



**UNITED STATES DEPARTMENT OF COMMERCE**  
**International Trade Administration**  
Washington, D.C. 20230

A-552-802  
5<sup>th</sup> Administrative Review  
POR 2/01/09 – 01/31/10  
**Public Document**  
IA/NME/IX: SSP, JH, PW

August 31, 2011

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

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

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

---

## SUMMARY

We have analyzed the comments submitted in the fifth administrative review of certain frozen warmwater shrimp (“shrimp”) from the Socialist Republic of Vietnam (“Vietnam”). As a result of our analysis, we have made changes from the *Preliminary Results*.<sup>1</sup> 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*:

- Comment 1: Surrogate Country
- Comment 2: Surrogate Values
  - A. Shrimp
  - B. Shrimp Conversion Ratio
  - C. Shrimp Count-size Error
  - D. Inclusion of Imports Specifying Bangladeshi Origin
  - E. Cartons
  - F. Purchased Ice
  - G. Water
  - H. Containerization
  - I. Labor

---

<sup>1</sup> See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results, Partial Rescission, and Request for Revocation, In Part, of the Fifth Administrative Review*, 76 FR 12054 (March 4, 2011) (“*Preliminary Results*”).



- J. Financial Ratios
- Comment 3: Zeroing
- Comment 4: Separate Rate Companies
- Comment 5: Changes to the Minh Phu Group Margin Program
  - A. Quantity
  - B. Marine Insurance
- Comment 6: Customs Instructions
  - A. Corrections to Cash Deposit and Liquidation Instructions
  - B. Liquidation Instructions
- Comment 7: Name Corrections for Certain Companies

## BACKGROUND

The period of review (“POR”) is February 1, 2009, through January 31, 2010. The Department of Commerce (“Department”) verified information submitted by CamRanh Seafoods Processing Enterprise Pte (“CamRanh”) on December 13, 2010.<sup>2</sup> In addition, the Department verified information submitted by Camau Frozen Seafoods Processing Import and Export Corporation (“Camimex”) from December 15-18, 2010.<sup>3</sup>

In accordance with section 351.309 of the Department’s regulations, we invited parties to comment on our *Preliminary Results*. Between April 18, 2011 and April 25, 2011 we received briefs and rebuttal briefs from the Petitioners<sup>4</sup>, the Processors<sup>5</sup>, CamRanh/Contessa<sup>6</sup> and the Respondents.<sup>7</sup>

In addition, we invited parties to comment on our labor wage rate methodology on June 23, 2011. Between July 7, 2011 and July 15, 2011 we received briefs and rebuttal briefs concerning the labor wage rate from the Petitioners, the Processors and the Respondents. Please *see* Comment 2I below for a more detailed discussion of the labor wage rate methodology.

---

<sup>2</sup> See Memorandum to the File, from Paul Walker, Acting Program Manager, Office IX, “Fifth Administrative Review of Certain Frozen Warmwater Shrimp from Vietnam: Verification of Camranh Seafoods Processing Enterprise Pte.,” dated February 28, 2011.

<sup>3</sup> See Memorandum to the File, through Scot T. Fullerton, Program Manager, Office IX, from Jerry Huang, International Trade Analyst, “Verification of the Sales and Factors of Production Response of Camau Frozen Seafoods Processing Import and Export Corporation in the 2009-2010 Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam,” dated February 28, 2011.

<sup>4</sup> The Ad Hoc Shrimp Trade Action Committee and its members, hereafter referred to as the “Petitioners.”

<sup>5</sup> The American Shrimp Processors Association and the Louisiana Shrimp Association and their members, hereafter referred to as the “Processors.”

<sup>6</sup> CamRanh and Contessa Premium Foods Inc., hereafter referred to as “CamRanh/Contessa.”

<sup>7</sup> Hereafter we have referred to the following companies collectively as the “Respondents:” the Minh Phu Group; Nha Trang Seaproduct Company (“Nha Trang Seafoods Group”); Camimex; Bac Lieu Fisheries Joint Stock Company; Ca Mau Seafood Joint Stock Company; Can Tho Agricultural and Animal Products Imex Company; Cuulong 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; Minh Hai Joint-Stock Seafoods Processing Company; Nha Trang Fisheries Joint Stock Company; Phu Cuong Jostoco Corp.; Phuong Nam Foodstuff Corp.; Soc Trang Seafood Joint Stock Company; Thuan Phuoc Seafoods and Trading Corporation; and UTXI Aquatic Products Processing Corporation.

## CHANGES SINCE THE *PRELIMINARY RESULTS*

### A. Weighted-Average Calculation of the Separate Rate

The Department has adjusted the calculation of the separate rate using the weighted-average margins of Camimex and the Minh Phu Group. When calculating a separate rate for non-individually reviewed respondents, it is the Department's practice to base this rate on the estimated weighted-average dumping margins established for the individually examined respondents, excluding *de minimis* margins or margins based entirely on AFA.<sup>8</sup> As a result the Department has weight averaged the margins of Camimex and the Minh Phu Group in calculating the margin for the companies eligible for a separate rate.<sup>9</sup>

### B. Inclusion of Inventory Changes in Surrogate Financial Ratios

The Department notes that it inadvertently excluded changes to finished goods inventories for the calculation of the surrogate financial ratio denominators for overhead, and selling, general, and administrative expenses for the *Preliminary Results*. To correct this error, for these final results, the Department has adjusted the surrogate financial ratio denominators for overhead, and selling, general and administrative expenses to include changes to finished goods inventories.<sup>10</sup>

## DISCUSSION OF THE ISSUES

### Comment 1: Surrogate Country

#### *Case Briefs:*

- The Petitioners argue that because the shrimp surrogate value data for both the Philippines and Bangladesh are comparable in their level of specificity, the Department should consider other factors of production ("FOPs") to determine which surrogate country to select.<sup>11</sup> The Petitioners maintain that the Philippine data for direct material inputs, packing materials, utilities, and surrogate financial ratios is superior to the Bangladeshi data.
- Petitioners further argue that the shrimp data from the Philippines Fisheries Development Authority Data ("PFDA Data") is publicly available, product-specific, count-specific, and representative of transaction prices.
- Furthermore, the Petitioners contend that the record contains three 2009 financial statements from three Philippine seafood processing companies (*i.e.*, RDEX Food International, Inc. ("RDEX"), Bluefin Seafood Export Inc. ("Bluefin") and Renn & Rell Seafood Sphere, Inc. ("Renn & Rell")) that are more contemporaneous than the Bangladeshi financial statements, publicly available, and contain enough information to calculate surrogate financial ratios.

---

<sup>8</sup> See section 735(c)(5)(A) of the Act.

<sup>9</sup> See Memo to the File, "Separate Rate Calculation" dated concurrently with this memo.

<sup>10</sup> See, *e.g.*, *Seamless Refined Copper Pipe and Tube From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 60725 (October 1, 2010) ("*Copper Pipe*") and accompanying Issues and Decision Memorandum at Comment 2.

<sup>11</sup> Citing, *e.g.*, *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review*, 73 FR 49162 (August 20, 2008) and accompanying Issues and Decisions Memorandum at Comment 1c.

*Rebuttal Briefs:*

- The Respondents rebut the Petitioners' claim and argue that the Department should continue to use Bangladesh as the primary surrogate country because the Bangladeshi surrogate value data for the main input, fresh shrimp, is superior to the Philippine surrogate value data for shrimp.
- Moreover, the Respondents assert that unlike the Bangladeshi shrimp industry, the Philippine shrimp industry is small and cost inefficient, and therefore, less similar to the shrimp produced in Vietnam.
- According to the Respondents, RDEX, Bluefin, and Renn & Rell are not companies whose main focus is shrimp processing, and should, therefore, not be used by the Department to calculate surrogate financial ratios.

**Department's Position:**

In accordance with section 773(c)(4) of the Tariff Act of 1930, as amended (the "Act"), the Department must value FOPs using, to the extent possible, the prices or costs of the FOPs in one 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.<sup>12</sup>

*Economic Comparability*

Section 351.408 of the Department's regulations indicates that the Department will consider per-capita gross national income ("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."<sup>13</sup>

In this case, the Department has determined that both the Philippines and Bangladesh are economically comparable to Vietnam.<sup>14</sup> Thus, consistent with the policy described above, the

---

<sup>12</sup> See *Policy Bulletin No. 04/1: Non-Market Economy Surrogate Country Selection Process*, dated March 1, 2004 ("*Policy Bulletin*").

<sup>13</sup> See *Policy Bulletin* at note 5.

<sup>14</sup> See Letter from Scot T. Fullerton, to Interested Parties, regarding "Antidumping Duty Order on Frozen Warmwater Shrimp from the Socialist Republic of Vietnam," dated August 20, 2010, at Attachment I.

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 the Philippines and Bangladesh were significant producers of shrimp, and that both countries had exports of subject merchandise during the POR. With the exception of certain scope exclusions not pertinent here, all Vietnamese-origin shrimp which fall within the scope of the *Order*<sup>15</sup> are subject merchandise, regardless of the production process used. When selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.<sup>16</sup> Consequently, the Respondents' argument that the Philippine shrimp industry is small and cost inefficient is not relevant because it does not apply to the subject merchandise, but rather, the production process.

### *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."<sup>17</sup> We have found that both the Philippines 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 potential surrogate countries, we have considered the quality and specificity of the available factors data in selecting a surrogate country.

In selecting surrogate values 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. Moreover, the FOP which accounts for the largest portion of normal value is shrimp. As discussed below, we find that the *2010 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 explained below, we find that the *PFDA Data* does not include evidence that it is publicly available, is not a broad-market average, and may not represent actual transaction prices.

Therefore, because of the superiority of the Bangladeshi surrogate value data as compared to the Philippine surrogate value data, we are able to make a distinction between Bangladesh and the Philippines for the purpose of selecting a surrogate country. Consequently, we have selected Bangladesh as the surrogate country for these final results.

---

<sup>15</sup> 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*").

<sup>16</sup> See *Sebacic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 65674 (December 15, 1997) and accompany 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).

<sup>17</sup> See *Policy Bulletin* at 4.

## Comment 2: Surrogate Values

### A. Shrimp

#### *Case Briefs:*

- The Petitioners argue that the Department should value the Respondents' shrimp input using wholesale prices of various seafood species from the Philippines Fisheries Development Authority ("PFDA") at the Novatas City Fish Port to calculate the surrogate value for shrimp.<sup>18</sup>
- The Petitioners assert that the PFDA data is publicly available, product-specific, count-size specific raw shrimp surrogate value data from the Philippines that is contemporaneous to the POR and, therefore, comparable to the Bangladeshi data found in the 2010 Network of Aquaculture Centres in the Asia-Pacific Data ("*2010 NACA Data*").
- The Petitioners contest that the PFDA Data is more contemporaneous with the POR because it corresponds to the entire POR, whereas the *2010 NACA Data* corresponds to five of the twelve months in the POR.

#### *Rebuttal Briefs:*

- The Respondents contend that the Department has previously found that the *2010 NACA Data* is publicly available, represents a broad market average, is product-specific, contemporaneous, and represents actual transaction prices.<sup>19</sup>
- Moreover, the Respondents argue that the Department should use the *2010 NACA Data* to calculate the surrogate value for shrimp because it has very specific count sizes, which allows for a more accurate calculation of the Respondents' shrimp input.
- Additionally, the Respondents assert that the PFDA Data does not indicate whether the information is publicly available, how it was compiled, what the data represents, and does not contain specific count sizes.
- The Respondents further contend that the PFDA data is (a) from one port, (b) does not indicate the volume of shrimp which enters into that port, and (c) does not specify the origin of the shrimp. In contrast, the *2010 NACA Data* specifies the number of participants in the study and is inclusive of multiple shrimp sources (*i.e.*, farmers, processors, *etc.*) within the shrimp producing regions of Bangladesh.
- The Respondents argue that the PFDA data is not accompanied by a narrative defining "wholesale" prices or why the data is categorized by the undefined terms "1<sup>st</sup> Grade" and "2<sup>nd</sup> Grade."

#### **Department's Position:**

We agree with the Respondents and find that the *2010 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

---

<sup>18</sup> *Citing* Letter from Domestic Producers, to Secretary of Commerce, regarding Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Data on Surrogate Values for the Fifth Administrative Review (2009-2010), dated March 24, 2011 ("Domestic Producers 2<sup>nd</sup> surrogate value Submission") at Attachment 1.

