additional data related to surrogate wage rate calculation to parties and allowed for comment.²⁵ On July 20, 2010, the Department received comments on the July 15, 2010, wage rate memorandum from Petitioner,²⁶ Processors,²⁷ and Vietnamese Respondents.²⁸

DISCUSSION OF THE ISSUES:

General Issues

Comment 1: Shrimp Surrogate Value (“SV”)

The Respondents note that in past administrative reviews, as well as the *Preliminary Results* of this review²⁹, the Department has relied upon price data supplied in a 2006 study performed by

²⁰ See Memorandum to the File, through Scot T. Fullerton, Program Manager, from Susan S. Pulongbarit, International trade Analyst, regarding Antidumping Duty Administrative Review of Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Wage Data, dated June 22, 2010 (“2nd Wage Rate Data Memorandum”).

²¹ See Letter from Trade Pacific, to Secretary of Commerce, regarding Certain Frozen Warmwater Fish from the Socialist Republic of Vietnam, dated June 25, 2010.

²² See Letter from Stewart and Stewart, to Secretary of Commerce, regarding Administrative Review of the Antidumping Duty Order Covering Frozen Warmwater Shrimp From the Socialist Republic of Vietnam (2/1/08-1/31/09): Comments on Labor Wave Value, dated June 25, 2010.

²³ See Letter from Picard Kentz & Rowe, to Secretary of Commerce, regarding Fourth Antidumping Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam (2008-2009): Comments Regarding Valuation of Labor Wage Rate, dated June 25, 2010.

²⁴ See Letter from Thompson Hine, to Secretary of Commerce, regarding Certain Frozen Warmwater Shrimp from Vietnam: Comments on Labor Wage Rate, dated June 25, 2010.

²⁵ See Memorandum to the File, through Scot T. Fullerton, Program Manager, from Susan S. Pulongbarit, International trade Analyst, regarding Antidumping Duty Administrative Review of Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Export Data, dated July 16, 2010 (“3rd Wage Rate Data Memorandum”).

²⁶ See Letter from Picard Kentz & Rowe, to Secretary of Commerce, regarding Fourth Antidumping Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam (2008-2009): Comments Regarding Valuation of Labor Wage Rate, dated July 20, 2010.

²⁷ See Letter from Stewart and Stewart, to Secretary of Commerce, regarding Administrative Review of the Antidumping Duty Order Covering Frozen Warmwater Shrimp From the Socialist Republic of Vietnam (2/1/08-1/31/09): Comments on Labor Wave Value, dated July 20, 2010.

²⁸ See Letter from Thompson Hine, to Secretary of Commerce, regarding Certain Frozen Warmwater Shrimp from Vietnam: Comments on Labor Wage Rate, dated July 20, 2010.

²⁹ See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review*, 72 FR 52052 (September 12, 2007) (“1st AR Final”) and accompanying Issues and Decision Memorandum at Comment 1; *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 52273 (September 9, 2009) (“2nd AR Final”) and accompanying Issues and Decision Memorandum at Comment 1; *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47191 (September 15, 2009) (“3rd AR Final”) and accompanying Issues and Decision Memorandum at Comment 6; and, *Certain Frozen*

the Network of Aquaculture Centres in the Asia-Pacific (“2006 NACA Data”) to value the raw shrimp input. The Respondents also note that the Department considers the 2006 NACA Data to consist of a broad market average, specific to the input in question and is otherwise reliable. The Respondents contend that the *Updated NACA Data* is just as reliable as the previous NACA data relied upon by the Department in prior reviews.³⁰ According to the Respondents, the *Updated NACA Data* provides extensive detail on data collection methods, how prices were reported and calculated, and notes that the data is generated from the same stakeholders as the 2006 NACA Data.³¹ The Respondents claim that the *Updated NACA Data* meets the Department’s criteria for SVs in that it is specific to the input in question, representative of a broad market average, publicly available and contemporaneous.

The Processors note that the record of this administrative review contains a 2009 article from India’s *Business Standard* which provides count size price information for tiger prawns sold by harvesters to processors and exporters in India.³² The Processors contend that this article provides a broad market average, is count size specific, and is within seven months of the POR.³³ The Processors assert that the 2006 NACA Data, relied upon in the *Preliminary Results*, is both less contemporaneous than the *Business Standard* article, and does not represent a broad market average because it represents price information from eight individual processors in Bangladesh.³⁴ The Processors contend that the *Updated NACA Data*, submitted after the *Preliminary Results*, also shares this deficiency because it contains price data for only eight processors which produced a small portion of the total of Bangladeshi production.³⁵

Department’s Position:

We agree with the Respondents and find that the *Updated NACA Data* is the best information with which to value raw shrimp because it is publicly available, represents a broad-market average, is product-specific, contemporaneous and represents actual transaction prices. We note that we have made similar findings in past administrative reviews of Vietnamese shrimp with respect to the 2006 NACA data.³⁶

The Processors advocate using solely an article from the *Business Standard* to value the shrimp input. At the outset, we note that both the *Updated NACA Data* and the *Business Standard* represent PAI. The article from the *Business Standard* provides sale offers, in one Indian state,

Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results, Partial Rescission, and Request for Revocation, In Part, of the Fourth Administrative Review, 75 FR 12214 (March 15, 2010) (“*Preliminary Results*”).

³⁰ See *Shrimp Price Study, Phase II; Case Studies in Vietnam, Indonesia and Bangladesh*, dated January 10, 2010 (“*Updated NACA Data*”), found in the Respondents’ April 9, 2010 submission at Exhibit ASV-1.

³¹ See the Respondents’ April 9, 2010 submission at 1.

³² See the Processors’ September 18, 2009 submission at Exhibit 2.

³³ *Id.*

³⁴ See Surrogate Values Memo at Annex 38, page 113.

³⁵ See *Updated NACA Data*.

³⁶ See 1st AR Final at Comment 1; 2nd AR Final at Comment 1; and, 3rd AR Final at Comment 6.

for three count sizes of shrimp, as of the date of the article. The Department prefers, whenever possible, country-wide data instead of regional data when the former is available.³⁷ The *Updated NACA Data* includes data from five different districts in Bangladesh³⁸, whereas the *Business Standard* provides data from a single state, Andhra Pradesh. Consequently, we find that the *Updated NACA Data* represents country-wide data, rather than data from a single state, and thus, is more representative of a broad market average than the data contained in the *Business Standard*. Moreover, we note that the Department's strong preference is to use surrogate values, especially for a critical input such as raw shrimp, from the primary surrogate country, which in this case is Bangladesh. As the *Business Standard* information is from India, it is less preferable than the *Updated NACA Data* for Bangladesh.

In past cases, the Department has found that count size-specific data is important in calculating an accurate dumping margin, and has rejected shrimp SVs containing a limited number of count sizes.³⁹ We note that both the *Updated NACA Data* and the *Business Standard* contain information specific to black tiger shrimp (*penaeus monodon*). We also note that the *Updated NACA Data* contains prices for five different count sizes (20, 30, 44, 66 and 100) and the *Business Standard* only three different count sizes (30, 40 and 50). Because the *Updated NACA Data* contains more count size-specific data, we find that it is more specific to the input in question than the *Business Standard*.

In addition, the *Updated NACA Data* was collected for the period January 2008 to June 2009, making it contemporaneous with the POR. In contrast, the *Business Standard* article is dated seven months after the POR (*i.e.*, August 13, 2009), thus, it is not contemporaneous with the POR.

Moreover, we note that, when valuing FOPs, the Department prefers actual transaction prices to price quotes.⁴⁰ The *Updated NACA Data* relies upon actual transaction prices. The NACA study states on page 42 that the data on prices and quantity was taken from the stakeholders' written records and represent actual transaction prices, and that the fisheries officers worked to ensure that the information was authentic. In addition, the NACA study states on page 42 that all possible efforts were made to verify the consistency of the collected data and to ensure that this data was error free. In contrast to the *Updated NACA Data*, the *Business Standard* states that the prices are ones that "exporters are currently offering," and thus, are not actual transaction prices. Consequently, we find that the *Updated NACA Data* is representative of actual transaction prices while the *Business Standard* is not.

³⁷ See, *e.g.*, *Wuhan Bee Healthy Co., Ltd. v. United States*, Slip Op. 05-142 (CIT 2005) at 5.

³⁸ See *Update NACA Data* at 41.

³⁹ See, *e.g.*, *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004) and accompanying Issues and Decision Memorandum at Comment 1.

⁴⁰ See, *e.g.*, *Honey from the People's Republic of China: Rescission and Final Results of Antidumping Duty New Shipper Reviews*, 71 FR 58579 (October 4, 2006) and accompanying Issues and Decision Memorandum at Comment 2.

The Processors have attempted to impugn the credibility of the *Updated NACA Data* by implying that its data is not reflective of a large enough portion of the Bangladeshi shrimp industry. We note that the *Updated NACA Data* describes in detail the collection methods employed,⁴¹ while the *Business Standard* contains no underlying data or supporting documentation for the price quotes it contained. Because the *Business Standard* does not contain this type of information, or even quantity information, we cannot know what portion of the Indian shrimp industry it represents, or even that the information is complete. Thus, we find the *Updated NACA Data* to be superior to and more reliable than the *Business Standard* price quotes.

Comment 2: Surrogate Country

The Processors note that while India and Bangladesh are both on the surrogate country list, India's per-capita gross national income ("GNI") is more economically comparable to Vietnam because India's GNI is closer to that of Vietnam than is Bangladesh's.⁴²

The Processors argue that both India and Vietnam are significant producers of shrimp, ranked fourth and fifth in the world, respectively. The Processors maintain that Bangladesh is ranked fifteenth in the world and produces about ten percent of the amount of shrimp India does.⁴³ The Processors contend that both India (29 percent) and Vietnam (100 percent) are significant producers of shrimp through aquaculture, while Bangladesh (17 percent) produces a smaller portion of its shrimp through aquaculture.⁴⁴ Moreover, according to the Processors, in India and Vietnam, the most important species of shrimp produced is the giant tiger prawn.⁴⁵ The Processors assert that the Food and Agricultural Organization of the United Nations ("FAO") fact sheet on tiger prawns does not evidence any significant difference in production methods between India and Vietnam, and that both India and Vietnam use extensive farming methods.⁴⁶ Thus, the Processors argue that because India produces significant volumes of subject merchandise that are highly comparable to the merchandise produced in Vietnam, and Bangladesh does not, India should be selected as the surrogate country for the final results.

Department's Position:

In accordance with section 773(c)(4) of the Tariff Act of 1930, as amended ("Act"), the Department must value FOPs using, to the extent possible, the prices or costs of the FOPs in one

⁴¹ See *Updated NACA Data* at 41-43.

⁴² See the Department's May 18, 2009 letter to Interested Parties.

⁴³ Based on 2007 data from FAO FishStat, India produced 498,522 metric tons ("mt"), Vietnam 488,100 mt and Bangladesh 63,300 mt of shrimp. See the Processors' August 17, 2009 submission.

⁴⁴ *Id.*

⁴⁵ The Processors note that, while FishStat does not record the amount of tiger prawn grown in Bangladesh, Bangladesh only produced 63,300 mt of shrimp, where as India produced 298,249 mt of tiger prawn and Vietnam 170,000 mt of tiger prawn.

⁴⁶ *Id.* at Exhibit 1.

or more market economy (“ME”) countries that are (a) at a level of economic development comparable to that of the non-market economy country; and (b) significant producers of comparable merchandise. In addition, on March 1, 2004, the Department issued a *Policy Bulletin* which provides guidance regarding the Department’s selection of surrogate market economy countries in NME cases.⁴⁷

Economic Comparability

The Department’s regulations, at 19 CFR 351.408, indicate that the Department will consider per-capita GNI when determining economic comparability. However, neither the statute nor the Department’s regulations define the term “economic comparability.” As such, the Department does not have a set range within which a country’s per-capita GNI could be considered economically comparable.