<sup>19</sup> *Citing, e.g., See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 47771 (August 9, 2010) ("*4<sup>th</sup> Vietnamese Shrimp AR*") and accompanying Issues and Decision Memorandum at Comment 1.

have made similar findings in the 4<sup>th</sup> *Vietnamese Shrimp AR* with respect to the 2010 NACA data.<sup>20</sup>

The Petitioners advocate using solely PFDA Data to value the shrimp input. At the outset, we note that the 2010 NACA Data is publicly available as it is published by the Network of Aquaculture Centres in Asia-Pacific. With regard to the PFDA Data, there exists no corresponding narrative on the record indicating that the information is publicly available. Additionally, the Department prefers, whenever possible, country-wide data instead of regional data when the former is available.<sup>21</sup> The 2010 NACA Data includes data from five different districts in Bangladesh<sup>22</sup>, whereas the PFDA Data provides data from a single port. Consequently, we find that the 2010 NACA Data represents country-wide data, rather than data from a single location, and thus, is more representative of a broad market average than the PFDA Data.

In past cases, the Department has found that count size-specific data is important in calculating an accurate dumping margin, and has rejected shrimp surrogate values containing a limited number of count sizes.<sup>23</sup> We note that although both the 2010 NACA Data and the PFDA Data contain information specific to black tiger shrimp (*penaeus monodon*), the 2010 NACA Data contains prices for five specific count sizes (20, 30, 44, 66 and 100), whereas the PFDA Data only contains three general count sizes (small, medium, and large). As a result, because the 2010 NACA Data contains more count size-specific data, we find that it is more specific to the input in question than the PFDA Data.

Regarding contemporaneity, we disagree with Petitioners that the PFDA Data is more contemporaneous than the 2010 NACA Data. The Department notes that even if a surrogate value were calculated from one month within the POR, the Department would still find it to be contemporaneous.<sup>24</sup> As a result, because both the 2010 NACA Data and the PFDA Data include black tiger shrimp data from within the POR (*i.e.* 5 months and 12 months, respectively), we find both the 2010 NACA Data and the PFDA data to be contemporaneous.

Moreover, we note that, when valuing FOPs, the Department prefers actual transaction prices.<sup>25</sup> In the previous review the Department found that the 2010 NACA Data relies upon actual transaction prices.<sup>26</sup> The NACA study states on page 42 that the data on prices and quantity was

---

<sup>20</sup> *Id.*

<sup>21</sup> *See, e.g., 4<sup>th</sup> Vietnamese Shrimp AR* and accompanying Issues and Decisions Memorandum at Comment 1.

<sup>22</sup> *See 2010 NACA Data* at 36.

<sup>23</sup> *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.

<sup>24</sup> *See, e.g., Carbazole Violet Pigment 23 From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 68780, 68784 (December 29, 2009) (where we stated that "because the average coal price was for December 2007, which is the first month of the POR, we treated the value for steam coal as contemporaneous with the POR."), unchanged in *Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 36630 (June 28, 2010).

<sup>25</sup> *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.

<sup>26</sup> *See e.g., 4<sup>th</sup> Vietnamese Shrimp AR* and accompanying Issues and Decisions Memorandum at Comment 1.

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 *2010 NACA Data*, there is no accompanying narrative provided by the PFDA defining whether "wholesale" prices are actual transaction prices and what the categorizations of "1<sup>st</sup> Grade" and "2<sup>nd</sup> Grade" indicate. As a consequence, we find that the *2010 NACA Data* is representative of actual transaction prices as opposed to the undefined "wholesale" prices for "1<sup>st</sup> Grade" and "2<sup>nd</sup> Grade" shrimp of the PFDA Data.

Furthermore, we observe that the *2010 NACA Data* describes in detail the collection methods employed<sup>27</sup>, while the PFDA Data contains no underlying data or supporting documentation for the wholesale prices it contained. Because the PFDA Data does not contain this type of information, we cannot know what portion of the Philippine shrimp industry it represents, or even that the information is complete. Thus, we find the *2010 NACA Data* to be superior to, and more reliable than, the PFDA Data.

## **B. Shrimp Conversion Factor**

### *Case Briefs:*

- The Processors note that in the *Preliminary Results*, the Department used the surrogate prices measured by the number of head-on, shell-on ("HOSO") shrimp per kilogram ("kg") from Bangladesh, but relied on HOSO to headless, shell-on ("HLSO") conversion ratios reported by the Respondents to value their raw shrimp consumption that were procured on a HLSO basis.
- The Processors contend that the Department should use a broad market average, publicly available conversion factor from the surrogate country instead of the Respondents' own conversion factors in order to convert Bangladeshi HOSO prices to value the Respondents' shrimp input.
- The Processors contend that the Department should use either (a) the surrogate conversion factor that is reported by the Food and Agriculture Organization ("FAO") for Bangladesh, (b) a worldwide "indicative" conversion factor reported by the FAO, or (c) the standard conversion factor employed by the National Oceanographic and Atmospheric Administration.
- The Processors insist that using the Bangladeshi conversion factor is consistent with the statute, which directs the Department to rely on external surrogate country data to value factors.<sup>28</sup> This also ensures that the surrogate prices are fully determined by the surrogate market economy, and not distorted by introducing individual data from the NME country under review.
- The Processors further argue that the Bangladeshi conversion factor better complies with the Department's preference to use values from one surrogate country, where possible, that are publicly available, reliable and represent a broad market average.<sup>29</sup>

---

<sup>27</sup> See *2010 NACA Data* at 41-43.

<sup>28</sup> Citing Section 773 (c)(1),(3), and (4) of the Act.

<sup>29</sup> Citing section 351.408(c)(1) and (2) of the Department's regulations.

*Rebuttal Briefs:*

- The Respondents rebut that the conversion factors used by the Department for the *Preliminary Results* do not convert Bangladeshi shrimp prices, but rather convert Vietnamese raw shrimp input from a HLSO basis to a HOSO basis.
- The Respondents state that since only Vietnamese FOPs are converted, it would be inappropriate to use anything but Vietnamese ratios to undertake the HLSO to HOSO shrimp conversion in order to perform this conversion.

**Department's Position:**

The Department disagrees with the Processors regarding the use of conversion factors for HLSO shrimp to HOSO shrimp and will continue to use respondent-specific conversion ratios for the final results. The Department notes that the Respondents' raw shrimp input was procured on a HLSO basis and converted to HOSO usage rates based on each company's actual experience.<sup>30</sup> Accordingly, the Department utilized the Respondents' raw shrimp consumption rates, and applied the appropriate surrogate prices from Bangladesh to derive normal values.<sup>31</sup> Because these usage rate conversions were applied internally for each respondent based on each company's specific production experience within Vietnam, it would be inappropriate to use other non-company specific conversion factors, regardless of whether they are broad market conversion factors based in Bangladesh or other countries, to conduct the HLSO to HOSO shrimp conversions.

**C. Shrimp Count-size Error**

*Case Briefs:*

- The Processors state that in the *Preliminary Results*, the Department inadvertently excluded the percent decrease in the value between the first and second count sizes when it extrapolated values for count sizes not covered by the *2010 NACA Data*.

*Rebuttal Briefs:*

- The Respondents state that the purpose of the calculation is to determine the average difference in value among the range of count sizes for which there begins to be a difference in value. The Respondents further assert that differences in value do not occur until the third count size, and, as such, the Department's calculation should not incorporate the zero difference between the first and second count sizes in its averages.

**Department's Position:**

The Department agrees with the Respondents regarding the calculation of extrapolated count sizes and will continue to exclude the zero difference between the first and second count sizes. The Department notes that the first two count sizes reported by the Respondents, which are represented by variable names RM1 and RM2, fall within the surrogate value bracket of 0-20 shrimp per kilogram. In other words, the Department has a single price point for all shrimp falling within the 0-20 shrimp per kilogram range. Because RM1 and RM2 fall within the same

---

<sup>30</sup> See, e.g., Camimex's Section D Questionnaire Response, dated September 10, 2010, at 13.

<sup>31</sup> See *Preliminary Results*.

surrogate value count size bracket, the surrogate value is identical for RM1 and RM2 and, consequently, it is not necessary to calculate a percentage decline in price between RM1 and RM2. As a result, the Department disagrees with the Petitioners' claim that the extrapolated prices are incorrect. Moreover, the Department notes that it has consistently calculated the surrogate values for the extrapolated count sizes in this manner in past reviews.<sup>32</sup>

#### **D. Inclusion of Imports Specifying Bangladeshi Origin**

##### *Case Briefs:*

- The Respondents note that in the *Preliminary Results*, for factors valued using UN ComTrade data, the Department excluded imports indicating a Bangladesh country of origin into Bangladesh, stating that there was no evidence on the record regarding what these data represent, *e.g.*, re-importations, another category of unspecified imports, or the result of an error in reporting.<sup>33</sup>
- The Respondents also note that it is the Department's practice, when using import data for factor valuation purposes, to include imports from all countries with the exception of NME countries, countries which the Department has previously determined subsidize exports, and unspecified countries.<sup>34</sup>
- Moreover, the Respondents note that the Department stated in the *Preliminary Results* that it is the Department's preference to value all factors of production utilizing data from the primary surrogate country and to consider alternative sources only when a suitable value from the primary surrogate country does not exist on the record.<sup>35</sup>
- The Respondents argue that factors valued using UN ComTrade data saw dramatic increases in the fourth administrative review once the Department began to exclude exports from Bangladesh into Bangladesh, which the Department did not exclude in the first through third administrative reviews.<sup>36</sup>
- The Respondents note that the record of this review contains UN ComTrade explanatory notes which specify that re-imports are included in a country's imports, and are defined as goods imported in the same state as previously exported.
- Consequently, the Respondents assert that as there is record evidence explaining that imports from Bangladesh into Bangladesh are re-imports, because Bangladesh does not fall into any of the three excluded categories listed above, and because these data are from the surrogate country, these data should remain a part of the UN ComTrade data, making the surrogate values reasonable and consistent with the first through third administrative reviews.

---

<sup>32</sup> See, *e.g.*, *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) ("3<sup>rd</sup> Vietnamese Shrimp AR") and accompanying Issues and Decision Memorandum at Comment 6C.

<sup>33</sup> See *Preliminary Results* at 12062.

<sup>34</sup> See 3<sup>rd</sup> *Vietnamese Shrimp AR* at Comment 7b.

<sup>35</sup> See *Preliminary Results*.

<sup>36</sup> See the Respondents' April 18, 2011, submission at Exhibit 1.

### *Rebuttal Briefs:*

- The Petitioners and the Processors contend that the UN ComTrade article cited by the Respondents states that supplementary sources of information may be required in order to determine the origin of re-imports.<sup>37</sup>
- The Petitioners and the Processors claim that the record contains no such supplementary sources that would clarify the origin of re-imports to assure that the products in question have not undergone meaningful transformation in an NME, or generally export subsidized country. According to the Petitioners and the Processors, because the classification of these imports is unclear, they should not be relied upon for factor valuation purposes.
- The Processors contend it would be reasonable to conclude that incidences of re-importation would be rare and would be constrained by a country's exports, *i.e.*, a country cannot re-import more than it exports. The Processors argue that the amount of goods re-imported into Bangladesh are high, and thus, cannot be of Bangladeshi origin.
- The Processors speculate that re-import transactions are not in the ordinary course of trade because the products in question must be defective, rejected or recalled goods whose values are not determined by a commercial first sale transaction between independent parties, and that these goods are being re-imported after an attempted sale has failed or was not completed.

### **Department's Position:**

We agree with the Processors, in part, and have continued to exclude line items for imports from Bangladesh into Bangladesh in our calculation of surrogate values. First, although UN ComTrade contains a definition of re-imports, it is unclear whether all, or any, of the entries into Bangladesh from Bangladesh are in fact re-imports. However, even if we were to assume that they are re-imports, UN ComTrade states that there are several reasons why an exported good might return to the country of origin (a) the exported good may be defective, (b) the importer may have defaulted on payments or cancelled the order, (c) authorities in the country to which the goods are being exported may have imposed an import barrier, or (d) demand or prices in the country of origin might have made it worthwhile to bring the good back.<sup>38</sup> We have no information as to how these types of goods, or these types of cancelled sales, would be valued upon reentering the country of origin. As such, we continue to find that they are an inappropriate category of imports to include in the calculation of surrogate values.

### **E. Cartons**

#### *Case Briefs:*

- The Respondents argue that should the Department continue to exclude re-imports into Bangladesh, the Department should follow the approach it used in the 3<sup>rd</sup> *Vietnamese Shrimp AR* where it used 2005 UN ComTrade data to value master cartons and 2006 UN ComTrade data to value other packing factors. The Respondents note that in the 3<sup>rd</sup> *Vietnamese Shrimp AR* the Department found that the surrogate value for master cartons was aberrational and used the prior year's value.<sup>39</sup>

---

<sup>37</sup> See the Respondents' March 24, 2011 submission at Exhibit 5.

<sup>38</sup> *Id.*

<sup>39</sup> See 3<sup>rd</sup> *Vietnamese Shrimp AR* at Comment 7b.

- Accordingly, the Respondents contend that 2005 UN ComTrade data should be used to value master cartons, and that historical UN ComTrade data on the record, as well as additional data sources<sup>40</sup>, indicate that 2007 UN ComTrade data is aberrational.<sup>41</sup>

*Rebuttal Briefs:*

- The Petitioners argue that the Department has set high standards for determining whether import data is aberrational. Citing *Tires*, the Petitioners argue that low quantities and high prices are not sufficient to warrant exclusion without specific record evidence substantiating the aberrational nature of the data.<sup>42</sup>
- The Petitioners and the Processors note that the Department faced similar arguments in the *3<sup>rd</sup> Vietnamese Shrimp AR* when the Department analyzed historical data which showed that the AUV for imports from Hong Kong into Bangladesh were aberrationally high.<sup>43</sup>
- The Petitioners and the Processors assert that the packing materials at issue in this review are distinguishable from the facts in the third review. Specifically, the Petitioners note that in the third review the price of master cartons rose over 2,500%, whereas the packing materials at issue here have gradually risen at a commercially reasonable rate.<sup>44</sup> The Processors argue that the Respondents have not demonstrated that there are abnormal data on the record of this review.

**Department's Position:**

As noted above, section 773(c)(1) of the Act directs the Department to use the “best available information” on the record when selecting surrogate values with which to value FOPs. It is the Department’s practice to choose surrogate values that represent non-export price averages, prices specific to the input, prices that are net of taxes and import duties, prices that are contemporaneous with the POR, and publicly-available non-aberrational data from a single surrogate market economy country.<sup>45</sup> In making a determination as to whether data are aberrational, the Department has found the existence of higher prices alone does not necessarily indicate that the price data are distorted or misrepresentative, and thus is not a sufficient basis upon which to exclude a particular surrogate value.<sup>46</sup> Under the Department’s current practice, interested parties must provide specific evidence showing the value is

---

<sup>40</sup> See the Respondents’ March 24, 2011 submission which contains rate sheets from various packing companies. We note that although the Respondents note that these data are the most accurate and contemporaneous data on the record, they do not argue that these data should be used *in lieu* of import statistics for surrogate value purposes.

<sup>41</sup> See the Respondents’ April 18, 2011 submission for an analysis of the aberrational nature of the 2007 UN ComTrade data.

<sup>42</sup> 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 Comment 9.

<sup>43</sup> See *3<sup>rd</sup> Vietnamese Shrimp AR* at Comment 7b.

<sup>44</sup> See *3<sup>rd</sup> Vietnamese Shrimp AR* at Comment 7c (where the Department noted that “the historical data on the record for inner boxes does not show a dramatic or unusual percent change between the 2006 Bangladeshi import data and the previous years. Rather, this historical data demonstrates a gradual increase in the price of Bangladeshi imported inner boxes between years, which, absent any other information on the record to conclude otherwise, the Department finds is commercially reasonable.”).

<sup>45</sup> See *Carbazole Violet Pigment 23 from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 36630 (June 28, 2010) (“*Carbazole Violet*”) and accompanying Issues and Decision Memorandum at Comment 4.

<sup>46</sup> *Id.*

aberrational. If a party presents sufficient evidence to demonstrate a particular surrogate value is aberrational, and thus not reliable, the Department will assess all relevant price information on the record, including any appropriate benchmark data, in order to accurately value the input in question.

The Respondents have argued that the surrogate value for cartons, based on UN ComTrade data, is aberrationally high if re-imports are excluded. Thus, we must determine whether the Respondents have provided sufficient evidence to establish that the per-unit value for cartons from UN ComTrade is aberrational.

In testing the reliability of surrogate values alleged to be aberrational, the Department applies certain criteria in making its decision. The Department's practice is to compare the surrogate values in question to the UN ComTrade average unit values ("AUVs") calculated for the same period using data from the other potential surrogate countries the Department identified for the review, to the extent that such data are available.<sup>47</sup> As stated previously, a party claiming a surrogate value is aberrational must present data establishing the surrogate value is aberrational. The Respondents have not placed any information on the record with respect to the AUVs of cartons from the other potential surrogate countries identified for this review.<sup>48</sup> Because that information is not on the record, we are unable to compare the surrogate value for cartons based on UN ComTrade data to the UN ComTrade AUVs for carton imports into the other potential surrogate countries to determine whether the Bangladeshi import statistics are aberrational.

We note the Department has also examined data from the same HTS category for the surrogate country over multiple years to determine if the current data appear aberrational with respect to historical values.<sup>49</sup> In this review, the Respondents placed historical Bangladeshi import data from UN ComTrade for the past four administrative reviews, which show that the inflated AUVs for these years rose from \$0.60/kg, to \$0.69/kg, to \$1.00/kg, to \$2.59/kg, to this year's inflated AUV of \$2.74. Compared to these data, we find the surrogate value of \$2.74/kg used in the *Preliminary Results* does not appear to be aberrational, but rather falls in line with the historical data. As we noted in the 3<sup>rd</sup> *Vietnamese Shrimp AR*, a gradual historical rise in prices is commercially reasonable. In summary, we find that the Respondents have not provided sufficient evidence to show the per-unit value for cartons from UN ComTrade is aberrational. As such, we have continued to base the surrogate value for cartons on the 2007 UN ComTrade data used in the *Preliminary Results*.

---

<sup>47</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079 (September 8, 2006) and accompanying Issues and Decision Memorandum at Comment 5.

<sup>48</sup> The other potential surrogate countries are the Philippines, Pakistan, India, Sri Lanka and Indonesia. See Memorandum from Kelly Parkhill, Acting Director, Office of Policy, to Scot T. Fullerton, Program Manager, Office 9, "Request for a List of Surrogate Countries for an Antidumping Duty Administrative Review of the Antidumping Duty Order on Frozen Warmwater Shrimp from the Socialist Republic of Vietnam," dated May 15, 2009 ("Surrogate Country List").

<sup>49</sup> See, e.g., *Carbazole Violet* at Comment 4.

## F. Purchased Ice

### *Case Briefs:*

- The Respondents argue that the Department should value ice using the 2009-2010 Apex Food Limited (“Apex”) financial statement.
- The Respondents note that the Apex financial statement was used to value ice in the 5<sup>th</sup> *Vietnamese Fish Fillets AR*, and that the Apex financial statement was used to calculate surrogate financial ratios in the instant review.<sup>50</sup>
- According to the Respondents, the Apex financial statement meets all of the Department’s surrogate value selection criteria.

### *Rebuttal Briefs:*

- The Petitioners and the Processors argue that the Department prefers surrogate values that are representative of a broad market average to those values which are representative of one company’s experience.<sup>51</sup> As a consequence, the Petitioners and the Processors urge the Department to continue to use UN ComTrade data to value the Respondents’ ice FOP.
- The Processors note that the Apex financial statement contains a value for “ice” and a value for “ice and chemicals.” The Processors argue that because the value for “ice” is much lower than the value for “ice and chemicals,” it is, therefore, understated.<sup>52</sup>
- The Processors contend that the Department should not rely on a unit value for ice which uses Apex’s production volume as the denominator to value the Respondents’ production volume. According to the Processors, the Department should not substitute Apex’s volume of ice consumption per unit of shrimp because this would violate the statute which directs the Department to rely on the Respondent’s data.

### **Department’s Position:**

The Department’s practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, surrogate values which are product-specific, representative of a broad market average, publicly available and contemporaneous with the POR.<sup>53</sup> The Department undertakes its analysis of valuing the FOPs on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry.<sup>54</sup> There is no hierarchy for applying the above-stated principles. Thus, the Department must weigh available information with respect to each input value and

---

<sup>50</sup> See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews*, 75 FR 12726 (March 17, 2010) (“5<sup>th</sup> Vietnamese Fish Fillets AR”) and accompanying Issues and Decision Memorandum at Comment 2g.

<sup>51</sup> See, e.g., *Brake Rotors from the People’s Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review*, 71 FR 66304 (November 14, 2006) and accompanying Issues and Decision Memorandum at Comment 3.

<sup>52</sup> See the Apex financial statement at 29 and 32.

<sup>53</sup> See, e.g., *Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of the 12<sup>th</sup> Administrative Review*, 73 FR 34251 (June 17, 2008) (“12<sup>th</sup> PRC Garlic AR”) and accompanying Issues and Decisions Memorandum at Comment 2.

<sup>54</sup> See *Glycine from the People’s Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 70 FR 47176 (August 12, 2005) and accompanying Issues and Decision Memorandum at Comment 1.

make a product-specific and case-specific decision as to what the “best” surrogate value is for each input.<sup>55</sup>

We note that the surrogate value for ice used by the Department in the *Preliminary Results* is not specific to the input in question. The description provided by UN ComTrade for HTS 2201.90.01, “Ice and snow,” contains two items, ice and snow, and only ice has been reported as a FOP by the Respondents.<sup>56</sup> After weighing the available information on the record, we have determined that HTS 2201.90.01 is not the best information available to value ice because a more contemporaneous, and product-specific, value is available in the 2009-2010 Apex financial statements.

It is clear from the 2009-2010 Apex financial statement that the ice value referenced is for ice produced for the seafood industry to preserve shrimp. As such, the Department finds that, absent any information to the contrary, it would be reasonable to infer that the ice value found in the 2009-2010 Apex financial statement is reflective of the type of ice used by the Respondents in the processing of shrimp. While we note that the Apex value is the experience of one company, and, in other recent cases involving seafood products, after carefully considering the available evidence in light of the particular facts of the seafood industry, the Department has determined that specificity is an important consideration when selecting a surrogate value for ice.<sup>57</sup> Moreover, the UN ComTrade data represents Bangladeshi imports from 2001-2002, and we note that the 2009-2010 Apex financial statements ice value is contemporaneous to the POR. Thus, we find that the 2009-2010 Apex financial statement represents a value for ice which is product-specific, representative of the Bangladeshi seafood industry, publicly available and contemporaneous with the POR. Therefore, in valuing the Respondents’ purchased ice for these final results, we have used the 2009-2010 Apex financial statements rather than UN ComTrade.

Regarding the Processors’ calculation concerns, we disagree that the Apex financial statement does not provide the necessary data to calculate a value for ice. Consistent with the *5<sup>th</sup> Vietnamese Fish Fillets AR*, where we found the ice value in Apex’s audited financial statement to be reliable, we find that the audited 2009-2010 Apex financial statement also contains a reliable value for ice.<sup>58</sup> We note that the Apex financial statement contains a value for “ice,” which, unlike the UN ComTrade data, fits the description of the Respondents’ FOP. While the Processors have speculated that this value may be understated, we find that there is no record evidence to suggest that it is.<sup>59</sup> In addition, rather than using the Respondents’ proprietary

---

<sup>55</sup> See *Freshwater Crawfish Tail Meat from the People’s Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002) and accompanying Issues and Decision Memorandum at Comment 2.

<sup>56</sup> See page 35 of the Apex financial statement which indicates that 100% of its production in 2008-2009 was shrimp.

<sup>57</sup> See *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 Decision Memorandum at Comment 3a; see also *5<sup>th</sup> Vietnamese Fish Fillets AR* at Comment 2g.

<sup>58</sup> See *5<sup>th</sup> Vietnamese Fish Fillets AR* at Comment 2g.

<sup>59</sup> The Processors correctly note that the value for “chemicals and ice” in the Apex financial statement is larger than the value for “ice.” However, we note that while the Apex financial statement lists “chemicals” as a line item, this line item has been left blank by Apex. The Apex financial statement is silent with respect to the value of chemicals

production quantities, which would result in proprietary, Respondent-specific ice values, we used Apex's production quantity. As noted above, it is the Department's policy to value FOPs using publicly available data.<sup>60</sup> In this case, because the ice value in Apex's data is in kilograms of ice per unit of shrimp, we have added this value to normal value, rather than multiplied it by factor usage rates. We have found in past cases that valuing ice using Apex's data, denominated in Bangladeshi takas per kilogram of shrimp, is a reliable value for the Respondents' ice FOP.<sup>61</sup>

## G. Surrogate Value for Water

### *Case Briefs:*

- The Respondents argue that the Department should value water using data from the Dhaka Water Supply and Sewage Authority ("Dhaka data"), and note that the Dhaka data was used to value water in the recently completed 6<sup>th</sup> *Vietnamese Fish Fillets* review.<sup>62</sup>
- According to the Respondents, the Dhaka data meet all of the Department's surrogate value selection criteria.