As described in the *Policy Bulletin*, the Department’s policy is not to rank-order countries’ comparability according to how close their per-capita GNI is to that of the NME country in question. The Department creates a list of possible surrogate countries which are to be treated as equally comparable in evaluating their suitability for use as a surrogate country, consistent with the statute’s requirement that the Department use a surrogate country that is at a level of economic development comparable to that of the NME country. The *Policy Bulletin* states that the Department’s “current practice reflects in large part the fact that the statute does not require the Department to use a surrogate country that is at a level of economic development most comparable to the NME country.”⁴⁸

In this case, the Department has determined that both India and Bangladesh are economically comparable to Vietnam.⁴⁹ Thus, consistent with the policy described above, the Department continues to find that these countries are equally economically comparable to Vietnam for purposes of surrogate value calculations.

Significant Producers

In the *Preliminary Results*, we found that both India and Bangladesh were significant producers of shrimp. Both countries had exports of subject merchandise during the POR and the record reflected at least one financial statement of a producer of shrimp within each country.

With the exception of certain scope exclusions not pertinent here, all Vietnamese-origin shrimp which fall within the scope of the antidumping duty the Order⁵⁰ are subject merchandise,

⁴⁷ See *Policy Bulletin No. 04/1: Non-Market Economy Surrogate Country Selection Process*, dated March 1, 2004 (“*Policy Bulletin*”).

⁴⁸ See *Policy Bulletin* at note 5.

⁴⁹ See Memorandum from Scot T. Fullerton, Program Manager, to Ronald Lorentzen, Director, Office of Policy, regarding the Selection of Surrogate Countries, dated September 15, 2008.

⁵⁰ See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam*, 70 FR 5152 (February 1, 2005) (“*Order*”).

regardless of the production process used. Furthermore, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.⁵¹ In this case, we note that both India and Bangladesh produce shrimp *via* aquaculture methods. Consequently, we do not find the Processors' arguments that shrimp produced in India are more specific to shrimp produced in Bangladesh to be persuasive.

Data Considerations

In selecting a surrogate country, the *Policy Bulletin* states that "if more than one country has survived the selection process to this point, the country with the best factors data is selected as the primary surrogate country."⁵² We have found that both India and Bangladesh are economically comparable, significant producers of comparable merchandise. As we find that there is more than one significant producer among the list of countries provided by Policy, we have considered the quality and specificity of the available factors data in selecting a surrogate country.

In selecting SVs for FOPs, section 773(c)(1) of the Act instructs the Department to use "the best available information" from the appropriate ME country. There exists on the record sufficient, publicly available surrogate factor information for the majority of FOPs from Bangladesh. As noted above, the FOP which accounts for the largest portion of normal value is shrimp. We find that the *Updated NACA Data* is the best available information with which to value shrimp because it is publicly available, represents a broad-market average, is product-specific, contemporaneous and represents actual transaction prices. Moreover, as noted above, with the exception of public availability, the single Indian shrimp value on the record of this review fails to meet these criteria. We note that there is one Indian financial statement on the record of this review, and while no party has advocated its use in calculating surrogate financial ratios, we also note that it contains evidence of subsidies the Department has previously found countervailable.⁵³ It is the Department's preference to not rely on financial statements where there is evidence that the company received countervailable subsidies and there are other sufficiently reliable and representative data on the record for purposes of calculating the surrogate financial ratios, as is the case here.⁵⁴ Therefore, because of the superiority of the Bangladeshi SV data as compared to the Indian SV data, we are able to make a distinction between Bangladesh and India for the purpose of selecting a surrogate country, based on the specificity of available factors data. Consequently, we have selected Bangladesh as the surrogate country for these final results.

⁵¹ See *Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 65674 (December 15, 1997) and accompanying Issues and Decision Memorandum at Comment 1 (to impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute).

⁵² See *Policy Bulletin* at 4.

⁵³ See, e.g., Falcon financial statement at 13.

⁵⁴ See, e.g., *Wire Decking from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 32905 (June 10, 2010) and accompanying Issues and Decision memorandum at Comment 2.

Comment 3: Surrogate Financial Ratios

The Department's criteria for choosing surrogate companies include the availability of contemporaneous financial statements, comparability to the respondent's experience, and publicly available information.⁵⁵ Moreover, for valuing factory overhead, selling, general & administrative expenses ("SG&A"), and profit, the Secretary normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.⁵⁶ Among the surrogate producers of comparable products, the Department prefers to value financial ratios using data from those surrogate producers whose financial data will not be distorted or otherwise unreliable.⁵⁷ In addition, the U.S. Court of International Trade ("CIT") has held that in the selection of surrogate producers, the Department may consider how closely the surrogate producers approximate the non-market producer's experience.⁵⁸ The Department also rejects financial statements of surrogate producers whose production process is not comparable to the respondent's production process when better information is available.⁵⁹

We note that the record of this review contains five financial statements from Bangladesh and one from India.⁶⁰ In the *Preliminary Results*, we valued financial ratios using the simple average of the 2007-2008 financial statement of Apex Foods Limited ("Apex") and the 2007-2008 financial statement of Gemini Seafood Limited ("Gemini"), both of which are Bangladeshi shrimp processors, *i.e.*, they produce identical merchandise. As we discuss more fully below, of the five Bangladeshi financial statements on the record, Apex and Gemini continue to represent the best available information for the purposes of calculating the surrogate financial ratios because their production experience is more specific to shrimp processing than to a range of other products.

⁵⁵ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China* ("Chlorinated Isocyanurates from the PRC"), 70 FR 24502 (May 10, 2005) and accompanying Issues and Decision Memorandum at Comment 3.

⁵⁶ See, e.g., *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006) ("*Diamond Sawblades from China*") and accompanying Issues and Decision Memorandum at Comment 2; see also 19 CFR 351.408(c)(4) and section 773(c)(4) of the Act.

⁵⁷ See *Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Cased Pencils from the People's Republic of China*, 67 FR 48612 (July 25, 2002) and accompanying Issues and Decision Memorandum at Comment 5.

⁵⁸ See *Rhodia, Inc. v. United States*, 240 F. Supp. 2d 1247, 1253-1254 (CIT 2002).

⁵⁹ See, e.g., *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005) and accompanying Issues and Decision Memorandum at Comment 1.

⁶⁰ As noted above, no party has advocated for the use of the Indian financial statement in calculating surrogate financial ratios, which we find contains countervailable subsidies. Consequently, in accordance with *Wire Decking*, and because we have selected Bangladesh as the surrogate country, the Department has determined not to use of this Indian statement.

A. *Gemini's Loading/Unloading Expenses*

The Respondents argue that the Department should include the loading and unloading expenses from the Gemini financial statement under raw materials instead of SG&A. The Respondents contend that these expenses are related to Gemini's production costs because they relate to the movement of raw materials, and thus, are captured elsewhere in the Department's calculations. The Respondents note that in the last administrative review, the Department excluded these costs from the financial ratio calculation.

In rebuttal, the Petitioner maintains that there is no record evidence that Gemini's loading and unloading expenses are related to raw material freight-in charges, which would be the only basis for these expenses to be considered a part of raw material costs. The Petitioner notes that the basis for alleged prior classifications of Gemini's loading and unloading expenses are not on the record of this review. The Petitioner also notes that these expenses are listed in the Gemini financial statement along with depreciation, and accordingly, are more likely to be costs relating to moving materials, consumables and finished goods within production facilities or warehouses. The Petitioner asserts that these expenses are properly considered either as overhead or SG&A, not production expenses.

Department's Position:

We find that, based on the limited description in Gemini's financial statement, loading and unloading expenses are best considered as movement expenses and thus should be excluded from the surrogate financial ratio calculation. In deriving appropriate SVs for overhead, SG&A, and profit, the Department typically examines the financial statements on the record of the proceeding and categorizes expenses as they relate to MLE, factory overhead, SG&A and profit, and excludes certain expenses (*e.g.*, movement expenses) consistent with the Department's practice of accounting for these expenses elsewhere.⁶¹ In so doing, it is the Department's longstanding practice to avoid double-counting costs where the requisite data are available to do so.⁶² We include freight expenses in our dumping calculations for each company; therefore, to also include them in our calculation of the surrogate SG&A financial ratio that is then applied to the margin calculations would result in double-counting. Accordingly, for the final results, we have excluded loading and unloading expenses from the surrogate ratio calculation.

⁶¹ See, *e.g.*, *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results And Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 19174 (April 17, 2007) and accompanying issues and Decision Memorandum at Comment 1. Moreover, the Department has specifically made deductions for loading and unloading expenses from the starting price in other cases. See, *e.g.*, *Certain Frozen Warmwater Shrimp from India: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 9991 (March 9, 2009), unchanged in final.

⁶² See, *e.g.*, *Helical Spring Lock Washers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 4175 (January 24, 2008) (where the Department clearly articulated its practice to avoid double-counting costs in calculating dumping margins).

B. *Gemini's Sales Commissions*

According to the Respondents, Gemini's sales commission expenses should be excluded from the calculation of surrogate financial ratios because it is a direct selling expense for export sales which is captured elsewhere in the Department's calculations. The Respondents note that the Department employed the same reasoning when it excluded this expense in the last administrative review.

In rebuttal, the Petitioner argues that the Department has established a clear practice of treating commission expenses as SG&A in surrogate financial ratio calculations.⁶³ The Petitioner asserts that the Department has explained in prior cases that the total selling expenses of the surrogate producer represent the total expenses incurred for selling subject merchandise, including commissions.⁶⁴ According to the Petitioner, when pressed in other administrative reviews involving NMEs to adjust surrogate financial ratios to exclude sales commissions, generally, the Department has noted that because sales commissions represent standard selling expenses, these commissions should be included in the SG&A calculation.⁶⁵ Further, the Petitioner argues that the Department has stated that whether a NME respondent incurred sales commissions is irrelevant to the Department's surrogate SG&A calculation, as the Department does not modify surrogate financial ratios to match the particular circumstances of the NME country.⁶⁶ The Petitioner contends that sales commissions, whether on domestic or export sales are selling expenses and neither Department practice nor apparent logic justify the exclusion of such expenses from SG&A for the purposes of determining surrogate financial ratios.

Department's Position:

The Department disagrees with the Respondents' argument that the Department should exclude sales commissions from the calculation of the surrogate financial ratios in order to avoid double-counting. Consistent with the Department's practice, because sales commissions represent standard selling expenses, these commissions should be included in the surrogate SG&A calculation.⁶⁷ Furthermore, whether a Vietnamese producer incurred sales commissions is irrelevant to the Department's surrogate SG&A calculation, as the Department does not modify surrogate financial ratios to match the particular circumstances of the NME country.⁶⁸

⁶³ See *Frontseating Service Valves from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 74 FR 10886 (March 13, 2009) ("*Frontseating Service Valves from China*") and accompanying Issues and Decision Memorandum at Comment 1B.

⁶⁴ *Id.*

⁶⁵ See *Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 71 FR 34893 (June 16, 2006) ("*Honey from China*") and accompanying Issues and Decision Memorandum at Comment 3.

⁶⁶ *Id.*

⁶⁷ See, e.g., *Honey from China* and accompany issues and Decision Memorandum at Comment 3; see also *Frontseating Service Valves from China* and accompanying Issues and Decision Memorandum at Comment 1B.

⁶⁸ *Id.*

We do not find the Respondents' argument on the use of commissions in the last administrative review persuasive. In the last administrative review the Department made findings on depreciation and labor, not sales commissions.⁶⁹

C. *Use of Apex Financial Statements*

The Respondents assert that the Department should include the Apex 2008-2009 financial statement when calculating surrogate financial ratios. The Respondents maintain that this statement covers seven months of the POR, where as the 2007-2008 Apex statement used at the *Preliminary Results* covers only five months of the POR. The Respondents contend that in past cases the Department has relied upon POR coverage in determining which financial statement from the same company to use when calculating surrogate financial ratios.

The Petitioner argues that the 2008-2009 Apex financial statement should not be used in the calculation of surrogate financial ratios because Apex experienced an operating loss and an after tax loss. The Petitioner notes that Apex has a small pre-tax profit due to significant "other income." The Petitioner notes that Apex's other income is due to profit on interest and dividends and claim that this income is unrelated to Apex's primary operations.⁷⁰

Department's Position:

We agree with the Respondents. An examination of the 2008-2009 Apex financial statement shows that it had an operating loss which was offset by "Other Income," resulting in a positive "Profit Before Tax."⁷¹ The Petitioner has argued that because this "other income" was based on activities unrelated to Apex's primary operations, the Department should adjust Apex's profit to be negative, and thus, not use the 2008-2009 financial statement in the calculation of surrogate financial ratios. While the Petitioner cited no case precedent for this requested adjustment, in past cases, the Department has excluded from financial ratio calculations income earned from long-term assets/investments because such income is not associated with the general operations of the company.⁷² However, because the Department relies on the financial statement data as reported by the surrogate company, we are unable to go behind the financial statement to determine the appropriateness of including these items in the financial ratio calculations.⁷³ The Department will only make financial ratio adjustments when we can determine whether the income was long- or short-term in nature.⁷⁴ Here it is unclear as to whether Apex's other income

⁶⁹ See *3rd AR Final* at Comments 9 & 10.

⁷⁰ Citing *e.g.*, 2008-2009 Apex financial statement at 18 (Profit & Loss Statement) and 34 (Note 27).

⁷¹ *Id.*

⁷² See, *e.g.*, *Notice of Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil*, 71 FR 7517 (February 13, 2006) and accompanying Issues and Decision Memorandum at Comment 4.

⁷³ See *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 18B.

⁷⁴ See, *e.g.*, *Third Administrative Review of Frozen Warmwater Shrimp from the People's Republic of China: Final*

is long- or short-term. Apex lists its “other income” under “Cash Flows from Operating Activities,” which is separate from cash flows from investments and financial activities,⁷⁵ the bulk of which is interest income already accounted for in SG&A. This classification by Apex indicates that it considers the “other income” to be related to its primary operations. The remaining income is from dividends⁷⁶ collected from investments,⁷⁷ however, Apex’s financial statement does not indicate whether these investments are long- or short-term. Accordingly, because we cannot determine whether Apex’s “other income” is long- or short-term, for the final results, we have made no offset to profit for “other income.”

In addition, because the 2008-2009 Apex financial statement covers more months of the POR than the 2007-2008 Apex financial statement, and because Apex had a profit in the 2008-2009 fiscal year, consistent with our practice, we have used the 2008-2009 Apex financial statement to calculate surrogate financial ratios.⁷⁸

D. *Use of the Beach, Gulf & Fine Foods Financial Statements*

The Petitioner argues that for the final results the Department should include the 2008 financial statement of Beach Hatchery Limited (“Beach”), the 2008-2009 financial statements of Gulf Foods Limited (“Gulf”), and Fine Foods Limited (“Fine Foods”) in its calculation of surrogate financial ratios. The Petitioner notes that, in past cases, the Department has preferred to use multiple acceptable financial statements to obtain more accurate and representative financial ratios.⁷⁹ The Petitioner argues that Gulf, Beach and Fine Foods are all producers of comparable merchandise and that all three financial statements are contemporaneous with the POR, and thus, should be included in the Department’s surrogate financial ratio calculation. Alternatively, the Petitioner contends that, should the Department find that the merchandise produced by Beach and Gulf are not comparable merchandise, the Department should include the financial statement of Fine Foods, which processes shrimp.

Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 46565 (September 10, 2009) and accompanying Issues and Decision Memorandum at Comment 4a (stating that the Department made no interest income offset for “deposit and SBI bonds” because the Department could not discern from the financial statements whether income from these assets were long-term or short-term in nature); *see also Bulk Aspirin from the People's Republic of China; Final Results of Antidumping Duty Review*, 68 FR 6710 (February 10, 2003) and accompanying Issues and Decision Memorandum at Comment 5 (stating that the Department offset interest expense with short-term interest revenue where the Department could discern the short-term nature of the interest revenue from the financial statements).

⁷⁵ *Id.* at 20.

⁷⁶ *Id.* at 34.

⁷⁷ *Id.* at 26.

⁷⁸ *See 1st AR Final* at Comment 2a (when considering multiple financial statements from a single company the Department considers the financial statements overlapping more months of the POR to be more contemporaneous, and thus, preferable).

⁷⁹ *See, e.g., Chlorinated Isocyanurates from the PRC* and accompanying Issues and Decisions Memorandum at Comment 3; *Amended Final Results of Antidumping Duty Administrative Review and New Shipper Reviews: Wooden Bedroom Furniture From the People's Republic of China*, 72 FR 46957 (August 22, 2007) (“*Wooden Bedroom Furniture From China*”) and *PRC* and accompanying Issues and Decisions Memorandum at Comment 17.

Department's Position:

As noted above, it is the Department's practice to value overhead, SG&A and profit using non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.⁸⁰ A careful review of the Beach financial statement shows that Beach farms shrimp fry, and is not a processor of shrimp.⁸¹ A careful review of the Gulf financial statement shows that Gulf farms shrimp fry, shrimp and fish, and is not a processor of shrimp.⁸² A careful review of the Fine Foods financial statement shows that Fine Foods is a farmer of fish and fish products, and is not a processor of shrimp.⁸³ We note that neither respondent is vertically integrated, and thus, are processors, not farmers, of shrimp. We also note that Gemini and Apex are both shrimp processors, and thus, produce identical merchandise. As a result, we have not relied upon Beach, Gulf and Fine Foods to calculate financial ratios for the final results because these companies' production experiences are less representative of respondents' production experience, and therefore, do not represent the best information available for the purposes of calculating surrogate financial ratios.

Comment 4: Revocation

Respondents contend that the Department previously established a procedure enabling non-mandatory respondents the ability to obtain revocation in *Colombian Cut Flowers*⁸⁴ and that Camimex and Grobest both met the criteria set forth in that case in this review. Additionally, Respondents assert that the Department has misinterpreted section 777A(c)(2) of the Act with regard to denying revocation requests for Camimex and Grobest. Respondents agree that although the Department is able to limit its number of mandatory respondents under section 777A(c)(2), they contend that the Department cannot deny revocation requests on this basis. Further, Respondents maintain that the Department did not issue a separate notice requesting public comment on the issue of revocation requests as stated in the Respondent Selection Memo. Moreover, Respondents argue that the CIT has stated that revocation decisions are "predicated upon a judgment founded upon facts which are related and applicable to the matter upon which the determination is to be made. A connection must exist between some rational reasoning and

⁸⁰ See, e.g., *Diamond Sawblades from China* and accompanying Issues and Decision Memorandum at Comment 2; see also 19 CFR 351.408(c)(4) and section 773(c)(4) of the Act.

⁸¹ See the Beach financial statement at "Notes to Financial Statements" section, note 1.02.

⁸² See the Gulf financial statement at 16, note 1.02.

⁸³ See the Fine Foods financial statement at 17, note 1.3. While the Petitioner stated that Fine Foods is a processor of shrimp, its financial statement states that its main activities are: production of fish, fish product, fish spawn breeding, fingerling growing, production of fish meal and oil, processing fish and plantations of good quality timber trees. *Id.* The Fine Foods financial statement lists a turnover of 1 mt of shrimp, but it is unclear that Fine Foods processed this shrimp. See the Fine Foods financial statement at 26.

⁸⁴ *Citing Certain Fresh Cut Flowers From Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 62 FR 53287 (Oct. 14, 1997) ("*Colombian Cut Flowers*"), and accompanying Issues and Decisions Memorandum at Comment 3.

the discretionary determination which is exercised.”⁸⁵ Specifically, Respondents contend that the Department must explain why it has rejected any revocation requests.

Petitioner rebuts Respondents’ argument that the Department erred in its decision that it would not revoke the *Order* for companies not subject to individual review. They assert that there is no basis under 19 CFR 351.222 stating that respondents have a right to individual examination in order to meet all of the requirements for revocation.

Department’s Position:

We disagree with Respondents’ argument that the Department should reconsider its decision not to revoke the *Order* for companies that were not chosen as non-mandatory respondents.⁸⁶

Although Respondents argue that the Department previously established a procedure for which non-mandatory respondents can obtain revocation in *Colombian Cut Flowers*, we note that this procedure was never implemented in practice and was limited to the *Colombian Cut Flowers* proceeding.⁸⁷ Therefore, contrary to Respondents’ argument, the Department’s treatment of requests for revocation in *Colombian Cut Flowers* is not applicable to this review.

Additionally, we disagree with Respondents’ argument that the Department misinterpreted the statute when it decided to not revoke the *Order* for Camimex and Grobest. As mentioned below in Comment 5, the Department has the discretion to limit the number of respondents that are individually examined.⁸⁸ As Respondents have stated, “section 777A(c)(2) nowhere refers to requests for revocation.”⁸⁹ Further, as the Department stated in the *Preliminary Results*:

Nothing in the regulation requires the Department to conduct an individual examination and verification when the Department has limited its review, under section 777A(c)(2). As explained above, the non-selected revocation companies were not selected for individual review because, pursuant to 777A(c)(2)(B) of the Act, the Department selected the two largest exporters, by volume.

We do not interpret our regulation as limiting the discretion afforded by Congress under section 777A(c)(2).

For the final results of this review, we continue to find that our preliminary determination with respect to the non-selected revocation companies’ revocation requests is not contrary to the

⁸⁵ Citing *e.g.*, *Chevron Standard, Ltd. V. United States*, 5 CIT 174, 178 (1983) (Citing *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156 (1962)).

⁸⁶ The Respondents assert that the Department incorrectly stated the “revocation companies” consist of the Minh Phu Group, Grobest, Fish One, and Seaprodex Minh Hai. Instead, the “revocation companies” should not have included Seaprodex Minh Hai. The Department notes that this was an inadvertent error and Seaprodex Minh Hai will not be included as a revocation company in the Final Results.

⁸⁷ See *Colombian Flowers* at 53290 (stating that the Department has developed the procedure “for addressing requests for revocation by small companies in *this* proceeding”) (emphasis added).

⁸⁸ See 777A(c)(2)(B) of the Act.

⁸⁹ See Respondents’ Case Brief at 9.

statute or Department policy. Because the non-selected revocation companies were not selected for individual review pursuant to 777A(c)(2)(B) of the Act, and because they filed the necessary separate rates information, these companies were treated as cooperative separate-rate respondents, and have received separate rates pursuant to the statute and the Department's practice. The statute does not require the Department to select exporters for revocation purposes within the context of section 777A(c)(2)(B) of the Act. Rather, pursuant to that statutory provision, because of the large number of companies with review requests, the Department selected respondents for individual examination that could reasonably be examined. That the non-selected revocation companies requested revocation pursuant to the Department's regulations does not require the Department to individually review these companies for revocation purposes, when the Department, as it did here, limits the individually reviewed companies under the statute.

Comment 5: Respondent Selection

Petitioner contends that the reliance on U.S. Customs and Border Protection ("CBP") data does not meet the Department's statutory requirements.⁹⁰ Additionally, they argue that the Department has not taken into account in this review the misclassification of subject merchandise (*i.e.*, type 3 entry) as non-subject merchandise (*i.e.*, type 1 entry) that has occurred in the 2008 – 2009 PRC shrimp review.⁹¹ They assert that this is in opposition to the Department's position that CBP "type 3" data is reliable. Petitioner contends that reliance on type 3 CBP data facilitates the exclusion of misclassified entries and is, therefore, unlawful. However, they argue that such misclassification issues can be remedied by releasing "type 1" and "type 3" CBP data along with the issuance of quantity and value ("Q&V") questionnaires" prior to the final results of this review.