### *Rebuttal Briefs:*

- The Processors argue that, according to an Asian Development Bank ("ADB") study, because Dhaka's water tariffs are too low, the utility is deprived of needed funds to maintain its operations.<sup>63</sup>
- The Processors argue that because Dhaka's water rates are kept artificially low by government regulation, and are thus distorted, the Department should value water using Indian data from the Maharashtra Industrial Development Corporation ("Maharashtra data") which was used in the 5<sup>th</sup> *PRC Shrimp AR*.<sup>64</sup>
- The Processors note that while it is the Department's preference to use surrogate values from the selected surrogate country, the Department has relied on values from an alternate country when values from the principal country are unreliable or unusable. According to the Processors, this is consistent with the statutory mandate to value factors based on the best available information form regarding the values of such factors in a market economy country, or countries, considered to be appropriate.<sup>65</sup>
- The Processors contend that India is economically comparable to Bangladesh, is a significant producer of subject merchandise, the Maharashtra data provides a broad market average, is contemporaneous and publicly available.

---

consumed by Apex in its 09/10 fiscal year. Thus, we do not find the value for ice to be understated.

<sup>60</sup> See, e.g., 4<sup>th</sup> *Vietnamese Shrimp AR* at Comment 1.

<sup>61</sup> See, e.g., 5<sup>th</sup> *Vietnamese Fish Fillets AR* at Comment 2g.

<sup>62</sup> See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Sixth Antidumping Duty Administrative Review and Sixth New Shipper Review*, 76 FR 15941 (March 22, 2011) ("6<sup>th</sup> *Vietnamese Fish Fillets AR*") and accompanying Issues and Decision Memorandum at Comment IVc.

<sup>63</sup> See the Processors' April 4, 2011 submission at Exhibit 5, ADB study. The Processors note that the ADB Study states that Dhaka requires governmental approval to raise its water tariffs by more than 5%, and that donors withdrew from supporting Dhaka due in part to its inability to implement necessary increases in water tariffs. *Id.* at 87.

<sup>64</sup> See the Processors' April 11, 2011 submission at Exhibit 4. See also *Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of Fifth Antidumping Duty Administrative Review*, 76 FR 8338 (February 14, 2011) ("5<sup>th</sup> *PRC Shrimp AR*"), unchanged in final.

<sup>65</sup> See Section 773(c)(1) of the Act.

### **Department's Position:**

We agree with the Respondents. As noted above in Comment 1, for the final results of this review, we have selected Bangladesh as the primary surrogate country. As noted above, the Department's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, surrogate values which are product-specific, representative of a broad market average, publicly available and contemporaneous with the POR.<sup>66</sup> Although the Dhaka data and Maharashtra data both represent regional data, and the Department prefers national data, we note that both fit the Department's preferences for data that is product-specific, publicly available and contemporaneous with the POR. However, of these two data sources, only the Dhaka data is from the surrogate country, Bangladesh. It is the Department's preference to value all FOPs utilizing data from the primary surrogate country and to consider alternative sources only when a suitable value from the primary surrogate country does not exist on the record.<sup>67</sup> In this review, the record contains a suitable value for water from the primary surrogate country. Therefore, we have determined that the Dhaka data is the best available information for valuing water because it is from the primary surrogate country and it satisfies the other surrogate value selection criteria. Thus, consistent with the 6<sup>th</sup> *Vietnamese Fish Fillets AR*, for these final results we have valued water using data from the Bangladesh Dhaka Water Supply & Sewage Authority.

Regarding the validity of the ADB study, we note that there is insufficient evidence on the record to conclude that water prices in Dhaka are artificially low. While the ADB study indicates that in the past Dhaka water prices may have been affected by government pricing policies, policies that may have caused international development agencies to discontinue water projects in Dhaka, we note that the scope of the ADB evaluation covers the years 2001-2008, and not the POR or the Dhaka data on the record of this review. Therefore, we find that the Processors have not demonstrated that the Dhaka data is distorted and should not be used in the final results.

### **H. Surrogate Value for Containerization**

#### *Case Briefs:*

- The Respondents argue that the Department should value containerization using 08/09 data from a respondent in the companion Indian shrimp review, Falcon Marine, and note that the 08/09 Falcon Marine value was used to value containerization in the recently completed 6<sup>th</sup> *Vietnamese Fish Fillets AR*.<sup>68</sup>
- According to the Respondents, the Falcon Marine value meets all of the Department's surrogate value selection criteria.

#### *Rebuttal Briefs:*

- The Processors contend that the 08/09 Falcon Marine value is not contemporaneous with the POR because it pre-dates the POR by 12 months.

---

<sup>66</sup> See e.g., 12<sup>th</sup> *PRC Garlic AR* at Comment 2.

<sup>67</sup> See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Fifth New Shipper Review*, 75 FR 38985 (July 7, 2010) and accompanying Issues and Decision Memorandum ("*Fish NSR5 Final Results*") at Comment 2B.

<sup>68</sup> See 6<sup>th</sup> *Vietnamese Fish Fillets AR* at Comment IVH.

- The Processors maintain that the Department should not rely on data from one company but should average the Indian containerization value used in the *Preliminary Results* with that of 09/10 Falcon Marine data, which is contemporaneous to the POR.<sup>69</sup>

### **Department's Position:**

We agree with the Processors, in part. As noted above in Comment 1, for the final results we have selected Bangladesh as the primary surrogate country. The record of this review does not contain a suitable value for containerization from the primary surrogate country. Therefore, we have considered other values that meet the Department's surrogate value selection criteria.<sup>70</sup>

In this case, we have determined that the Indian value for containerization from Falcon Marine represents the best available information on the record. We note that Falcon Marine is an exporter of shrimp, and thus, the containerization value found in its financial statement is reflective of the containerization costs that would be incurred by the Respondents, which are also exporters of shrimp. Additionally, the 09/10 Falcon Marine value is contemporaneous with the POR, whereas the data used in the *Preliminary Results*, pre-dates the POR by 14 years. Therefore, for these final results, we have valued containerization using data from Falcon Marine.

## **I. Surrogate Value for Labor**

### *Case Briefs:*

- The Processors assert that the Department recently recognized the employee compensation data from the International Labour Organization's ("ILO") Chapter 6A labor statistics as preferable to Chapter 5B labor rates, as the employee compensation data in Chapter 6A is more comprehensive and provides a more accurate representation of the full range of labor costs incurred.<sup>71</sup>
- Accordingly, the Processors contend that the Department should use the average of Chapter 6A compensation data in food manufacturing for India, Nicaragua and the Philippines for the final results because these three countries are economically comparable to Vietnam and significant producers of subject merchandise.
- The Petitioners argue that the ILO Chapter 5B labor rates used in the *Preliminary Results* do not incorporate indirect labor costs and require the Department to rely upon financial statements to account for these additional labor expenses.<sup>72</sup> Using this methodology, however, the Petitioners contest that combining the labor rate data from multiple countries with the labor expenses from the financial statements of a small number of producers in one country creates internally inconsistent results.
- The Petitioners assert that the Department should use Chapter 6A labor data because it values all components of labor costs through a consistent methodology from the same data reporting source.

<sup>69</sup> See the Processors' April 4, 2001 submission at Exhibit 2.

<sup>70</sup> See *Fish NSR5 Final Result* at Comment 2B.

<sup>71</sup> *Citing Antidumping Methodologies In Proceedings Involving Non-Market Economies: Valuing the Factors of Production: Labor; Request for Comment* ("Labor Comments"), 76 FR 9544 (February 18, 2011).

<sup>72</sup> *Id.*

- The Respondents argue that the statute instructs the Department to use the best available information for valuing factors of production.<sup>73</sup> Additionally, they state that, pursuant to the statute and regulations, the Department has a preference to use surrogate values from a single surrogate country.<sup>74</sup>
- The Respondents further assert that, although the Department has acknowledged its preference for industry-specific data versus country-wide data,<sup>75</sup> it must evaluate industry-specific data on a case-by-case basis.<sup>76</sup>
- The Respondents contend that in this review, the industry-specific data used by the Department for the *Preliminary Results* that was classified under “manufacturing of food products and beverages” is far less specific than the “shrimp processing” category provided by the Bangladesh Bureau of Statistics (“BBS”) that are on the record.
- Additionally, the Respondents contend that the Department’s interim methodology is unreliable because it averages different types of workers within a broad range of industries and provides no way of correcting for these differences. Additionally, they assert that this methodology collects data from a six-year spread without accounting for the many socio-economic, political and institutional factors that could change within the same countries from year to year.
- The Respondents assert that the Department should use the Bangladesh shrimp processor earnings rate published by the BBS to derive the labor wage rate for the final results.

*Rebuttal Briefs:*

- The Processors rebut and argue that the Department is permitted to use compensation data from multiple countries to construct surrogate labor rates under the statute and the regulations.<sup>77</sup>
- The Processors argue that the Department has repeatedly explained that it prefers using compensation data from multiple countries to construct surrogate labor rates due to the wide variation in labor rates among countries<sup>78</sup>, which the CIT recently upheld.<sup>79</sup>
- The Processors further contest that the Bangladeshi wage data recommended by the Respondents is inferior to the ILO data because it appears to be split between men and women, and not reported on an aggregate basis for men and women. Without information about the gender make-up of employees in the shrimp processing industry, the Processors argue the data do not provide a reliable and accurate representation of employers’ actual costs.
- The Processors assert that the Bangladeshi data also appears to cover only earnings, which is less inclusive than the Chapter 6A data because it provides a more comprehensive measure of employee compensation.

---

<sup>73</sup> Citing Section 733(c) of the Act.

<sup>74</sup> See Respondents’ Case Brief at 11-12.

<sup>75</sup> Citing *Final Results of Redetermination Pursuant to Remand, Dorbest Ltd. v. United States*, (November 10, 2010) at 28-29

<sup>76</sup> Citing *6<sup>th</sup> Vietnamese Fish Fillets AR* at Comment III.

<sup>77</sup> See Processors’ Rebuttal Brief at 2-3.

<sup>78</sup> Citing *Labor Comments*.

<sup>79</sup> Citing *Shandong Rongxin Import & Export Co., Ltd. v. United States* (“*Shandong Rongxin*”), Slip. Op. 11-45 (CIT April 21, 2011) at 15.

- The Petitioners contest that the CIT has recently upheld the Department’s preference for valuing labor from several countries rather than a single country.<sup>80</sup> Accordingly, the Department should not alter its final results to value labor based on data submitted from a single country.
- The Respondents assert that, in the event that the Department rejects the BBS data, the Department should not use ILO Chapter 6A data over Chapter 5B data, as the Department has established its preference for Chapter 5B data in the past.<sup>81</sup> Moreover, Chapter 6A data are over inclusive because various labor related expenses are already accounted for in the Department’s calculation of surrogate selling, general, and administrative expenses (“SG&A”).

*Labor Methodology Arguments:*

- The Processors argue that the Department should select the Philippines as the primary surrogate country and use the Chapter 6A labor data from the Philippines to value labor.
- The Processors assert that if the Department continues to use Bangladesh as the primary surrogate country, it should reject Bangladeshi wage data and rely on the Philippines as a second surrogate country for wage data.
- The Petitioners contend that the Department should derive surrogate labor rates from multiple countries in this review. They argue that the rationale for this approach has long been articulated by the Department and the abrupt switch to a single country for labor rate is an unnecessary and unwarranted overcorrection from the CIT ruling in *Shandon Rongxin*.
- The Petitioners argue that the Department should select the Philippines as the most appropriate surrogate country and use ILO Chapter 6A data from that country to value labor.
- The Petitioners argue that if the Department selects Bangladesh as the primary surrogate country, the Department should not use the Bangladeshi shrimp industry wage rates submitted by the Respondents, as many workers are undocumented and overlooked in official statistics, and labor abuses are pervasive throughout the industry.
- The Respondents argue that the Department should use the BBS data to value labor as it is wholly compliant with the Department’s criteria for selecting surrogate value.
- The Respondents argue that there is additional information regarding the Bangladeshi shrimp industry from a number of other sources, which corroborates the value of the Bangladeshi shrimp processing worker earning rates and provides a ratio for female to male employees in the Bangladeshi shrimp processing sector.

*Labor Methodology Rebuttals:*

- The Processors argue that the Respondents’ additional information confirms that the Bangladeshi earnings data is similar to ILO Chapter 5B data, not the Chapter 6A data, which the Department prefers.
- The Processors argue that the gender ratio figure provided by the Respondents is from 2006 and, therefore, is not reliable.

---

<sup>80</sup> Citing *Shandong Rongxin* at 4-5.

<sup>81</sup> See, e.g., *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of the First Antidumping Administrative Review and First New Shipper Review*, 72 FR 52052 (September 5, 2007) and accompanying Issues and Decision Memorandum at Comment 5.

- The Petitioners argue that the Respondents’ and Domestic Producers’ additional information underscores the aberrationally low nature of Bangladeshi wage data.
- The Petitioners argue that the Department’s current policy establishes a practice whereby labor wage rates will be understated when the surrogate country has a low GNI and overstated when the GNI is high.
- The Petitioners argue that the additional information submitted by the Respondents is unreliable because of calculation errors and the fact that it does not corroborate with the Bangladeshi wage data.
- The Respondents argue that the Department should use the industry specific wage rate from Bangladesh as it remains the best available information on the record.
- The Respondents argue that the Domestic Producers’ allegations regarding the BBS data are dated and that the Philippines data recommended by Domestic Producers suffers from the same challenges.
- The Respondents assert that if the Department must use a surrogate wage rate from the ILO, it should use the Chapter 6A labor information from India.

**Department’s Position:**

Section 733(c) of the Act provides that the Department will value FOPs in NME cases using the best available information regarding the value of such factors in a ME country, or countries, considered to be appropriate by the administering authority. The Act requires that when valuing FOPs, the Department utilize, to the extent possible, the prices or costs of factors of production in one or more ME countries that are (1) at a comparable level of economic development and (2) significant producers of comparable merchandise.<sup>82</sup>

Previously, the Department used regression-based wages that captured the worldwide relationship between per capita GNI and hourly manufacturing wages, pursuant to section 351.408(c)(3) of the Department’s regulations, to value the Respondents’ cost of labor. However, on May 14, 2010, the Court of Appeals for the Federal Circuit (“CAFC”), in *Dorbest Ltd. v. United States*, 604 F.3d 1363, 1372 (Fed. Cir. 2010) (“*Dorbest*”), invalidated section 351.408(c)(3) of the Department’s regulations. As a consequence of the CAFC’s ruling in *Dorbest*, the Department no longer relies on the regression-based wage rate methodology described in its regulations.

Since October 2010, the Department had applied an interim wage rate methodology that derives a surrogate wage rate from a simple-average of industry-specific wage rates from countries that are both economically comparable and significant producers of merchandise comparable to the merchandise subject to the antidumping duty proceeding.<sup>83</sup> Since implementing this interim industry-specific wage rate methodology, the Department had encountered a number of methodological and practical challenges that must be considered in evaluating whether this methodology should be adopted for the longer term. On February 18, 2011, the Department published in the *Federal Register* a request for public comment on the interim methodology, and the data sources.<sup>84</sup> The Department noted that, while the Department preferred using multiple

---

<sup>82</sup> See Section 773(c)(4) of the Act.

<sup>83</sup> See *Preliminary Results* at 12062-12063.

<sup>84</sup> See *Labor Comments* at 18.

data points when evaluating labor data, relying on industry-specific data necessarily constrains the amount of available data.

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings.<sup>85</sup> In *Labor Methodologies*, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. The Department explained that we have carefully considered the “significant producer” prong of the statute (section 773(c)(4)(B) of the Act) in light of the CIT’s decision in *Shandong Rongxin*, where the court imposed an even further restriction on the “significant producer” definition used in the interim methodology.<sup>86</sup> The Department further explained that, upon careful examination of our options in light of *Shandong Rongxin*, we consider that any alternative definition for “significant producer” that would also be compliant with the court’s decision would unduly restrict the number of countries from which the Department could source wage data. The Department found that the base for an average wage calculation would be so limited that there would be little, if any, benefit to relying on an average of wages from multiple countries for purposes of minimizing the variability that occurs in wages across countries. Therefore, in light of both the Federal Circuit’s decision in *Dorbest*, and the CIT’s recent decision in *Shandong Rongxin*, the Department stated that relying on multiple countries to calculate the wage rate is no longer the best approach for calculating the labor value. Accordingly, the Department found that using the data on industry-specific wages from the primary surrogate country is the best approach for valuing the labor input in NME antidumping duty proceedings, and that this approach is fully consistent with how the Department values all other FOPs, and it results in the use of a uniform basis for FOP valuation--a single surrogate.

As part of the *Labor Comments*, the Department also considered methodologies that will best capture all labor costs. Previously, the Department used earnings or wage data as reported in “Chapter 5B: Wages in Manufacturing” of the ILO’s *Yearbook of Labor Statistics*. Chapter 5B captures the pre-tax monetary remuneration received by the employee. Under the interim wage rate methodology, the Department assumed that indirect labor costs (*i.e.*, employer expenses for social benefits, pensions and training, etc.) are included in the calculated surrogate financial ratios (*i.e.*, factory overhead (“OH”), SG&A and profit) for the NME producer. When the OH and SG&A line items are disaggregated, the Department had a practice of adjusting the surrogate financial ratios for OH, SG&A, and profit by categorizing all identifiable labor costs not included in the ILO’s definition of Chapter 5B data as overhead expenses.<sup>87</sup> However, when OH and SG&A are aggregated, the Department would be unable to determine whether adjustments are needed to account for all of the indirect labor-related costs.

Due to concerns that reliance on data from Chapter 5B of the ILO may under-count the NME producer’s labor costs, the Department was considering alternative data sources for valuing labor to ensure all labor costs incurred by the NME producer are accounted for in the normal value

---

<sup>85</sup> See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (“Labor Methodologies”).

<sup>86</sup> See *Shandong Rongxin*.

<sup>87</sup> See *Folding Metal Tables and Chairs from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 2905 (January 18, 2006) and accompanying Issues and Decision Memorandum, at Comment 1.

(“NV”) calculation. The Department proposed relying on labor and wage data that include all costs incurred by the producer related to labor including wages, benefits, housing, training, etc. One example of such a data source is “Chapter 6A: Labor Cost in Manufacturing” from the ILO’s *Yearbook of Labour Statistics*. Although the Department discounted the use of the ILO Chapter 6A data in 2006 because very few market economy countries reported labor data, this may no longer be the case.<sup>88</sup> As of January 2011, sixty-six market economy countries reported ILO Chapter 6A data at the national level. The Department also noted that some market economy countries report industry-specific data under ILO Chapter 6A, which is in keeping with the Department’s interim practice of relying on industry-specific data within the existing ILO source where available. The Department was aware that there may be data constraints using industry-specific data classified under ILO Chapter 6A because fewer market economy countries that are found to be economically comparable to a subject country report industry-specific under ILO Chapter 6A than under ILO Chapter 5B. Accordingly, in determining whether to source wage data from alternative data sources, such as ILO Chapter 6A, the Department recognized that we would need to evaluate how to address situations where there are significant data constraints in light of the preference for data at the industry-specific level.<sup>89</sup>

After reviewing the comments and information received following *Labor Comments*, the Department decided to change the preferred data source to ILO’s Chapter 6A data, on the rebuttable presumption that Chapter 6A data better accounts for all direct and indirect labor costs. Additionally, if there is evidence submitted on the record by interested parties demonstrating that the NME respondent’s cost of labor is overstated, the Department will make the appropriate adjustments to the surrogate financial statements, subject to the available information on the record. Specifically, when the surrogate financial statements include disaggregated overhead and selling, general and administrative expense items that are already included in the ILO’s definition of Chapter 6A data, the Department will remove these identifiable costs items.<sup>90</sup>

In this review, the Department has selected Bangladesh as the surrogate country for the final results.<sup>91</sup> Because Bangladesh does not report labor data to the ILO, we are unable to use ILO’s Chapter 6A data to value the Respondents’ labor wage. However, the record does contain a labor wage rate for shrimp processing in Bangladesh, published by the BBS. As stated throughout this memorandum, when selecting possible surrogate values for use in an NME proceeding, the Department’s preference is to use surrogate values that are publicly available, broad market averages, contemporaneous with the POR, specific to the input in question, and exclusive of taxes.<sup>92</sup> Pursuant to section 773(c)(1) of the Act, it is also the Department’s practice to use the best available information to derive surrogate values. The Department considers several factors, including quality, specificity and contemporaneity, to determine the best available information in accordance with the Act. The Department finds this labor wage rate to

---

<sup>88</sup> See *Antidumping Methodologies Notice*, 71 FR at 61721.

<sup>89</sup> See *Labor Comments* at 9545.

<sup>90</sup> See *Labor Methodologies* at 30693.

<sup>91</sup> See Comment 1.

<sup>92</sup> See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Second Administrative Review*, 72 FR 13242 (March 21, 2007) and accompanying Issues and Decision Memorandum at Comment 8B.

be the best available information on the record. This data is publicly available, represents a broad market average, specific to the shrimp processing industry, contemporaneous to the POR, and collected from an official Bangladeshi government source in the surrogate country that the Department has selected. Therefore, we note that the BBS data is consistent with the Department's statement of policy regarding the calculation of surrogate value for labor.

In this review, because there is no record evidence as to whether the BBS data contains all costs related to labor, including wages, benefits, housing, training, *etc.*, we have made no adjustments to the surrogate financial ratios and included all of the itemized indirect labor costs noted in Apex and Gemini's financial statements, as noted in *Labor Methodologies*. With regard to the Processors' argument that a simple average of male and female wage rate fails to account for the actual ratio of female to male workers in the industry in Bangladesh, we note that the Processors failed to provide any detailed information about the actual gender ratio during the POR or record evidence demonstrating how the ratio provided by the Respondents is distorted. As a result, we have adjusted the Bangladeshi shrimp processing industry wage rate by weight- averaging the male and female wage rate based on the best available information on the record, the gender ratio reported by a United States Agency for International Development ("USAID") study.<sup>93</sup>

We disagree with the Petitioners that the Bangladeshi labor data is aberrationally low. The Department has long recognized, and the Petitioners also agree, that the disparity in labor rates correspond with disparities in the GNIs of countries. The Petitioners' labor data does not demonstrate that the Bangladeshi labor data is aberrationally low, but speak to the Petitioners' argument that the Department's wage rate policy establishes a practice whereby labor wage rates will be understated when the surrogate country has a low GNI and overstated when the GNI is high. On that point, we also disagree that the Department should revert to the multiple-country methodology to derive labor rates, because of the variability that exists across wages from countries that are economically comparable. As explained above, the Department concluded that to be compliant with the statute, and the two most recent court decisions, the base for an average wage calculation would be so limited (two countries in this case following the interim labor methodology) that there would be little, if any, benefit to relying on an average of wages from multiple countries for purposes of minimizing the variability that occurs in wages across countries. Therefore, in light of these two court decisions, after having gained experience in applying a multi-country averaging method, and reviewing the available labor data for this case, the Department decided that valuing labor with data from the primary surrogate country would be the preferable approach.

Further, we disagree with the Processors that the Department should rely on labor data from outside the primary surrogate country, Bangladesh. It is the Department's preference to value all FOPs utilizing data from the primary surrogate country and to consider alternative sources only when a suitable value from the primary surrogate country does not exist on the record. In this review, the record contains a suitable value for labor from the primary surrogate country. We note that while the Petitioners argued extensively about the poor working conditions of the shrimp processing industry in Bangladesh, the studies cited only provide information on the general condition of the industry and are not specific to the wage data used by the Department.

---

<sup>93</sup> See the Respondents' Labor Methodologies Comments, dated July 7, 2011, at Attachment 5.

Moreover, these studies are dated several years prior to the POR and are corrected in a more recent USAID study.<sup>94</sup>

## J. Surrogate Financial Ratios

### *Case Briefs:*

- The Petitioners contest that if the Department continues to use Bangladesh as the surrogate country, it should use the Bangladeshi financial statements as well as the 2009 Philippine financial statements for RDEX, Bluefin, and Renn & Rell because it is the Department's preference to use multiple financial statements when calculating surrogate financial ratios.<sup>95</sup>
- The Petitioners note that the Department has previously stated that using the greatest number of financial statements will yield the most representative data from the relevant manufacturing sector to calculate accurate surrogate financial ratios.<sup>96</sup>
- The Petitioners claim that because the record does not contain a wealth of financial statements from the surrogate country<sup>97</sup>, it should not depend solely on the two Bangladeshi financial statements on the record.
- The Petitioners also argue that if the Department selects the Philippines as the surrogate country, it should use the 2009 financial statements for RDEX, Bluefin, and Renn & Rell to calculate surrogate financial ratios.