Respondents disagree with the Department's selection of two mandatory respondents and contend that the three largest exporters should have been chosen. Respondents argue that Camimex, specifically, should have been chosen as the third mandatory respondent. In choosing the three largest exporters, according to Respondents, the percentage of imports represented by the three largest exporters would be similar to the percentages of exports represented by the mandatory respondents from the February 1, 2006 – January 31, 2007 POR ("POR 2") and the February 1, 2007 – January 31, 2008 POR ("POR 3").

Additionally, Respondents assert that the addition of a third mandatory respondent would not be a burden to the Department since three mandatory respondents have been chosen in previous PORs.⁹² They further contest that the CIT has previously determined that four companies is not

⁹⁰ Citing 19 U.S.C. § 1677f-1(c)(2)(B)(2000) and 19 U.S.C. § 1675(a)(2)(A)(ii).

⁹¹ Citing *Third Administrative Review of Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 46565 (Sept. 10, 2009), and accompanying Issues and Decisions Memorandum at Comment 7.

⁹² Citing *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of the First Antidumping Administrative Review and First New Shipper Review* ("POR 1 Final Results"), 72 FR 52052, and

a large number for individual review.⁹³ Accordingly, as argued by Respondents, the Department should review Camimex for the final results using the voluntary responses.

Contessa asserts that the Department should calculate a company-specific margin for Camimex and Grobest based on its voluntary responses to the Department's questionnaire. Contessa contends that the statute and the Department's regulations provide a vehicle for producers, exporters, and importers to request a review and also requires the Department to conduct a review when requested.⁹⁴ Furthermore, they argue that companies can submit voluntary responses to the Department⁹⁵ and that the statute instructs the Department to calculate margins based on voluntary responses unless the number of voluntary respondents is too large.⁹⁶

Petitioner rebuts and argues that the CIT most recently upheld the Department's mandatory respondent methodology in *Ad Hoc Shrimp Trade Action Committee*,⁹⁷ in which the CIT stated "that agencies with statutory enforcement responsibilities enjoy broad discretion in allocating investigative and enforcement resources."⁹⁸ Petitioner further argues that the Respondents do not suggest criteria for how the Department should determine the number of mandatory respondents to review and that the statute does not provide any further criteria, other than volume, to limit respondent selection.⁹⁹ Therefore, the Department should not review Camimex based solely on its request for a review.

Petitioner rebuts Contessa and Respondents' assertion that the Department erred in declining to calculate company-specific rates based on respondents' voluntary responses and contend the Department was correct in limiting its calculation of company-specific rates to mandatory respondents.¹⁰⁰ Petitioner maintains that the Court has previously rejected arguments that the language of section 782(a) of the Act mandates that the Department must review voluntary respondents when the Department has limited the number of mandatory respondents.¹⁰¹

Additionally, Respondents disagree with Petitioner's claim that the Department's CBP data is unreliable and that the Department should issue Q&V questionnaires. Respondents contest that the reliability of CBP data is evidenced in the fact that any inaccuracy in the data would have

accompany Issues and Decisions Memorandum, dated Sept, 12, 2007; and *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Administrative Review* ("POR 3 Final Results") and accompanying Issues and Decisions Memorandum, 74 FR 47191, dated Sept. 15, 2009.⁹³ *Id.*

⁹⁴ Citing Section 752(a) of the Act and 19 CFR 351.213(b).

⁹⁵ Citing Section 782(a) of the Act.

⁹⁶ Citing 19 CFR 351.204(d) and 351.213(f).

⁹⁷ Citing *Ad Hoc Shrimp Trade Action Committee v. United States*, 2009 Ct. Intl. Trade LEXIS 158; SLIP OP. 2009-151 (Dec. 29, 2009). (*Ad Hoc Shrimp Trade Action Committee*).

⁹⁸ *Id.* (quoting *Torrington Co. v. United States*, 68 F.3d 1347, 1351 (Fed. Cir. 1995)).

⁹⁹ Citing Section 777A(c)(2)(B) of the Act.

¹⁰⁰ Citing Section 777A(c)(2)(B) of the Act.

¹⁰¹ Citing *Longkou Haimeng Machinery Co., Ltd. v. United States*, 581 F. Supp. 2d 1344, 1350 – 1354 (Ct. Intl. Tr. 2008) (*Longkou Haimeng Machinery*).

been presented to the Department by the Respondent. Furthermore, the Respondents contest that the use of CBP data was reasonable and consistent with the Department's past practices.

Department's Position:

The Department disagrees with Petitioner with respect to the respondent selection methodology employed in this proceeding. Section 777A(c)(2)(B) of the Act states that, if it is not practicable to individually examine each exporter and producer because of the large number of producers or exporters, the Department may limit examination of exporters or producers to those accounting for the largest volume of subject merchandise exported during the POR. Therefore, based on our resources and pursuant to section 777A(c)(2)(B) of the Act, the Department selected two exporters for individual review. *See* Respondent Selection Memo. The Department notes that the statute does not mandate the method in which it selects from the largest exporters by volume, and our practice in selecting respondents in administrative reviews has been to examine CBP data of subject entries and select respondents accounting for the largest volume of exports of subject merchandise, as specified in section 777A(c)(2)(B) of the Act.¹⁰²

Further, the Department has the discretion to determine whether or not its resources allow it to review additional respondents, Camimex, or another company, as an individually reviewed respondent (*i.e.*, as the third largest exporter) and regardless of such respondent's request to participate as a voluntary respondent. The statute clearly authorizes the Department to limit the number of individually reviewed respondents, including those that have requested to participate as a voluntary respondent.¹⁰³ The Department disagrees with the argument that it is required to individually examine each voluntary respondent simply because a request has been made, as the Act specifically states that "the administering authority shall establish an individual countervailable subsidy rate or an individual weighted average dumping margin ... if the number of exporters or producers who have submitted such information is not so large that individual examination of such exporters or producers would be unduly burdensome and inhibit the timely completion of the investigation."¹⁰⁴ Additionally, the Department was recently upheld in its mandatory respondent selection methodology "in light of the general principle that agencies with statutory enforcement responsibilities enjoy broad discretion in allocating investigative and enforcement resources."¹⁰⁵

Although Petitioner alleges that the Department should release type 1 entries to parties because the Department has found that subject merchandise has previously been misclassified as a type 1

¹⁰² *See, e.g., Certain Lined Paper Products from the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review*, 73 FR 58540 (October 7, 2008) unchanged in *Certain Lined Paper Products from the People's Republic of China: Notice of Final Results of the Antidumping Duty Administrative Review*, 74 FR 17160 (April 14, 2009) ("CLPP 2009").

¹⁰³ *See Longkou Haimeng Machinery citing* Section 777A(c)(2)(B) of the Act and 782(a) of the Act.

¹⁰⁴ *See* section 782(a)(2) of the Act.

¹⁰⁵ *Ad Hoc Shrimp Trade Action Committee* (quoting *Torrington Co. v. United States*, 68 F.3d 1357, 1351 (Fed. Cir. 1995)).

entry in Shrimp from the PRC,¹⁰⁶ the Department notes that they have not presented any evidence specific to this review demonstrating that any such misclassification has occurred. Indeed, Petitioner has not demonstrated that there are any errors with the CBP data. Absent any evidence of error with respect to the CBP data pertaining to this case, the Department find that no basis exists that would warrant amending the CBP data here.¹⁰⁷

Further, the Department disagrees with Petitioner's request that the Department should issue Q&V questionnaires to the Respondents at this stage of the proceeding. As explained above, our normal practice is to use CBP volume data in selecting respondents in administrative reviews.¹⁰⁸ The Department has deviated from this practice only when the Department has determined based on substantial record evidence that the CBP data are unreliable or unusable.¹⁰⁹ No such evidence is present in this review. Given that CBP data are generally reliable, and that Q&V questionnaires are a significant time-consuming data collection process, particularly when there are many review requests, the Department finds CBP data to be a reasonable and preferable basis for respondent selection in this review. Because the Department selected respondents using CBP data and conducted full reviews of those respondents, Petitioner's request that Q&V questionnaires be issued at this stage of the proceeding is impracticable.¹¹⁰ Therefore, for the final results of this review, the Department has determined not to issue Q&V questionnaires to any exporters or producers subject to the instant proceeding and continue to find that our selection of respondents for this review was reasonable and in accordance with section 777A(c)(2)(B) of the Act.

Comment 6: Exclusion of Imports from Bangladesh in Surrogate Value Calculations

The Petitioner notes that the Department valued numerous FOPs based on Bangladeshi imports, as reported by UN ComTrade. The Petitioner also notes that, consistent with its past practice, the Department excluded imports from NMEs, countries which provide generally available export subsidies and non-specified countries.

¹⁰⁶ Citing *Third Administrative Review of Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 46565 (September 10, 2009) and accompanying Issues and Decisions Memo at Comment 7.

¹⁰⁷ See, e.g., *Asociacion Colombiana Exportadores de Flores v. United States*, 40 F. Supp 2d 466 (CIT 1999) at 471 – 472; *Stainless Steel Sheet and Strip in Coils from Taiwan: Final Results and Rescission in Part of Antidumping Duty Administrative Review*, 73 FR 6932 (February 6, 2008), and accompany Issues and Decisions Memorandum at Comment 1.

¹⁰⁸ See, e.g., Respondent Selection Memo and CLPP 2009.

¹⁰⁹ See, e.g., *Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews and Partial Rescission of Review*, 74 FR 6372, 6373 (February 9, 2009) unchanged in *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 41374, August 17, 2009.

¹¹⁰ See *Certain Frozen Warmwater Shrimp From India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 33409 (July 13, 2009) (“India Shrimp Final 2009”) and accompanying Issues and Decisions Memorandum at Comment 2.

According to the Petitioner, for PE bags, trays and cartons, imports into Bangladesh from Bangladesh account for a significant portion of the SV. The Petitioner observes that there were no exports from Bangladesh into Bangladesh for these FOPs in 2005 and 2006. The Petitioner notes that in the 2004 data used in *POR 2*, the Department excluded exports from Bangladesh to Bangladesh for some FOPs, but not others, without stating why.¹¹¹ The Petitioner asserts that given the substantial volume of imports listed as originating in Bangladesh, and the irregular reporting of imports from this source, it is unclear whether this category of imports represents re-imports or is simply another category of unspecified imports in the UN ComTrade dataset. The Petitioner argues that in prior segments of this proceeding the Department has excluded import data that the agency found to be aberrational based on an analysis of the historical data on the record.¹¹² As a consequence, the Petitioner argues, the Department should exclude these data absent information explaining why types of merchandise these volumes and values represent, because its inclusion would cause the Department to rely on market values distorted by unusual or inexplicable circumstances.

Contessa argues that because Bangladesh to Bangladesh data were not included in previous years' reporting to UN ComTrade, the data is not rendered aberrational. Contessa contends that the volume or quantity of transactions include in the UN ComTrade data cannot be the basis for determining that a result is aberrational. Contessa asserts that when the Department considers whether certain line items within a set of data are aberrational, it typically looks at the extent to which small quantities in the data are skewing the overall average based on aberrational unit values.¹¹³ Contessa maintains that if an average unit value is based on a large quantity of transactions the Department has generally regarded these as being more reliable than average prices based on small quantities.¹¹⁴

Department's Position:

The Department agrees with the Petitioner. According to the *Merriam-Webster's Dictionary*, imports are defined as- to bring merchandise into a place or country from another country.¹¹⁵ In this case the Department has relied upon import statistics to value certain FOPs, *i.e.*, imports from foreign countries into Bangladesh. There is no record evidence as to whether the goods classified as imports from Bangladesh into Bangladesh are re-importations, another category of unspecified imports, or the result of an error in reporting. Because the constitution of this data is unclear, we do not find that it represents the best available information upon which to rely for valuation purposes. Consequently, for these final results the Department has excluded imports from Bangladesh into Bangladesh for surrogate valuation purposes for all FOPs.