### *Rebuttal Briefs:*

- The Respondents rebut that although the Department prefers to use as many financial reports as possible to calculate surrogate financial ratios, it is not the Department's practice to use annual reports from companies in different countries if financial statements from the preferred surrogate country are available.
- The Respondents contend that the financial statements proposed by the Petitioners are inappropriate for calculating surrogate financial ratios because these companies are not producers of comparable merchandise and do not match the Respondents' production experience.<sup>98</sup>
- The Respondents assert that the Department should continue to calculate surrogate financial ratios using the financial statements of Apex and Gemini because these companies have been used in previous administrative reviews, are more comparable to the mandatory Respondents, and are contemporaneous to the POR.<sup>99</sup>

---

<sup>94</sup> See Respondents' July 11, 2011 submission at 10.

<sup>95</sup> See *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 66087 (December 14, 2009) and accompanying Issues and Decisions Memorandum at Comment 3.

<sup>96</sup> Citing *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) and accompanying Issues and Decisions Memorandum at Comment 17.

<sup>97</sup> See *Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China*, 69 FR 67313 (November 17, 2004) and accompanying Issues and Decisions Memorandum at Comment 3.

<sup>98</sup> Citing *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China*, 69 FR 70997 (December 8, 2004) and accompanying Issues and Decisions Memorandum at Comment 9.f.

<sup>99</sup> Citing 4<sup>th</sup> *Vietnamese Shrimp AR* at Comment 3.

### **Department's Position:**

As noted above in Comment 1, for the final results of this review, we have selected Bangladesh as the primary surrogate country. It is the Department's practice to rely upon the primary surrogate country for all surrogate values whenever possible.<sup>100</sup> The record of this review contains two suitable financial statements from producers of comparable merchandise in Bangladesh (*see* below). Therefore, we find it unnecessary to look outside Bangladesh, *i.e.*, to the Philippines, for purposes of calculating surrogate financial ratios.

The Department agrees with the Respondents that Gemini and Apex should solely be used to calculate the surrogate financial ratios. The Department's standard criteria for selecting financial statements in calculating surrogate financial ratios includes examining the level of integration of the surrogate company in order to approximate OH, SG&A and profit levels of the respondent.<sup>101</sup> As previously established in the 4<sup>th</sup> *Vietnamese Shrimp AR*, Apex and Gemini are both primarily shrimp processors, and thus, produce identical merchandise to that of the Respondents. We also note that because Apex and Gemini are both primarily shrimp processors and, therefore, share similar production experiences to that of the Respondents.<sup>102</sup> Additionally, while the Department will use multiple financial statements in calculating surrogate financial ratios, it is not the Department's practice to use financial statements outside the primary surrogate country if financial statements from companies in the primary surrogate country are available.<sup>103</sup>

Regarding the Petitioners' argument that if the Department chooses the Philippines as the primary surrogate country, it should use the three Philippine financial statements on the record, we note that for the final results of this review, we have chosen Bangladesh as the primary surrogate country. As a result, the Petitioners' arguments for this issue are moot.

### **Comment 3: Zeroing**

#### *Case Briefs:*

- According to Camranh/Contessa and the Respondents, the CAFC has held that section 771(35)(b) of the act is ambiguous with respect to zeroing<sup>104</sup> and has held that the Department's use of zeroing is a reasonable construction of this section of the Act in both investigations and administrative reviews.<sup>105</sup>

---

<sup>100</sup> See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Fifth New Shipper Review*, 75 FR 38985 (July 7, 2010) and accompanying Issues and Decision Memorandum at Comment 2B; See also *Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China*, 69 FR 67313 (November 17, 2004) and accompanying Issues and Decision Memorandum at Comment 3 ("Furniture from China").

<sup>101</sup> See, e.g., *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010) and accompanying Issues and Decisions Memorandum at Comment V.

<sup>102</sup> See 4<sup>th</sup> *Vietnamese Shrimp AR* at Comment 3.

<sup>103</sup> See e.g., 6<sup>th</sup> *Vietnamese Fish Fillets AR* at Comment IV.

<sup>104</sup> Where normal value exceeds the export price ("EP"), or constructed export price ("CEP"), 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.

<sup>105</sup> See, e.g., *Timken Co. v. United States*, 354 F.3d 1334, 1342 (Fed. Cir. 2004) ("*Timken*").

- CamRanh/Contessa and the Respondents note that the Department stated in the *Zeroing Notice* that zeroing is not mandated by the statute, but is a product of administrative interpretation.<sup>106</sup>
- CamRanh/Contessa and the Respondents argue that the Department failed to explain in the *Zeroing Notice* why it was reasonable to interpret section 771(35)(b) of the Act as having one meaning in investigations and a different meaning in administrative reviews.<sup>107</sup>
- CamRanh/Contessa and the Respondents argue that nothing in the statute or legislative history of section 771(35)(b) of the Act supports the Department’s approach in the *Preliminary Results* which gives the statutory term “weighted average dumping margin” opposite meanings in investigations versus administrative reviews.
- CamRanh/Contessa and the Respondents argue that while parties have unsuccessfully challenged the Department’s practicing of zeroing subsequent to the *Zeroing Notice*, none of these cases presented the question as to whether it is appropriate for the Department to interpret section 771(35)(b) as providing for zeroing in reviews but not investigations.<sup>108</sup> CamRanh/Contessa note that these decisions were made at a time before the *Zeroing Notice*, when the Department was applying a consistent approach between investigations and reviews with respect to zeroing.
- CamRanh/Contessa and the Respondents argue that the Department set forth no canon of statutory construction, legislative history or policy ground for applying the statute differently in investigations and reviews in the *Preliminary Results*.
- Citing *Dongbu*, CamRanh/Contessa and the Respondents argue that the U.S. Court of Appeals for the Federal Circuit (“CAFC”) has found that the Department has not justified its practice of applying zeroing in administrative reviews, but not investigations.<sup>109</sup>
- According to CamRanh/Contessa and the Respondents, the CAFC found in *Dongbu* that the Department inconsistently interpreted section 771(35)(b) of the Act, with one meaning for investigations and another for administrative reviews. More specifically, the CAFC found that the Department had failed to provide a reasonable explanation for holding opposing interpretations in investigations and administrative reviews of section 771(35)(b) of the Act.
- Thus, consistent with *Dongbu*, and with *Corus*, where the CAFC found that section 771(35)(b) of the Act could not be interpreted differently in investigations and reviews, CamRanh/Contessa and the Respondents argue that the Department should discontinue zeroing for the final results.<sup>110</sup>

*Rebuttal Briefs:*

- The Petitioners and the Processors maintain that the Department should continue its practice of zeroing for the final results of this proceeding, and disagree with the Respondents that the *Dongbu* decision mandated a change in the Department’s practice with respect to zeroing. The Processors contend that in *Dongbu*, the CAFC merely remanded the case to the CIT to

---

<sup>106</sup> See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 FR 77722 (December 27, 2006) (“*Zeroing Notice*”).

<sup>107</sup> *Id.*

<sup>108</sup> See, e.g., *Koyo Seiko Co. v. United States*, 551 F.3d 1286, 1290-91 (Fed. Cir. 2008); see also *SKF USA Inc. v. United States*, 537 F.3d 1373, 1382 (Fed. Cir. 2008).

<sup>109</sup> See *Dongbu Steel Co., Ltd. v. United States*, 635 F.3d 1363 (Fed. Cir. 2011) (“*Dongbu*”).

<sup>110</sup> See *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*”).

provide the Department an opportunity to explain its reasoning regarding its interpretation of section 771(35) of the Act in the context of investigations and administrative reviews.

- The Petitioners and the Processors note that in *Dongbu* the CAFC recognized the ambiguity of the statutory language under *Chevron*<sup>111</sup>, and that the CIT (and, potentially the CAFC) have yet to review the Department’s explanation under the deferential reasonableness standard applied under prong two of *Chevron*.
- The Processors note that in *SKF* the CAFC affirmed the Department’s use of zeroing in administrative reviews, however, unlike *Dongbu*, in *SKF* the Department had the opportunity to fully explain its reasoning for continuing to deny offsets in administrative reviews.<sup>112</sup> The Processors further note that *SKF* was decided after the *Zeroing Notice*.
- According to the Processors, the *Dongbu* opinion conflicts with *SKF*, and when two CAFC decisions conflict, that court’s practice is to give precedence to the earlier decision.
- Moreover, the Processors observe that *Dongbu* relied upon *SKF I*<sup>113</sup>, where the Court requested that the Department provide an explanation for two different definitions of “foreign like product” but failed to consider *SKF I*’s successor case, *FAG Kugelfischer*, where the CAFC found the Department’s explanation on remand to be reasonable.<sup>114</sup>
- The Processors also note that the Supreme Court has held that “the meaning {of the same words} may well vary to meet the purposes of law,” where “the subject matter to which the words refer is not the same...or the conditions are different.”<sup>115</sup>
- The Processors argue that the courts have, on multiple occasions, found the Department’s decision to employ varying interpretations of the same statutory language for different purposes to be reasonable under *Chevron*.<sup>116</sup>
- The Petitioners and the Processors contend that the inherent differences between investigations and administrative reviews, which are distinct proceedings under different sections of the Act, justify the Department’s current practice toward zeroing, and permit different interpretations for the two types of segments.
- The Petitioners and the Processors assert that in an investigation the dumping margin calculation is used to determine whether dumping exists in order to determine whether an antidumping order should be issued, whereas administrative reviews assess whether dumping exists above a certain threshold.<sup>117</sup>
- The Petitioners and the Processors claim that it is reasonable for the Department to provide offsets when using an average-to-average methodology in ordinary investigations, while continuing to use an average-to-transaction methodology, without offsets, in those

---

<sup>111</sup> See *Chevron U.S.A. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984) (“*Chevron*”).

<sup>112</sup> See *SKF USA Inc. v. United States*, 630 F.3d 1365 (Fed. Cir. 2011) (“*SKF*”).

<sup>113</sup> See *SKF USA Inc. v. United States*, 263 F.3d 1369 (Fed. Cir. 2001) (“*SKF I*”).

<sup>114</sup> See *FAG Kugelfischer Georg Schafer AG v. United States*, 332 F.3d 1370, 1373 (Fed. Cir. 2003) (“*FAG Kugelfischer*”).

<sup>115</sup> See *United States v. Cleveland Indians Baseball Co.*, 532 U.S. 200, 213, 121 S.Ct. 1433, 1441, 149 L.Ed.2d 401 (2001); *Atlantic Cleaners & Dryers Inc. v. United States*, 286 U.S. 427, 433 (1932).

<sup>116</sup> See, e.g., *FAG Kugelfischer; RHP Bearings Ltd. v. United States*, 288 F.3d 1334, 1346 (Fed. Cir. 2002); and *RHP Bearings Ltd. v. United States*, 27 CIT 192, 198 (2003), appeal dismissed, 87 Fed. Appx. 165 (Fed. Cir. 2004).

<sup>117</sup> The Processors assert that, unlike in investigations, section 751(a)(2)(A)(ii) of the Act directs the Department to calculate a dumping margin for “each entry” in an administrative review. Therefore, the Processors contend, calculating margins with offsets for other non-dumped sales would prevent the Department from assessing duties on the basis of individual entries.

investigations where masked or targeted dumping may be present, and in all administrative reviews.

- The Petitioners and the Processors contend that the appropriate vehicle for extending the *Zeroing Notice* to reviews is a “section 123” determination, rather than a particular review.
- According to the Petitioners and the Processors, section 123(g)(1) of the URAA provides that the Department may not modify a regulation or practice in response to an adverse World Trade Organization decision “unless and until” certain extensive procedural steps are fulfilled, including, among others, consultation with congressional committees, request for public comment, and the publication of the new rule in the Federal Register.<sup>118</sup>

### **Department’s Position:**

We have not changed our calculation of the weighted-average dumping margin, as suggested by the Respondents, in these final results.

Section 771(35)(A) of the Act defines “dumping margin” as the “amount by which the normal value exceeds the EP or CEP 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 NV is greater than EP or CEP. We disagree with the Respondents that the Department’s zeroing practice is an inappropriate interpretation of the Act. Because no dumping margins exist with respect to sales where NV is equal to or less than EP or CEP, 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 section 771(35) of the Act.<sup>119</sup>

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 this section by aggregating all individual dumping margins, each of which is determined by the amount by which NV exceeds EP or CEP, and dividing this amount by the value of all sales. The use of the term “aggregate dumping margins” in section 771(35)(B) of the Act is consistent with the Department’s interpretation of the singular “dumping margin” in section 771(35)(A) of the Act, as applied on a comparison-specific level and not on an aggregate basis. At no stage of the process is the amount by which EP or CEP exceeds the NV permitted to offset or cancel the dumping margins found on other sales.