¹¹¹ See Petitioner's Surrogate Value Submission at Attachment 4, Exhibit 1.

¹¹² See *POR 3 Final Results* and accompanying Issues and Decisions Memorandum at Comment 2B.

¹¹³ Citing *e.g.*, *Tetrahydrofurfuryl Alcohol from the People's Republic of China*, 69 FR 3887, 3892 (Jan. 27, 2004).

¹¹⁴ *Id.* at 2

¹¹⁵ See <http://www.merriam-webster.com/dictionary/imports>.

Comment 7: Name Corrections for Certain Companies

The Respondents argue that the Department should grant separate rate status to company names which were included in separate rate submissions submitted to the Department. The Respondents also contend that the *Preliminary Results* included errors in names, which should be corrected for the final results.^{116,117} The Respondents further assert that the separate rate was not indicated in the *Preliminary Results* for Thuan Phuoc Seafoods and Trading Corporation (“Thuan Phuoc Seafoods”). The Respondents also maintain that the Department mistakenly included company names in the Vietnam-wide entity that are variations or exact duplicates names for companies that were preliminarily given separate rate status in the *Preliminary Results*.

Department’s Position:

The Department agrees with the Respondents that several “doing business as” (“dbas”) names were not included in the *Preliminary Results* and have included for the final results. Moreover, the Department agrees that the Department inadvertently did not include Thuan Phuoc Seafoods’ actual separate rate in the *Preliminary Results* and will correct this for the final results.

The Department also agrees with Respondents, in part, that various company names were inadvertently included in the Vietnam-wide rate and have corrected this for the final results.¹¹⁸ The Department notes that although Respondents contest that “Frozen Seafoods Factory No. 32 and/or Frozen Seafoods Fty” and “Frozen Seafoods Fty” are branches or factories of Thuan Phuoc Seafoods, Thuan Phuoc Seafoods’ separate rate application did not include either of these names.¹¹⁹ Thus, with the exceptions of “Frozen Seafoods Factory No. 32 and/or Frozen Seafoods Fty” and “Frozen Seafoods Fty,” the Department has not included the various company names presented by the Respondents in the Vietnam-wide entity.

Comment 8: Separate Rate Companies

A. Margins for Separate Rate Companies

The Respondents argue that should the mandatory respondents receive *de minimis* rates for the final results, the Department should revise its prior decisions to not grant separate rate companies the average rates of the mandatory respondents, a policy which the CIT has questioned.¹²⁰

¹¹⁶ See Attachment 1.

¹¹⁷ See Respondents’ case brief at 24, 29, 44, and 45, for business proprietary names being granted separate rate status for these final results.

¹¹⁸ See Attachment 2.

¹¹⁹ See Letter from Thompson Hine, to Secretary of Commerce, regarding Response to Separate Rate Application, dated June 3, 2009.

¹²⁰ See *Amanda Foods (Vietnam) Ltd., et al., v. United States*, Slip Op. 09-106 (September 29, 2009) (“*Amanda Foods*”).

The Petitioner contends that, in response to *Amanda Foods*, the Department issued the Final Remand Determination which found that the methodology used to assign rates to separate rates companies in the second administrative review was a reasonable method supported by substantial evidence on the record.¹²¹ The Petitioner contends that the Final Remand Determination is unequivocal in its support for the methodology and currently before the CIT.

Department's Position:

Because the Department has calculated margins greater than *de minimis* for the two participating respondents in this review,¹²² Minh Phu and Nha Trang, the Respondents and Petitioner's arguments on this issue are moot. Normally, the separate rate margin is determined based on the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding *de minimis* margins or margins based entirely on AFA.¹²³ Because the Department has calculated positive margins for both mandatory respondents, Minh Phu and Nha Trang, consistent with our practice, the Department has calculated a margin for the separate rate respondents based on a simple average of the rates the Department calculated for the two mandatory respondents. Because there are only two respondents for which a company-specific margin was calculated in this review, the Department has calculated a simple average separate rate margin to ensure that the total import quantity and value for either mandatory respondent is not inadvertently revealed.

B. Fish One Margin

Fish One asserts that they should receive their previously calculated margin of 0.00 percent because the Department has previously deemed it appropriate to use a calculated rate from a previous segment as the basis for a non-reviewed company's separate rate.¹²⁴ As such, they assert that assigning Fish One a 2.89 percent margin is inconsistent with this precedent.¹²⁵ Moreover, they argue that assigning a rate based on another company's data is punitive¹²⁶ and based on speculation.¹²⁷

The Petitioner rebuts and argues that Fish One should not receive its calculated margin from the first administrative review because that would require the Department to assume that a company has not changed its practices from one review period to another in which it was not selected.

¹²¹ See "Final Results of Redetermination Pursuant to Court Remand," dated March 3, 2010 ("Final Remand Determination").

¹²² The Department notes that only one calculated margin would have been needed to establish a calculated POR separate rate margin. In this case, there are two.

¹²³ See section 735(c)(5)(A) of the Act.

¹²⁴ Citing *POR 2 Final Results*.

¹²⁵ Citing *Preliminary Results*.

¹²⁶ Citing *Allied-Signal Aerospace Co. v. United States*, 996 F.2d 1185,1191 (Fed. Cir. 1993).

¹²⁷ Citing *LMI-La Metalli Industrialie, S.p.A. v. United States*, 912 F.2d 455, 460(CAFC; August 17, 1990).

The Petitioner argues that doing so effectively creates a cap on any rate that is assigned to a company in which it is not selected for individual review. Moreover, The Petitioner contends that Fish One's argument would require the Department to always individually review exporters that had been previously reviewed; thus hindering the Department's ability to employ section 777A(c)(2)(B) of the Act.

Department's Position:

The Department disagrees with Fish One with respect to its argument regarding the separate rate calculation. Fish One's argument essentially suggests that, because the Department calculated a zero rate for it as a mandatory respondent in *Vietnam Shrimp AR1*, that same margin should be applied to it in subsequent segments where Fish One is not selected for individual examination, regardless of whether the calculated rates for the mandatory respondents are positive, zero, *de minimis*, or based entirely on FA. However, we note that, other than circumstances such as those in *Vietnam Shrimp AR1*, *Vietnam Shrimp AR2*, and *Vietnam Shrimp AR3*, where all calculated rates have been either zero or *de minimis*, the Department intends to follow its well-established and court-affirmed practice of assigning separate rates based on the simple-average margins of the mandatory respondents as we did in the *Preliminary Results*.¹²⁸

Comment 9: Surrogate Value for Labor

Processors propose that if the Department does not use the regression methodology employed in the preliminary results or another methodology that relies on wage rates from various countries, it should use labor costs of a company or companies from the surrogate country that produce identical or similar merchandise. Specifically, they assert that the Department could derive labor rates from financial statements using the same methodology it uses for financial ratios. For the instant review, they contest the Department's reliance on the 2008 – 2009 financial statement for Gulf Foods Limited. Processors propose calculating a wage rate by dividing the salary and allowances paid to Gulf Foods Limited's company's employees over the total number of employees paid, which Processors state would provide the average cost of labor per employee per year. Processors assert that the Department could then divide the per year labor cost per employee using the estimated number of hours worked in the Department's current methodology (*i.e.*, eight hours per day, 24 working days per month, 12 months per year),¹²⁹ which would then result in an hourly wage of \$0.68.

¹²⁸ See *Longkou Haimeng Mach. Co. v. United States*, 581 F. Supp. 2d 1344, 1357-60 (CIT 2008).

¹²⁹ Citing ITA website, Expected Wages of Selected Non-Market Economy Countries, Notes to the May 2000 Revision.

Petitioner argues, however, that the Department should not use financial statements that include temporary and contract workers.¹³⁰ Petitioner argues that doing so would distort the wage calculation since these types of workers are not employed for a full year.

Rebutting, Processors assert that their proposed methodology provides an overall average cost for a variety of workers' categories and skills employed in the industry. Further, Processors claim that it promotes consistency with the selection of surrogate values since it is derived from the same publicly available data used to value financial ratios.

Processors also propose an alternative methodology for valuing the labor rate, which entails averaging the hourly labor rates of all countries within the range of economically comparable countries to Vietnam that produce significant amounts of shrimp. Processors assert that the Department has identified 38 countries with 2007 GNIs that are within the range of incomes of the surrogate countries identified as economically comparable to Vietnam.¹³¹

Petitioner contends that the wage or earnings data of Egypt, Guyana, Honduras, India, Indonesia, Mongolia, Nicaragua, Pakistan, the Philippines, and Sri Lanka are available from the ILO. However, Petitioner contends that it is the Department's practice to only include data found in the ILO category "earnings."¹³² Accordingly, Petitioner argues that the Department should exclude Honduras, Indonesia, Peru, and the Philippines from the labor rate calculation. Petitioner also argues that Mongolia should be excluded because it was not an exporter of shrimp from 2007 through 2009. The Department should then average the labor rate for the remaining countries (*i.e.*, Egypt, Guyana, India, Nicaragua, Pakistan, and Sri Lanka), which would yield an hourly wage rate of \$0.81.

Petitioner asserts that although the Department chose Bangladesh as an appropriate surrogate country for valuing FOPs, Bangladesh is not the most appropriate country for valuing the wage rate. It proposes that the Department employ a simple average of the wage rates for Kenya and Pakistan since these countries' GNIs bracket Vietnam's GNI, which would result in an hourly wage rate of \$0.91. It also proposes a second method in which the Department would use a simple average of the labor wage rates of the five shrimp-exporting countries whose GNIs are close to Vietnam's (*i.e.*, within 26 percent): Kenya; Pakistan; Senegal; India; and Nigeria. Petitioner notes that this alternative methodology would result in a labor wage rate of \$0.92.

Additionally, Petitioner contests that the calculated labor wage rate of \$0.17 per hour for Honduras is incorrect due to an error in the reporting of wage rates by the ILO. Petitioner asserts that three academic papers¹³³ prove that the ILO's calculated wage of \$0.15 per day is more

¹³⁰ *Citing e.g.*, 2007 – 2008 Apex Food Limited Report at 4.

¹³¹ *Citing 3rd Wage Rate Data Memorandum*; and *Preliminary Results* identifying Bangladesh and Indonesia as economically comparable countries to Vietnam.

¹³² *Citing Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61722 (October 19, 2006) ("*Antidumping Methodologies*").

¹³³ *Citing Processors' 1st Wage Rate Comments* at Exhibit 4 and "Minimum Wages, Globalization and Poverty in

likely to be an hourly wage rate. Petitioner also provides a paper published by the ILO stating that the 2007 monthly minimum wage rate for Honduras is approximately \$275, making the Department's calculated wage rate for Honduras of \$0.17 per hour impossible.¹³⁴

The Respondents suggest that the Department should value labor using wage data specific to the shrimp processing industry in Bangladesh taken from the Bangladesh Bureau of Statistics' 2007 Wage Survey.¹³⁵ The Respondents contest that the 2007 Wage Survey comports with a 2006 USAID study reporting a 2007 hourly wage of \$0.16,¹³⁶ and are in line with an estimated 2007 hourly wage rate for Bangladesh when calculated by dividing the per capita GNI by 2,304 hours (*i.e.*, 8 hours per day x 24 working days/month x 12 months), yielding an hourly wage of \$0.20. The Respondents also provide data indicating that the 2005 median hourly rate in Bangladesh is 11.3 Takas per hour.¹³⁷ The Respondents assert that after inflating this to a 2008 hourly rate would yield 14.33 Takas per hour, which is equivalent to \$0.21 per hour.¹³⁸

Additionally, the Respondents suggest an alternative methodology if the Department chooses to value labor using a regression analysis. For a regression methodology, they propose using per capita GNI and hourly wage rate data from Bangladesh, India, Indonesia, Pakistan, the Philippines, and Sri Lanka, since the Department has established these countries as economically comparable to Vietnam¹³⁹ and are producers of comparable merchandise.¹⁴⁰

The Respondents contest that it appears the Department is proposing to use a revised group of countries with a per capita GNI range of \$950 to \$4,100. They state that, although the countries' per capita GNI's are close to that of Vietnam's, it is unclear whether all of these countries are producers of comparable merchandise. Accordingly, the Respondents suggest using an OLS regression analysis of the six countries above, producing a 2007 hourly wage rate of \$0.36.

In response to the Department's 3rd Wage Rate Memo, the Respondents contest that the per capita GNI range of the revised countries is not at or below that of Vietnam. Further, it includes Mongolia, which is not a producer of similar merchandise. The Respondents contest that using an OLS regression analysis on the ten countries provided would result in anomalous hours worked per year. The Respondents suggest that the Department should employ a uniform

Honduras" at Exhibits 4 and 5; Processors' 2nd Wage Rate Comments at Exhibit 3.

¹³⁴ Processors' 2nd Wage Rate Comments at Exhibit at Exhibit 2.

¹³⁵ *Citing* availability at http://bbs.gov.bd/dataindex/key_wage07.pdf.

¹³⁶ *Citing* Respondents' 1st Wage Rate Comments at Exhibit 2.

¹³⁷ *Citing* Respondents' 2nd Wage Rate Comments at Exhibit 1.

¹³⁸ *Id.*

¹³⁹ *Citing* Memorandum to Scot T. Fullerton from Kelly Parkhill, Acting Director of Office of Policy, regarding Request for a List of Surrogate Countries for the Antidumping Duty Administrative Review of the Antidumping Duty Order on Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, dated May 15, 2009.

¹⁴⁰ *Citing* Memorandum to the File from Susan Pulongbarit, International Trade Analyst, regarding 2008 – 2009 Administrative Review of Certain Warmwater Shrimp from Vietnam: Fishstat Data, dated March 8, 2010.

number of hours using the same conversion calculation that is currently employed when ILO data are not reported on an hourly basis.¹⁴¹

Contessa argues that the Department should value labor using data from a market economy that is at a comparable level of economic development to Vietnam and is a producer of comparable merchandise.¹⁴² Contessa asserts that the Department has determined that Bangladesh fulfills these two requirements. Accordingly, Contessa proposes that the Department should use the shrimp processing wage rates from the 2007 Wage Survey published by the Bangladesh Bureau of Statistics¹⁴³ because it is a broad market average of publicly available, tax exclusive labor cost data in Bangladesh, and specific to shrimp processing. Contessa contends that doing so would provide a labor rate of 15.65 takas/hour.

Contessa contests that although India and Indonesia are countries that the Department has determined to be economically comparable to Vietnam and are each a significant producer of comparable merchandise, these countries should not be used for valuing labor. Contessa asserts that the Indian and Indonesian data are not as suitable as the Bangladeshi data because they are less specific to labor hours for shrimp processing and do not reflect data from the surrogate country chosen by the Department.

Department's position:

As a consequence of the CAFC's ruling in *Dorbest II*, the Department is no longer relying on the regression-based wage rate described in 19 CFR 351.408(c)(3). The Department is continuing to evaluate options for determining labor values in light of the recent CAFC decision. For these final results, we have calculated an hourly wage rate to use in valuing the Minh Phu Group and Nha Trang Seafoods' reported labor input by averaging earnings and/or wages in countries that are economically comparable to Vietnam and that are significant producers of comparable merchandise.

In regards to the proposal that the Department use the hourly wage rate for Bangladesh from the 2007 Wage Survey published by the Bangladesh Bureau of Statistics as an alternative to our previous regression-based wage rate. The Department disagrees. While information from a single surrogate country can reliably be used to value other FOPs, wage data from a single surrogate country does not constitute the best available information for purposes of valuing the labor input due to the variability that exists between wages and GNI. While there is a strong world-wide relationship between wage rates and GNI, too much variation exists among the wage rates of comparable MEs. As a result, we find reliance on wage data from a single country to be unreliable and arbitrary. For example, when examining the most recent wage data, even for countries that are relatively comparable to Vietnam in terms of GNI for purposes of factor

¹⁴¹ *Citing Antidumping Methodologies.*

¹⁴² *Citing* 19 U.S.C. 1677b(c)

¹⁴³ *Citing* Contessa's 1st Wage Rate Comments at Exhibit 1.

valuation (*e.g.*, countries with GNIs between USD 480 and USD 1650), the wage rate spans from USD 0.49 to USD 1.30.¹⁴⁴ Additionally, although both Sri Lanka and Guyana have GNIs below USD 2000, and both could be considered economically comparable to the Vietnam, Sri Lanka's observed wage rate is USD 0.41, as compared to Guyana's observed wage rate of USD 1.21 – over double that of Sri Lanka.¹⁴⁵ There are many socio-economic, political and institutional factors, such as labor laws and policies unrelated to the size or strength of an economy, that cause significant variances in wage levels between countries. For this reason, and because labor is not traded internationally, the cross-country variability in labor rates, as a general rule, does not characterize other production inputs or impact other factor prices. Accordingly, the large variance in these wage rates illustrates the arbitrariness of relying on a wage rate from a single country. For these reasons, the Department maintains its longstanding position that, even when not employing a regression methodology, more data are still better than less data for purposes of valuing labor. Accordingly, for these final results, the Department has employed a methodology that relies on a larger number of countries in order to minimize the effects of the variability that exists between wage data of comparable countries.

The Department disagrees with the proposal to derive wage rates from financial statements because the manner in which each company reports labor costs varies. Further, it is difficult to determine what types of labor are included in the broad labor or overhead classifications provided in each company's financial statements. Additionally, as most financial statements do not report the number of manufacturing working hours, the Department would only be able to obtain a wage rate based on output instead of hours worked.

The Department also disagrees with valuing labor using a regression analysis using just the countries that are economically comparable to Vietnam. The Department has previously found that restricting the basket of countries to include only countries that are economically comparable to each NME is not feasible and would undermine the consistency and predictability of the Department's regression analysis. A basket of “economically comparable” countries could be extremely small. For example, there were five countries with GNI less than US \$1,000 in the Department's 2007 calculation. A regression based on an extremely small basket of countries would be highly dependent on each and every data point. The inclusion or exclusion of any one country could have an extreme effect on the regression results. As described below, the Department screens the available data every year to ensure that they meet a number of important data suitability criteria. Therefore, the number and composition of the countries in the basket may vary unavoidably from year to year. A larger basket thus minimizes the potential for dramatic year-to-year variability.¹⁴⁶

¹⁴⁴ See “Expected Wages of Selected NME Countries,” revised in December 2009, available at <http://ia.ita.doc.gov/wages/index.html>.

¹⁴⁵ *Id.*

¹⁴⁶ See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716 (October 19, 2006).

With regards to the Honduran wage rate provided by the ILO, the Department is rejecting this wage rate since record evidence demonstrates that the wage rate is inaccurate, possibly due to an ILO reporting error. Record evidence also demonstrates that the effective Honduran minimum wage during the same year as the underlying ILO data is \$91.99 per month during 2006.¹⁴⁷ With the assumption that the current reported ILO wage rate of \$0.17, a worker would earn an average monthly wage of \$32.64, a third of the minimum wage rate.¹⁴⁸ Furthermore, information from the ILO, the Department's source, reports the Honduran monthly minimum over \$250 per month in 2007, using purchasing power parity.¹⁴⁹ Based on the comparison of the minimum wage rates on the record, the Department finds that the calculated wage rate for Honduras is unreliable. Therefore, the Department is rejecting the Honduran wage rate for the purposes of averaging surrogate wage rates in this administrative review.

To achieve a labor value that is based on the best available information for these final results, we have relied on labor data from several countries determined to be both economically comparable to Vietnam, and significant producers of comparable merchandise.

First, in order to determine the economically comparable surrogate countries from which to calculate a surrogate wage rate, the Department looked to the Surrogate Country Memo.¹⁵⁰ Early in this review, the Department selected six countries for consideration as the surrogate country for this review. To determine which countries were at comparable levels of economic development to Vietnam, the Department placed primary emphasis on GNI.¹⁵¹ The Department relies on GNI to generate its initial list of countries considered to be economically comparable to the PRC. In this review, the list of potential surrogate countries found to be economically comparable to Vietnam included Bangladesh, Pakistan, India, Sri Lanka, the Philippines, and Indonesia. The Department used the high- and low-income countries identified in the Surrogate Country Memo list as "bookends" and then identified all countries in the World Bank's World Development Report for 2007 with per capita incomes (using the 2007 GNIs from the 2009 Expected Wages of Selected NME Countries) that placed them between these "bookends". This resulted in 38 countries, ranging from India with USD 470 GNI to Colombia with USD 1,650.¹⁵²

Regarding the second criterion of "significant producer," the Department identified all countries which have exports of comparable merchandise (defined as HTS 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24,

¹⁴⁷ See Petitioner's July 20, 2010 Wage Rate Comments at Exhibit 1.

¹⁴⁸ This assumes 24 working days per month and 8 working hours per day.

¹⁴⁹ See Petitioner's July 20, 2010 Wage Rate Comments at Exhibit 2.

¹⁵⁰ See Memorandum to Scot T. Fullerton, Program Manager, from Kelly Parkhill, Acting Director Office of Policy, regarding Request for a List of Surrogate Countries for a Antidumping Duty Administrative Review of the Antidumping Duty Order on Frozen Warmwater Shrimp ("Frozen Shrimp") from the Socialist Republic of Vietnam ("Surrogate Country Memo").

¹⁵¹ See 19 CFR 351.408(b).

¹⁵² See the memoranda to the file dated June 15, 2010, June 22, 2010, July 6, 2010 and July 14, 2010 (collectively, "Labor Wage Rate Data").

0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30, which are identified in the scope of this order) between 2007 and 2009.¹⁵³ After screening for countries that had exports of comparable merchandise, we found that 16 of the 50 countries designated as economically comparable to Vietnam are also significant producers. In this case, we have defined a “significant producer” as a country that has exported comparable merchandise from 2007 through 2009.

For purposes of valuing wages in this review, the Department determines the following 16 countries to be both economically comparable to Vietnam, and significant producers of comparable merchandise: Cote d’Ivoire, Egypt, Ghana, Guyana, India, Indonesia, Kenya, Nicaragua, Nigeria, Pakistan, Philippines, Sao Tome & Principe, Senegal, Sri Lanka, Honduras and Yemen.

Third, from the 16 countries that the Department determined were both economically comparable to Vietnam and significant producers of comparable merchandise, the Department identified those with the necessary wage data. In doing so, the Department has continued to rely upon ILO Chapter 5B data “earnings”, if available and “wages” if not.¹⁵⁴ We used the most recent data within five years of the base year (2007) and adjusted to the base year using the relevant Consumer Price Index.¹⁵⁵ Of the 16 countries that the Department has determined are both economically comparable and significant producers of comparable merchandise, nine countries, *i.e.*, Bangladesh, Cambodia, Cote d’Ivoire, Ghana, Kenya, Nigeria, Sao Tome &

¹⁵³ The export data is obtained from the Global Trade Atlas. *Id.*

¹⁵⁴ The Department maintains its current preference for “earnings” over “wages” data under Chapter 5B. However, under the previous practice, the Department was typically able to obtain data from somewhere between 50-60+ countries. Given that the current basket now includes 16 countries, the Department found that our long-standing preference for a robust basket outweighs our exclusive preference for “earnings” data. We note that several countries that met the statutory criteria for economic comparability and significant production, such as the Philippines and Indonesia, reported only a “wage” rate. Thus, if earnings data is unavailable from the base year (2007) of the previous five years (2002-2006) for certain countries that are economically comparable and significant producers of comparable merchandise, the Department will use “wage” data, if available, from the base year or previous five years. The hierarchy for data suitability described in the 2006 *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, (October 19, 2006) (“Antidumping Methodologies”) still applies for selecting among multiple data points within the “earnings” or “wage” data. This allows the Department to maintain consistency as much as possible across the basket.