This does not mean that non-dumped transactions are disregarded in calculating the weighted-average dumping margin. It is important to note that the weighted-average margin will reflect any non-dumped transactions 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 transactions is included in the numerator. Thus, a greater amount of non-dumped transactions results in a lower weighted-average margin.

---

<sup>118</sup> See section 123(g)(1) of the URAA.

<sup>119</sup> See, e.g., *Timken*, 354 F.3d at 1342; and *Corus I*, 395 F.3d at 1347-49.

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.”<sup>120</sup> 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.<sup>121</sup>

In 2007, the Department implemented a modification of its calculation of weighted-average dumping margins when using average-to-average comparisons in antidumping investigations.<sup>122</sup> With this modification, the Department’s interpretation of the statute with respect to non-dumped comparisons was changed within the limited context of investigations using average-to-average comparisons. Adoption of the modification pursuant to the procedure set forth in section 123(g) of the Uruguay Round Agreements Act was specifically limited to address adverse WTO findings made in the context of antidumping investigations using average-to-average comparisons. The Department’s interpretation of the statute was unchanged in other contexts.

It is reasonable for the Department to interpret the same ambiguous language differently when using different comparison methodologies in different contexts. In particular, the use of the word “exceeds” in section 771(35)(A) of the Act can reasonably be interpreted in the context of an antidumping investigation to permit negative average-to-average comparison results to offset or reduce the amount of the aggregate dumping margins used in the numerator of the weighted-average dumping margin as defined in section 771(35)(B) of the Act. The average-to-average comparison methodology typically applied in antidumping duty investigations averages together high and low prices for directly comparable merchandise prior to making the comparison. This means that the determination of dumping necessarily is not made for individual sales, but rather at an “on average” level for the comparison. For this reason, the offsetting methodology adopted in the limited context of investigations using average-to-average comparisons is a reasonable manner of aggregating the comparison results produced by this comparison method. Thus, with respect to how negative comparison results are to be regarded under section 771(35)(A) of the Act, and treated in the calculation of the weighted average dumping margin under section 771(35)(B) of the Act, it is reasonable for the Department to consider whether the comparison result in question is a product of an average-to-average comparison or an average-to-transaction comparison.

In *U.S. Steel*, the CAFC considered the reasonableness of the Department’s interpretation not to apply zeroing in the context of investigations using average-to-average comparisons, while continuing to apply zeroing in the context of investigations using average-to-transaction comparisons pursuant to the provision at section 777A(d)(1)(B) of the Act.<sup>123</sup> Specifically, in *U.S. Steel*, the CAFC was faced with the argument that, if zeroing were never applied in investigations, then the average-to-transaction comparison methodology would be redundant

---

<sup>120</sup> See *Timken*, 354 F.3d at 1342.

<sup>121</sup> See, e.g., *Timken*, 354 F.3d at 1343; see also *NSK Ltd. v. United States*, 510 F.3d 1375, 1379-80 (Fed. Cir. 2007).

<sup>122</sup> See *Zeroing Notice*, 71 FR at 77722.

<sup>123</sup> See *U.S. Steel Corp., v. United State.*, 621 F.3d 1351 (Fed. Cir. 2010) (“*U.S. Steel*”).

because it would yield the same result as the average-to-average comparison methodology. The Court acknowledged that the Department intended to continue to use zeroing in connection with the average-to-transaction comparison method in the context of those investigations where the facts suggest that masked dumping may be occurring.<sup>124</sup> The Court then affirmed as reasonable the Department's application of its modified average-to-average comparison methodology in investigations in light of the Department's stated intent to continue zeroing in other contexts.<sup>125</sup>

In addition, the CAFC recently upheld, as a reasonable interpretation of ambiguous statutory language, the Department's continued application of "zeroing" in the context of an administrative review completed after the implementation of the *Zeroing Notice*.<sup>126</sup> In that case, the Department had explained that the changed interpretation of the ambiguous statutory language was limited to the context of investigations using average-to-average comparisons and was made pursuant to statutory authority for implementing an adverse WTO report. We find that our determination in this administrative review is consistent with the CAFC's recent decision in *SKF*.

Furthermore, in *Corus I*, the CAFC acknowledged the difference between antidumping duty investigations and administrative reviews, and held that section 771(35) of the Act was just as ambiguous with respect to both proceedings, such that the Department was permitted, but not required, to use zeroing in antidumping duty investigations.<sup>127</sup> That is, the Court explained that the holding in *Timken* – that zeroing is neither required nor precluded in administrative reviews – applies to antidumping duty investigations as well. Thus, *Corus I* does not preclude the use of zeroing in one context and not the other.

Moreover, we disagree with the Respondents that the CAFC's recent decision in *Dongbu* requires the Department to change its methodology in this administrative review. The holding of *Dongbu*, and the recent decision in *JTEKT*<sup>128</sup>, was limited to finding that the Department had not adequately explained the different interpretations of section 771(35) of the Act in the context of investigations versus administrative reviews, but the CAFC did not hold that these differing interpretations were contrary to law. Importantly, the panels in neither *Dongbu* nor *JTEKT* overturned prior CAFC decisions affirming zeroing in administrative reviews, including *SKF*, which we discuss above, in which the Court affirmed zeroing in administrative reviews notwithstanding the Department's determination to no longer use zeroing in certain investigations. Unlike the determinations examined in *Dongbu* and *JTEKT*, the Department here is providing additional explanation for its changed interpretation of the statute subsequent to the *Final Modification for Antidumping Investigations*<sup>129</sup> – whereby we interpret section 771(35) of the Act differently for certain investigations (when using average-to-average comparisons) and

---

<sup>124</sup> See *U.S. Steel*, 621 F.3d at 1363.

<sup>125</sup> *Id.*

<sup>126</sup> See *SKF*, 630 F.3d at 1365.

<sup>127</sup> See *Corus I*, 395 F.3d at 1347.

<sup>128</sup> See *JTEKT Corporation v. US*, 2010-1516, -1518 (CAFC June 29, 2011) ("*JTEKT*").

<sup>129</sup> See *i.e.*, *Zeroing Notice*, 71 FR at 77722; and *Antidumping Proceedings: Calculation of the Weighted – Average Dumping Margin During an Antidumping Investigation; Change in Effective Date of Final Modification*, 72 FR 3783 (Jun. 26, 2007) (collectively, *Final Modification for Antidumping Investigations*).

administrative reviews. For all these reasons, we find that our determination is consistent with the holdings in *Dongbu*, *JTEKT*, *U.S. Steel*, and *SKF*.

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 NV, the amount by which the price exceeds NV will not offset the dumping found in respect of other transactions.

#### **Comment 4: Separate Rate Margins**

##### *Case Briefs:*

- The Respondents argue that if the mandatory Respondents receive *de minimis* rates, the Department should also grant the separate rate Respondents a *de minimis* rate.<sup>130</sup>
- CamRanh/Contessa contend that if the Department determines that one or more of the mandatory Respondents was not engaged in dumping during the POR and assigns an individual rate of zero or *de minimis*, this is evidence that non-selected Respondents also were not engaged in dumping.<sup>131</sup>
- CamRanh/Contessa assert that the Department should include all of the margins assigned to the mandatory Respondents when calculating the separate rate, even if the individual rate is zero or *de minimis*.

##### *Rebuttal Briefs:*

- Domestic Producers rebut that CamRanh/Contessa has not provided any basis for deviating from the Department's practice stated in Section 735(c)(5)(A) of the Act, which instructs the Department to exclude zero and *de minimis* margins when calculating the separate rate margin.
- The Petitioners assert that although the Respondents reference *Amanda Foods I* in their argument, the circumstances in that review are substantially different from those in this current review. Specifically, all of the mandatory Respondents in the review at issue there received zero rates providing evidence to suggest that pricing behavior was changed in order to comply with the antidumping duty order.<sup>132</sup> This is in contrast to the previous and current reviews in which both of the mandatory Respondents in the fourth administrative review and two of the three Respondents in the current review were all assigned margins above *de minimis*.
- The Petitioners contest that in *Amanda Foods I*, the Department under respectful protest, assigned a *de minimis* margin to separate rate companies only after re-opening the record, and requesting additional information from the plaintiff.<sup>133</sup>

---

<sup>130</sup> Citing *Amanda Foods (Vietnam) Ltd. et al. v. United States*, Slip Op. 11-39 (CIT April 14, 2011).

<sup>131</sup> Citing e.g., *Amanda Foods (Vietnam) Ltd., et al. v. United States*, 647 F. Supp. 2d 1368 (CIT 2009) ("*Amanda Foods F*").

<sup>132</sup> Citing *Amanda Foods I*, 647 F. Supp. 2d at 1380.

<sup>133</sup> Citing *Amanda Foods (Vietnam) Ltd. v. United States*, Slip. Op. 11-39 at 7 (CIT 2011).

### **Department's Position:**

Because the Department has calculated margins greater than *de minimis* for two mandatory Respondents in this review, the Minh Phu Group and Camimex, the Respondents' arguments on this issue are moot. Additionally, we agree with the Petitioners that the Department should not diverge from the practice of excluding zero and *de minimis* margins when calculating the separate rate margin. 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 facts available.<sup>134</sup> Although the Department did assign a *de minimis* separate rate in *Amanda Foods I*, we agree with the Petitioners that the facts in that review are different from those in this administrative review. In the *Amanda Foods I* review, all mandatory respondents received zero or *de minimis* rates. Thus, the Department had to determine a reasonable method of calculating the separate rate under section 735(c)(5)(B) of the Act. Here, the Department has calculated rates that are above *de minimis* and not based entirely upon facts available for two of the mandatory respondents. Thus, the Department is not under the purview of section 735(c)(5)(B) of the Act, but rather, will determine a separate rate based upon section 735(c)(5)(A) of the Act. Also, in *Amanda Foods I*, the separate rate companies were assigned a *de minimis* margin only after the Department reopened the record, requested further information from the plaintiff, and performed additional data comparisons to information already on the record.<sup>135</sup> Because these same facts are not present in this current review, the Department will maintain its practice of excluding zero and *de minimis* margins from the separate rate calculation.

### **Comment 5: Changes to the Minh Phu Group Margin Program**

#### **A. Quantity Variable**

##### *Case Briefs*

- Minh Phu Group contends that the Department incorrectly labeled one of the quantity variables in the margin program, and provided programming language to correct this error.

### **Department's Position:**

The Department inadvertently mislabeled one of Minh Phu Group's quantity variables in the *Preliminary Results*, and has corrected this error for the final results.

#### **B. Marine Insurance**

##### *Case Briefs*

- Minh Phu Group argues that it inadvertently reported market economy and non-market economy marine insurance for some observations. Minh Phu Group contends that this resulted in the Department inadvertently double-counting marine insurance for those observations.

---

<sup>134</sup> See, e.g., *First Administrative Review of Steel Wire Garment Hangers From the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 27994 (May 13, 2011).

<sup>135</sup> See *Final Results of Redetermination Pursuant to Court Remand*, dated December 9, 2010, *Amanda Foods (Vietnam) Ltd., et al. v. United States*, Slip Op. 11-39 at 7 (CIT 2011).

- Minh Phu Group claims that the Department should not double count its marine insurance given that its questionnaire responses clearly indicate that when Minh Phu Group incurs market economy marine insurance, it does not also incur non-market economy marine insurance.<sup>136</sup>

**Department’s Position:**

We agree with Minh Phu Group. It is the Department’s longstanding practice to avoid double-counting costs where the requisite data are available to do so.<sup>137</sup> Here it is clear that Minh Phu Group’s marine insurance costs have been double-counted. Because the requisite information is available for the Department to avoid double-counting, for the final results we have adjusted the application of Minh Phu Group’s marine insurance to ensure this cost is not double-counted.

**Comment 6: Customs Instructions**

**A. Corrections to Cash Deposit and Liquidation Instructions**

*Case Briefs:*

- The Respondents assert that the Department should correct certain typographical errors in the Department’s draft cash deposit and liquidation instructions.<sup>138</sup>

**Department’s Position:**

The Department agrees with the Respondents. Accordingly, for these final results, the Department will correct those errors noted in the Respondents’ case briefs<sup>139</sup> in its cash deposit and liquidation instructions.

**B. Liquidation Instructions**

*Case Briefs:*

- The Respondents assert that issuing the liquidation instructions prior to 30 days following 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 law.
- The Respondents argue that liquidation instructions should not be sent to CBP before the deadline established for appealing the final results to the CIT.<sup>140</sup>
- The Respondents argue that the CIT has declared unlawful the Department’s practice of issuing liquidation instructions within fifteen days of publication of the final results because

---

<sup>136</sup> See, e.g., Letter to Secretary of Commerce, From the Minh Phu Group, Regarding Minh Phu Group Response to the Department’s Section C Questionnaire, dated September 23, 2010, at 28.