¹⁵⁵ Under the Department’s regression analysis, the Department limited the years of data it would analyze to a two-year period. *See Antidumping Methodologies*, 71 FR at 61720. However, because the overall number of countries being considered in the regression methodology was much larger than the list of countries now being considered in the Department’s calculations, the pool of wage rates from which we could draw from two years-worth of data was still significantly larger than the pool from which we may now draw using five years worth of data (in addition to the base year). The Department believes it is acceptable to review ILO data up to five years prior to the base year as necessary (as we have previously), albeit adjusted using the Consumer Price Index. *See Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology*, 70 FR 37761, 37762 (June 30, 2005). In this manner, the Department will be able to capture the maximum amount of countries that are significant producers of comparable merchandise, including those countries that choose not to report their data on an annual basis. *See also* CPI data placed on record, obtained from the International Monetary Fund’s International Financial Statistics.

Principe, Senegal, and Yemen, were not used in the wage rate valuation because there was no earnings or wage data available. Additionally, Honduras has also been excluded as explained above. The remaining countries reported either earnings or wage rate data to the ILO within the last five years.¹⁵⁶

The Department relied on data from the following countries to arrive at its wage rate in these final results: Egypt, Guyana, India, Indonesia, Nicaragua, Pakistan, Philippines, and Sri Lanka. The Department calculated a simple average of the wage rates from these eight countries of \$0.89 per hour. This resulted in a wage rate derived from comparable economies that are also significant producers of the comparable merchandise, consistent with the CAFC's ruling in *Dorbest II* and the statutory requirements of section 773(c) of the Act.

Comment 10: Zeroing

The Respondents and Contessa note that the World Trade Organization ("WTO") has found on numerous occasions in the past three years that the Department's practice of zeroing¹⁵⁷ has violated U.S. obligations under WTO agreements. The Respondents and Contessa argue that the WTO found in *U.S.-Zeroing (EC)* that because results of sales with negative margins were systematically disregarded, the methodology applied by the Department in administrative reviews has resulted in amounts of assessed antidumping duties which exceeded the foreign producers/exporters dumping margins.¹⁵⁸ The Respondents and Contessa contend that while this finding was applicable to only specific administrative reviews, the rationale applied by the WTO applies to any administrative review in which the Department employs zeroing. The Respondents, Contessa and Fish One assert that in *U.S.-Zeroing (Japan)*, the WTO found that the practice of zeroing in administrative reviews was inconsistent with U.S. obligations required in Articles 2.4 and 9.3 of the *Anti-Dumping Agreement* and Article VI:2 of *GATT 1994*.¹⁵⁹ Moreover, according to the Respondents and Contessa, the WTO made two similar findings in 2009.¹⁶⁰

The Respondents maintain that in other administrative reviews the Department has justified the application of zeroing by noting that the CAFC has repeatedly affirmed the permissibility of

¹⁵⁶ See International Labour Organization's Yearbook of Labour Statistics.

¹⁵⁷ Where normal value exceeds the export price (or constructed export price) and the Department treats the comparison results as showing no dumping rather than a negative amount of dumping in calculating the weighted average dumping margin.

¹⁵⁸ See *United States-Laws, Regulations and Methodology for Calculating Dumping Margins (Zeroing)*, WT/DS294/AB/R (April 18, 2006) ("*US-Zeroing (EC)*").

¹⁵⁹ See *United States-Measures Relating to Zeroing and Sunset Reviews*, WT/DS322/AB/R (January 9, 2007) ("*US-Zeroing (Japan)*").

¹⁶⁰ See *United States-Continued Existence and Application of Zeroing Methodology*, WT/DS350/AB/R (February 9, 2009) ("*US-Zeroing (EC II)*"); see also *United States – Measures Relating to Zeroing and Sunset Reviews- Recourse to Article 21.5 of the DSU by Japan*, WTD/DS322/AB/RW (09-3902) (August 18, 2009) ("*US-Zeroing (Japan II)*").

denying offsets in administrative reviews.¹⁶¹ The Respondents and Contessa contend that zeroing is neither required nor prohibited by U.S. law, or judicial precedent. Moreover, the Respondents assert that the United States has a duty under international law to comply with international agreements to which it is a signatory, except where prohibited by U.S. law.

Further, the Respondents note that the United States has implemented the WTO's rulings against zeroing in investigations. Contessa argues that the CAFC has found that where the Department has the authority to interpret the statute, the Department may also occasionally reassess its policies and apply a new policy to a pending case.¹⁶² According to Contessa, the Department has, on occasion, adopted a change in statutory interpretation that applied to all segments pending as of the date of the change.¹⁶³ As a consequence, the Respondents and Contessa claim that, because zeroing is neither required nor prohibited by U.S. law, the Department may abandon its practice of zeroing in administrative reviews to comply with its international obligations under the WTO.¹⁶⁴

The Respondents argue that the Department's zeroing practice is particularly egregious in the instant review because, the application of zeroing may result in an overall positive margin for both mandatory respondents when their margins would otherwise be *de minimis*. Moreover, the Respondents maintain that this practice would prevent MPG from receiving its third consecutive *de minimis* margin, and deprive it of revocation.

The Processors argue that the Respondents' arguments are in error with respect to the Department's "zeroing" practice as it applies to administrative reviews. The Processors contend that the statute does not prohibit the "zeroing" methodology. The Processors argue that, on the contrary, the very nature of the statute requires the "zeroing" methodology to be applied to sales of goods at less than fair value. The Processors contend that the Department's "zeroing" methodology in administrative reviews has been repeatedly affirmed by the CAFC.¹⁶⁵

The Petitioner argues that, outside the context of antidumping investigations, the Department employs a comparison methodology, whereby non-dumped sales do not offset the amount of dumping with respect to dumped sales. According to the Petitioner and the Processors, the

¹⁶¹ See, e.g., *Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 46584 (August 11, 2008) and accompanying Issues and Decision Memorandum at Comment 1.

¹⁶² See *SKF USA, Inc. v. United States*, 254 F.3d 1022, 1029-30 (Fed. Cir. 2001).

¹⁶³ See, e.g., *Policy Bulletin 98.1: Basis for Normal Value when Foreign Market Sales are Below Cost* (February 23, 1998); see also *Policy Bulletin 94.1: Treatment of Inventory Carrying Cost in Constructed Value* (March 25, 1994).

¹⁶⁴ See, e.g., *Alexander Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch.) 64, 118 (1804); *Luigi Bormioli Corp. v. United States*, 304 F.3d 1362, 1368 (Fed. Cir. 2002) (statutes must be interpreted to be consistent with GATT obligations, absent contrary indications in the statutory language or legislative history).

¹⁶⁵ The Processors cite to, among others, the recent *Koyo Seiko Co. v. United States*, 551 F.3d 1286, 1290-91 (Fed. Cir. 2008) and *SKF USA Inc. v. United States*, 537 F.3d 1373, 1382 (Fed. Cir. 2008), where the "zeroing" methodology was upheld for administrative reviews.

CAFC has held this to be a reasonable interpretation of the statute.¹⁶⁶ The Petitioner notes that the Department has modified its calculation of the weighted-average dumping margin only when using average-to-average comparisons in investigations.¹⁶⁷ The Petitioner argues that the Department has continually declined to adopt any other modifications concerning any other methodology in administrative reviews and has rejected such suggestions in numerous administrative reviews.¹⁶⁸ Moreover, the Petitioner and the Processors argue that the CAFC has repeatedly affirmed the Department's practice of zeroing in administrative reviews.¹⁶⁹

Department's Position:

The Department notes that parties made nearly identical arguments concerning zeroing in the last administrative review. Then, as now, the Department has not changed our calculation of the weighted-average dumping margin for these final results of review.

Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." Outside the context of antidumping investigations involving average-to average comparisons, the Department interprets this statutory definition to mean that a dumping margin exists only when normal value is greater than export or constructed export price. As no dumping margins exist with respect to sales where normal value is equal to or less than export or constructed export price, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The CAFC has held that this is a reasonable interpretation of the statute.¹⁷⁰

Section 771(35)(B) of the Act defines weighted-average dumping margin as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer." The Department applies these sections by aggregating all individual dumping margins, each of which is determined by the amount by which normal value exceeds export price or constructed export price, and dividing this amount by the value of all sales. The use of the term aggregate dumping margins in section 771(35)(B) is consistent with the Department's interpretation of the singular "dumping margin" in section 771(35)(A) as applied on a comparison-specific level and not on an aggregate basis. At no stage of the process is the amount by which export price or constructed export price exceeds the normal value permitted to offset or cancel out the dumping margins found on other sales.

¹⁶⁶ See, e.g., *Timken Co. v. United States*, 354 F.3d 1334, 1342 (Fed. Cir. 2004) ("*Timken*").

¹⁶⁷ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 FR 77722 (December 27, 2006) ("*Zeroing Notice*").

¹⁶⁸ See, e.g., *Granular Polytetrafluoroethylene Resin from Italy: Final Results of Antidumping Duty Administrative Review*, 74 FR 14519 (March 31, 2009) and accompanying issues and Decision Memorandum at Comment 10.

¹⁶⁹ See, e.g., *NSK Ltd. v. United States*, 510 F.3d 1375 (Fed. Cir. 2007) ("*NSK*").

¹⁷⁰ See, e.g., *Timken; Corus Staal BV v. Department of Commerce*, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005), *cert. denied*; 126 S. Ct. 1023, 163 L. Ed. 2d 853 (Jan. 9, 2006) ("*Corus I*").

This does not mean that non-dumped sales are disregarded in calculating the weighted-average dumping margin. It is important to note that the weighted-average margin will reflect any non-dumped merchandise examined during the POR: the value of such sales is included in the denominator of the weighted-average dumping margin, while no dumping amount for non-dumped merchandise is included in the numerator. Thus, a greater amount of non-dumped merchandise results in a lower weighted-average margin.

The CAFC explained in *Timken* that denial of offsets is a “reasonable statutory interpretation given that it legitimately combats the problem of masked dumping, wherein certain profitable sales serve to mask sales at less than fair value.”¹⁷¹ As reflected in that opinion, the issue of so-called masked dumping was part of the policy reason for interpreting the statute in the manner interpreted by the Department. No U.S. court has required the Department to demonstrate “masked dumping,” before it is entitled to invoke this interpretation of the statute and deny offsets to dumped sales.¹⁷²

The respondent has cited WTO dispute-settlement reports (“WTO reports”) finding the denial of offsets by the United States to be inconsistent with the Antidumping Agreement. As an initial matter, the CAFC has held that WTO reports are without effect under U.S. law, “unless and until such a [report] has been adopted pursuant to the specified statutory scheme” established in the Uruguay Round Agreements Act (“URAA”).¹⁷³ Congress has adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.¹⁷⁴ As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department’s discretion in applying the statute.¹⁷⁵ Moreover, as part of the URAA process, Congress has provided a procedure through which the Department may change a regulation or practice in response to WTO reports.¹⁷⁶ With regard to the denial of offsets in administrative reviews, the United States has not employed this statutory procedure.

With respect to *US-Zeroing (EC)*, the Department has modified its calculation of weighted-average dumping margins when using average-to-average comparisons in antidumping investigations.¹⁷⁷ In doing so, the Department declined to adopt any other modifications concerning any other methodology or type of proceeding, such as administrative reviews.¹⁷⁸

¹⁷¹ See *Timken*, 354 F.3d at 1343.

¹⁷² See, e.g., *Timken*, 354 F.3d at 1343; *Corus I*, 395 F.3d 1343; *Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007) (“*Corus II*”); and *NSK*.

¹⁷³ See *Corus I*, 395 F.3d at 1347-49; accord *Corus II*, 502 F.3d at 1375; *NSK*, 510 F.3d 1375.

¹⁷⁴ See, e.g., 19 USC 3538.

¹⁷⁵ See 19 USC 3538(b)(4) (implementation of WTO reports is discretionary).

¹⁷⁶ See 19 USC 3533(g); see, e.g., *Zeroing Notice*.

¹⁷⁷ See *Zeroing Notice*.

¹⁷⁸ *Id.* 71 FR at 77724.

With respect to *US-Zeroing (Japan)*, *US-Zeroing (Japan II)* and *US-Zeroing (EC II)*, the steps taken in response to these reports do not require a change to the Department's approach of calculating weighted-average dumping margins in the instant administrative review.

For all these reasons, the various WTO Appellate Body reports regarding "zeroing" do not establish whether the Department's denial of offsets in this administrative review is consistent with U.S. law. Accordingly, and consistent with the Department's interpretation of the Act described above, in the event that any of the export transactions examined in this review are found to exceed normal value, the amount by which the price exceeds normal value will not offset the dumping found in respect of other transactions.

Comment 11: Amanda Foods Separate Rate Certification

Amanda Foods argues that the Department should accept its' separate rate certification ("SRC"), which the Department rejected in the *Preliminary Results*. Amanda Foods argues that the Department has the discretion to accept information at any point in a proceeding¹⁷⁹ and has previously accepted a late submission after demonstrating that the party was not at fault.¹⁸⁰ Amanda Foods contends that their participation in prior segments of this review and its intent to fully cooperate in the instant review support their argument that the late filing of their SRC was the fault of their prior counsel.

Department's Position:

Consistent with the *Preliminary Results*, for these final results the Department continues to find Amanda Foods' SRC untimely. The Department has the discretion as to whether or not to extend any time limit¹⁸¹. Adherence to the deadlines set forth by the Department is necessary for the orderly administration of each review, in particular to allow the Department to gather and analyze the necessary information from all parties and make its determinations within statutory deadlines. It is particularly important that SRCs and SRAs are submitted early in a proceeding so that the Department can determine whether an entity is separate from Vietnam, to pursue questions that may arise, and provide opportunities for parties to comment on the information on the record.

The Department disagrees with Amanda Foods' assertion that the Department should accept its late submission because it has previously done so in *Shrimp from India*. The Department notes that the facts here are distinguishable from the facts surrounding our decision to accept the late submission in *Shrimp from India*. In that case, the respondent was able to provide a compelling

¹⁷⁹ Citing 19 CFR 351.302(c)(2)(i) and *National Steel Corp. v. United States*, 870 F. Supp. 1130, 1134 (Ct. Int'l Trade 1994).

¹⁸⁰ Citing *Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52055 (Sept. 12, 2007) ("*Shrimp from India*"), and accompanying Issues and Decisions Memorandum at Comment 10.

¹⁸¹ See 19 CFR 351.302(B).

explanation that it did not receive the Department's Q&V questionnaire. As a result, they were unaware of their obligation to submit a response to the Department. In order to support their claim, the respondent in *Shrimp from India* provided the Department with documentation to substantiate its explanation.

In this case however, the Department notes that Amanda Foods has participated in all prior segments of this proceeding, and thus is aware of the administrative review process as well as the corresponding deadlines. In addition, we note that the Department clearly stated the due date for all SRCs in its *Initiation*. Therefore, because we continue to reject Amanda Foods' SRC as an untimely submission, Amanda Foods is no longer entitled to a separate rate. As a result, Amanda Foods' cash deposit rate of 4.57, has been revised for these final results to the Vietnam-wide rate of 25.76.

Comment 12: Exclusion of Imports from Unspecified Countries in Surrogate Value Calculations

The Petitioner notes that the Department stated that it excluded imports into Bangladesh from unspecified countries. The Petitioner argues that the Department did not exclude imports into Bangladesh from all unspecified countries, such as "Other Asia, nes" and "Other Europe, nes."

Department's Position:

We agree with the Petitioner. The Department inadvertently included some imports into Bangladesh from non-specific countries in certain SV calculations.¹⁸² This has been corrected for the final results.

Comment 13: Assessment Rate Calculation for the Minh Phu Group

The Respondents argue that the Department excluded certain sales made to an importer in its calculation of assessment rates, resulting in a higher assessment rate for the importer.¹⁸³ The Respondents note that in the *Preliminary Results* the Department used the following language when calculating assessment rates: IF SALEU = 'CEP' THE IMPORTER = IMPORTERU. According to the Respondents, for the final results, the Department should use the following language when calculating assessment rates: IF SALEU1 = 'CEP' THE IMPORTER = IMPORTERU. The Respondents argue that, should the Department make this SAS programming correction, only importers listed in its case brief should be included in its liquidation instructions.¹⁸⁴

¹⁸² We note that the "Other Europe, nes" category could contain imports from NMEs such as Belarus, Armenia, *etc.*

¹⁸³ Because the name of the importer is proprietary, *see* the Respondents' case brief at 48.

¹⁸⁴ Because the names of the importers are proprietary, *see* the Respondents' case brief at 49.

Department's Position:

We agree with the Respondents and have corrected this inadvertent error for the final results.

Comment 14: Liquidation Instructions

The Respondents assert that the liquidation instructions should include all the names of companies for which a separate rate has been granted in this review. Moreover, the Respondents contend that issuing the liquidation instructions prior to 30 days from the publication of the final results would contravene the statutory time frame for filing a summons and complaint with the CIT, and is not in accordance with the law. The Respondents maintain that liquidation instructions should not be sent to CBP before the deadline established for appealing the final results to the CIT.¹⁸⁵ According to the Respondents, the CIT has declared unlawful the Department's practice of issuing liquidation instructions within fifteen days of publication of the final results because of the possibility of almost immediate liquidation which would prejudice an appellant's right to judicial relief.¹⁸⁶

Department's Position:

The plain language of the CIT's rule on filing a complaint indicates that an injunction request must be filed within 30 days of the filing of a complaint. *See* Rule 56.2, Judgment on an Agency Record for an Action Described in 28 U.S.C. § 1581(c). Rule 56.2 specifically states:

Any motion for a preliminary injunction to enjoin the liquidation of entries that are the subject of the action must be filed by a party to the action *within* 30 days after service of the complaint, or at such later time, for good cause shown. Notwithstanding the first sentence of this paragraph, an intervenor must file a motion for a preliminary injunction no earlier than the date of filing of its motion to intervene and *no later* than 30 days after the date of service of the order granting intervention, or at such later time, but only for good cause shown. Prior to the filing of the motion, the movant must consult with all other parties to the action in accordance with Rule 7(b). *No later* than 30 days after the filing of the record with the court, the parties, including proposed intervenors, must file with the clerk (1) a Joint Status Report, and (2) a proposed briefing schedule. *Id.* (emphasis added).

Thus, the Respondents need not wait 30 days to request an injunction, but must file the injunction within 30 days of the filing of their complaint. As a consequence, and as the Department stated in the *Preliminary Results*, we will issue liquidation instructions 15 days after the publication of the final results.

¹⁸⁵ *See* 19 USC 151a(a)(1).

¹⁸⁶ *See SKF USA Inc., et al., v. United States*, Slip Op. 09-32 (CIT) (April 17, 2009); *see also Tianjin Machinery Import & Export Corp., et al., v. United States*, 28 CIT 1635, 353 F. Supp. 2d 1294 (October 4, 2004).

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the margin calculation programs accordingly. If accepted, we will publish the final results of review and the final dumping margins in the *Federal Register*.

AGREE_____ DISAGREE_____

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

_____ Date

Attachment 1

- Bac Lieu Fisheries Joint Stock Company
- Bac Lieu Fisheries Limited Company
- Bac Lieu Fisheries Company Limited
- C.P. Vietnam Livestock Company Limited
- C.P. Vietnam Livestock Corporation (“C.P. Vietnam”)
- Cafetex Corp.
- Minh Hai Seaproducts Import Export Corporation
- Seaprimexco
- Minh Hai Seaproducts Co Ltd. (Seaprimexco)
- Can Tho Agricultural and Animal Products Imex Company
- Cuu Long Seaproducts Company (“Cuu Long Seapro”)
- Cuu Long Seaproducts Company
- Cuu Long Seapro
- Cuulong Seaproducts Company (“Cuu Long Seapro”)
- Cuu Long Seaproducts Limited (Cuulong Seapro)
- Cuulong Seapro
- Cuulong Seaproduct Company
- Danang Seaproducts Import Export Corporation
- Grobest & I-Mei Industrial (Vietnam) Co., Ltd
- Grobest & I-Mei Industrial Vietnam
- Incomfish
- Investment Commerce Fisheries Corp.
- Incomfish Corp.
- Incomfish Corporation
- Investment Commerce Fisheries
- Investment Commerce Fisheries Corporation
- Minh-Hai Export Frozen Seafood Processing Joint-Stock Company
- Cai Doi Vam Seafood
- Cai Doi Vam Seafood Im-Ex Company (Cadovimex)
- Cai Doi Vam Seafood Processing Factory
- Caidoivam Seafood Company (Cadovimex)
- Caidoivam Seafood Im-Ex Co.
- COFIDEC
- Coastal Fisheries Development Corporation
- Coastal Fisheries Development Co.
- Coastal Fisheries Development Corp.
- Seaprodex Min Hai
- Sea Minh Hai
- Seaprodex Minh Hai (Minh Hai Joint Stock Seafoods Processing Co.)
- Seaprodex Minh Hai Factory

- Seaprodex Minh Hai Factory No. 69
- Seaprodex Minh Hai Workshop 1
- Seaprodex Minh Hai-Factory No. 78
- Workshop 1 Seaprodex Minh Hai
- Ngoc Sinh Fisheries
- Ngoc Sinh Private Enterprises
- Ngoc Sinh Seafoods Processing and Trading Enterprises
- Ngoc Sinh
- Ngoc Sinh Seafood Processing Company
- Ngoc Sinh Seafoods (Private Enterprise)
- Nha Trang Fisheries Joint Stock Company
- Nhatrang Fisheries Joint Stock Company
- Nha Trang Fisco
- Nha Trang Fisheries, Joint Stock
- Phuong Nam Co., Ltd. (“Phuong Nam”)
- Western Seafood Processing and Exporting Factory (“Western Seafood”)
- Sao Ta Foods Joint Stock Company
- Fimex VN
- Sao Ta Seafood Factory
- Saota Seafood Factory
- Soc Trang Aquatic Products and General Import Export Company
- Stapimex
- Soc Trang Aquatic Products and General Import Export Company-(Stapimex)
- Stapimex Soc Trans Aquatic Products and General Import Export Company
- Stapmex
- Frozen Seafoods Factory No. 32
- Seafoods and Foodstuff Factory
- My Son Seafoods Factory
- Frozen Seafoods Factory No. 32
- Seafoods and Foodstuff Factory
- My Son Seafoods Factory
- UTXI Aquatic Products Processing Corporation (“UTXICO”)
- Vinh Loi Import/Export Co.
- Vinhloi Import Export Company
- Vinh Loi Import-Export Company
- Nha Trang Seaproduct Company
- Nha Trang Seafoods
- Nam Hai Foodstuff and Export Company Ltd.

Attachment 2

- C.P. Vietnam Livestock Co. Ltd.
- C.P. Vietnam Livestock Co., Ltd.
- Minh Hai Sea Products Import Export Company (“Seaprimex Co”)
- Seaprimexco Vietnam
- Can Tho Agricultural Products
- Cai Doi Vam Seafood Import-Export Company (“Cadovimex”)
- Cantho Animal Fisheries Product Processing Export Enterprise (Cafatex)
- Taydo Seafood Enterprises
- Tho Quang Seafood Processing & Export Company Da Nang Fisheries Service Industrial
- Seaprodex Min Hai
- Minh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co., Ltd. And Minh Phat Seafood Co., Ltd.)
- Ngoc Sinh Seafoods
- Phuong Nam Seafood Co., Ltd.
- Sao Ta Seafood Factory
- Frozen Seafood Factory No. 32
- Seafoods and Foodstuff Factory