<sup>137</sup> See, e.g., *Certain Tissue Paper Products from the People’s Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 72 FR 58642 (October 16, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

<sup>138</sup> Citing the Respondents’ Case Brief at Exhibits 2 and 3.

<sup>139</sup> *Id.*

<sup>140</sup> Citing 19 U.S.C. 1516a(a)(1).

of the possibility of almost immediate liquidation which would prejudice an appellant's right to judicial relief.<sup>141</sup>

**Department's Position:**

We disagree with the Respondents that our policy of issuing liquidation instructions to CBP 15 days after the publication of the final results of review is contrary to law. Our policy is based upon administrative necessity, namely that we must provide CBP with sufficient time to liquidate all entries, particularly in large and complex cases such as this review, before the entries are deemed liquidated. This policy was developed in light of *International Trading*<sup>142</sup>, where the CAFC held that entries are deemed liquidated at the rate asserted at entry pursuant to 19 USC 1504(d) if CBP does not liquidate within six months of the publication of the final results. Extreme consequences follow from deemed liquidation, specifically the government's inability to collect duties calculated to be due. It is the Department's practice to issue liquidation instructions unless we are aware that an injunction has been filed or is imminent. Furthermore, our current policy of sending liquidation instructions 15 days after the publication of the final results is in accordance with the CIT's statement that we must provide "some reasonable opportunity in which a plaintiff may seek to obtain the specific type of injunction described in 19 USC § 1516a(c)(2)."<sup>143</sup>

Our prior policy of issuing liquidation instructions within 15 days of the publication of the final results has been affirmed by the CIT.<sup>144</sup> In these cases, the CIT recognized that the statute does not establish a time by which the Department should issue liquidation instructions and held that the prior policy was reasonable.

In addition, the Respondents' reliance on *Tianjin* is unpersuasive because the CIT has held that *Tianjin* does not require the Department to wait longer than 15 days to issue liquidation instructions. Moreover, the CAFC has rejected the argument that suspension of liquidation must continue beyond the date that the final results are published to safeguard a Party's right to judicial review.<sup>145</sup> Publication of the final results of review triggers the period for liquidation and, within the reasonable period provided under the Department's new practice, interested parties must apply to the court for an injunction to prevent liquidation of entries pending judicial review. Accordingly, the Department intends to issue liquidation instructions 15 days after publication of the final results of this review.

---

<sup>141</sup> Citing *SKF USA Inc., et al., v. United States*, 611 F. Supp. 2d 1351 (CIT 2009) ("*SKF I*"); see also *Tianjin Machinery Import & Export Corp., et al., v. United States*, 353 F. Supp. 2d 1294 (CIT 2004).

<sup>142</sup> See *International Trading Co. v. United States*, 281 F.3d 1268 (CAFC 2002) ("*International Trading*").

<sup>143</sup> See *SKF I*, 611 F. Supp. 2d at 1364.

<sup>144</sup> See *Mittal Steel Galati S.A. v. United States*, 491 F. Supp. 2d 1273 (CIT 2007) ("*Mittal Steel*"), and *Mittal Steel Galati S.A. v. United States*, 502 F. Supp. 2d 1295 (CIT 2007).

<sup>145</sup> See *International Trading*, 281 F.3d at 1273.

## Comment 7: Names of Separate Rate Companies

### *Case Briefs:*

- CamRanh/Contessa assert that although the Department granted a separate rate to CamRanh in the *Preliminary Results*, this is only a general name and that the Department should grant a separate rate to the precise names listed on CamRanh's business license.<sup>146</sup>
- CamRanh/Contessa contest that the Department erroneously included CamRanh in Appendix I of the *Preliminary Results* and asserts that the Department should not exclude variations of CamRanh's names from receiving a separate rate, but include any variations within the same legal entity as CamRanh.
- Additionally, the Respondents argue that the Department should grant those company names for which separate rate status was legitimately requested but not included in the *Preliminary Results*. Additionally, the Department should also correct errors concerning the spelling and order of the words that comprise certain company names.<sup>147</sup>
- Moreover, the Respondents assert that Appendix I to the *Preliminary Results* erroneously lists several companies that were granted a separate rate, albeit with very slight differences in the names, as subject to the country-wide antidumping rate.
- The Respondents further dispute that Appendix II to the *Preliminary Results* incorrectly denied separate rate status to several trade names used by importers or brokers that contained minor typographical errors.

### **Department's Position:**

The Department agrees with CamRanh/Contessa and the Respondents, in part, that certain names properly requested were not included in the Preliminary Results and have included them for the final results. The Department also agrees with the Respondents that various company names were inadvertently included as part of the Vietnam-wide entity and has, therefore, corrected this for the final results.<sup>148</sup>

However, regarding certain trade names requested by the Respondents, the Department notes that although the Respondents assert these names were used to enter subject merchandise "likely due to importer or broker error," these names do not appear on the respective companies' business registration certificates. The Department notes that it is the importer's responsibility to accurately report the name of the appropriate exporter to United States Customs and Border Protection.<sup>149</sup> Further, when the importer mis-reports the name of an exporter, it is not the duty of the Department to correct such mistakes. Thus, the Department has not granted separate rate status to the names that 1) have not been granted separate rate status in a previous granting

---

<sup>146</sup> See Camranh Seafoods' Separate Rate Application, dated June 8, 2010, at Exhibits 4 and 5.

<sup>147</sup> See the Respondents' Case Brief at 31-45.

<sup>148</sup> See Appendix I to the Final Results.

<sup>149</sup> See 19 CFR 141.61.

period, or 2) do not appear on the business registration certificates submitted to the Department, and therefore are not recognized as representing the same entity.<sup>150,151</sup>

### 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*

Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

*August 31, 2011*  
Date

<sup>150</sup> See 3<sup>rd</sup> Vietnamese Shrimp Review and accompanying Issues and Decisions Memorandum at Comment 17.

<sup>151</sup> See Appendix II to the Final Results.

## Appendix I

- Agrex Saigon
- APL Logistics
- Aquatic Products Trading Company
- Ca Mau Seaproducts Exploitation and Service Corporation (“SES”)
- Can Tho Seafood Exports
- Cautre Export Goods Processing Joint Stock Company
- D & N Foods Processing Danang
- Daewoo Apparel Vietnam
- Foodstuff Factory Vietnam
- Hai Thanh Food Company Ltd.
- Hai Viet Corporation (“HAVICO”)
- Hai Vuong Co., Ltd.
- Hanoi Seaproducts Import Export Corporation (“Seaprodex Hanoi”)
- Hatrang Frozen Seaproduct Fty
- Kaier Furniture (Vietnam) Co., Ltd.
- Khanh Loi Production and Trading Co.
- Kien Gan Seaproduct Import and Export Company (“KISIMEX”)
- Kien Long Seafoods
- Kim Do Wood Production
- Lode Star Co., Ltd.
- Nyd Co., Ltd.
- Orange Fashion
- Pataya Food Industry (Vietnam) Ltd.
- Phu Thuan Corporation
- S.R.V. Freight Services Co., Ltd.
- Sea Product
- Song Huong ASC Import-Export Company Ltd
- Song Huong ASC Joint Stock Company
- Sustainable Seafood
- Tan Thanh Loi Frozen Food Co., Ltd.
- Tecapro Co. (Tacobest Factory)
- Thanh Hung Co., Ltd.
- Tien Tien Garment Joint Stock Company
- Tithi Co., Ltd.
- Vien Thang Pte Co., Ltd.
- Viet Nhan Company
- Vietnam Northern Viking Technology Co., Ltd.
- Vilfood Co
- Vina Atm Co., Ltd.
- Vinatex Danang

## Appendix II

- Bac Lieu Fisheries Company
- Bac Lieu Seaproducts Processing Factory
- Cadovimex Seafood
- Cadovimex Seafood Imp-Exp & Proc. Joint-Stock Co.
- Camau Seafood, Factory No. 4
- Camau Seafood Fty.
- Ca Mau Frozen Seafood Processing Import Export Corporation, or Camau Seafood Factory No. 4 (“CAMIMEX”) and/or Camau Frozen Seafood Processing Import Export Corporation (“CAMIMEX”) Cadovimex Seafood Import-Export and Process Joint Stock Company (“CADOVIMEX”)
- Cadovimex Seafood Import-Export and Process Joint Stock Company (“Cadovimex-Vietnam”)
- Cadovimex Seafood Import-Export and Process Joint Stock Company (“CADOVIMEX”) and/or Cadovimex Seafood Import-Export and Process Joint Stock Company (“Cadovimex-Vietnam”)
- Can Tho Agricultural and animal Product Import Export Company (“CATACO”) and/or Can Tho Agricultural and Animal Products Import Export Company (“CATACO”)
- Can Tho Animal Fisheries Product Processing Export Enterprise (Cafatex)
- Caidoivam Seafood Company
- Cai Doi Vam Seafood Im-Ex Company
- Cantho Imp Expo Fishery Ltd.
- C.P. Livestock Co., Ltd.
- Danang Seaproducts Import Export Corporation (“Seaprodex Danang”) and/or Danang Seaproducts Import Export Corporation (and its affiliate, Tho Quang Seafood Processing and Export Company) (collectively “Seaprodex Danang”)
- Frozen Seafood Fty
- Frozen Seafoods Factory No. 32 and/or Frozen Seafoods Fty
- Frozen Seafoods Factory
- Hoang Phuong Seafood Co.
- Investment Commerce Fisheries Corporation (“Incomfish”) and/or Investment Commerce Fisheries Corporation (“INCOMFISH”)
- Minh Hai Joint Stock Processing Co.
- Minh Hai Seaproducts Co Ltd. (Seaprimexco)
- Minh Hai Seaproducts Import Export Company (Seaprimex Co)
- Minh Hai Export Frozen Seafood Processing Joint Stock Company (“Minh Hai Jostoco”) and/or Minh Hai Export Frozen Seafood Processing Joint-Stock Company (“Minh Hai Jostoco”)
- Minh Hai Joint-Stock Seafoods Processing Company (“Seaprodex Minh Hai”) and/or Minh Hai Joint-Stock Seafoods Processing Company (“Sea Minh Hai”)
- Minh Hai Joint-Stock Processing Co.
- Minh Hai Seaproducts Import Export Company (Seaprimex Co)
- Minh Phat Seafood and/or Minh Phat Seafood Co., Ltd.

- Minh Phu Seafood Corporation (and its affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.) (collectively “Minh Phu Group”)
- Minh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.) and/or Minh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.) (collectively “Minh Phu Group”)
- Minh Phat Co Ltd.
- Minh Qui Seafoods Co. Ltd.
- Minh-Hai Export Frozen Seafood Processing Joint-Stock Company
- Nha Trang Fisheries Joint Stock
- Nha Trang Fisheries Joint Stock Company (“Nha Trang Fisco”) and/or Nha Trang Fisheries Joint Stock Company (“Nha Trang FISCO”)
- Phu Cuong Seafood Processing & Import-Export Co., Ltd. (aka Phu Cuong Jostoco Seafood Corporation, Phu Cuong Jostoco Corp., or Phu Cuong Seafood Processing Import-Export Company Limited)
- Phu Cuong Seafood Processing and Import-Export Co., Ltd. and/or Phu Cuong Seafood Processing & Import-Export Co., Ltd.
- Phu Cuong Seafood Processing Import Export Company Ltd.
- Phu Cuong Jostco Seafood Corporation
- Phuong Nam Co.
- Phuong Nam Company, Ltd. (“Phuong Nam”)
- Phuong Nam Seafood Co., Ltd.
- Sao Ta Foods Joint Stock Company (“Fimex VN”) and/or Sao Ta Foods Joint Stock Company (“Fimex”)
- Seaprodex Minh Hai Workshop I
- Soc Trang Aquatic Products and General Export Import Company
- Soc Trang Aquatic Products and General Import Export Company – (Stapi Mex)
- Soc Trang Aquatic Products and General Import Export Company (Stapimex)
- Soc-Trang Aquatic Products and General Import Export Company (Stapmix)
- Thuan Phuoc Seafood and Trading Company
- Thuan Phuoc Seafoods and Trading Corporation and its separate factories Frozen Seafoods Factory No. 32, Seafoods and Foodstuff Factory, and My Son Seafoods Factory (collectively, “Thuan Phuoc Corp.”)
- Thuan Phuoc Seafoods and Trading Corporation and/or Thuan Phuoc Seafood and Trading Corporation and/or Thuan Phuoc Seafoods and Trading Corporation (and its affiliates)
- UTXI Aquatic Products Processing Co.