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September 19, 2014

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

FROM: Gary Taverman   
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

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

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## SUMMARY

The Department of Commerce (“Department”) published the preliminary results of the administrative review of certain frozen warmwater shrimp (“shrimp”) from the Socialist Republic of Vietnam (“Vietnam”) of review on March 24, 2014.<sup>1</sup> The period of review (“POR”) is February 1, 2012, through January 31, 2013. We analyzed the case and rebuttal briefs that interested parties submitted on the record. As a result of our analysis, we made changes from the Preliminary Results. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

## **BACKGROUND:**

In accordance with 19 CFR 351.309(c)(ii), the Department invited parties to comment on our Preliminary Results.

On May 20, 2014, the Department issued a letter to all interested parties extending the case and rebuttal briefs for the final results.<sup>2</sup> On May 28, 2014, AHSTAC,<sup>3</sup> ASPA,<sup>4</sup> and interested party, Quoc Viet,<sup>5</sup> filed case briefs. Additionally, on May 28, 2014, mandatory respondents MPG,<sup>6</sup>

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<sup>1</sup> See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results Antidumping Duty Administrative Review, 79 FR 15944 (March 24, 2014) (“Preliminary Results”).

<sup>2</sup> See Letter to All Interested Parties, “Case Brief and Rebuttal Deadlines,” dated May 20, 2014.

<sup>3</sup> The Ad Hoc Shrimp Trade Action Committee (“AHSTAC”).

<sup>4</sup> American Shrimp Processors Association (“ASPA”).

<sup>5</sup> Quoc Viet Seaproducts Processing Trading and Import-Export Co., Ltd. (“Quoc Viet”).



Stapimex,<sup>7</sup> and the Vietnamese separate rate respondents<sup>8</sup> (collectively, “SR Respondents”) filed case briefs. On June 2, 2014, AHSTAC, ASPA, MPG, Stapimex, Quoc Viet and SR Respondents provided rebuttal comments. On July 25 and July 28, 2014, SR Respondents and MPG withdrew their hearing requests, respectively.

## SCOPE OF THE ORDER

The scope of the order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,<sup>9</sup> deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of the order, regardless of definitions in the Harmonized Tariff Schedule of the United States (“HTS”), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, white-leg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue

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<sup>6</sup> Minh Phu Seafood Export Import Corporation (and affiliated Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.); Minh Phu Seafood Corporation, Minh Phu Seafood Corp., Minh Qui Seafood Co., Ltd., Minh Qui Seafood, Minh Phat Seafood Co., Ltd., Minh Phat Seafood, and Minh Phu Hau Giang Seafood Co., Ltd. (collectively, MPG)

<sup>7</sup> Soc Trang Seafood Joint Stock Company (“Stapimex”)

<sup>8</sup> Bac Liu Fisheries Joint Stock Company (“Bac Lieu”), Ca Mau Seafood Joint Stock Company (“Seaprimexco Vietnam”), Cadovimex Seafood Import-Export and Processing Joint-Stock Company (“Cadovimex-Vietnam”), Cafatex Fishery Joint Stock Corporation (“Cafatex Corp”), Camau Frozen Seafood Processing Import Export Corporation (“Camimex”), Camau Seafood Processing and Service Joint Stock Company (“CASES”), Can Tho Import Export Fishery Limited Company (“CAFISH”), Coastal Fisheries Development Corporation (“COFIDEC”), C.P. Vietnam Livestock Corporation (“C.P. Vietnam”), Cuulong Seaproducts Company (“Cuulong Seapro”), Danang Seaproducts Import Export Corporation (and its affiliate, Tho Quang Seafood Processing and Export Company) (collectively “Seaprodex Danang”), Investment Commerce Fisheries Corporation (“Incomfish Corp”), Kim Anh Company Limited (“Kim Anh”), Minh Hai Export Frozen Seafood Processing Joint Stock Company (“Minh Hai Jostoco”), Minh Hai Joint-Stock Seafoods Processing Company (“Seaprodes Minh Hai”), Nha Trang Fisheries Joint Stock Company (“Nha Trang Fisco”), Nha Trang Seaproduct Company and its affiliates, NT Seafoods Corporation, Nhatrang Seafoods-F.89 Joint Stock Company, and NTSF Seafoods Joint Stock Company (collectively, “Nha Trang Seafoods”), Phu Cuong Jostoco Seafood Processing Corporation aka Phu Cuong Seafood Processing & Import-Export Co., Ltd. (“Phu Cuong Jostoco”), Phuong Nam Foodstuff Corp. (“Phuong Nam”), Sao Ta Foods Joint Stock Company (“FIMEX VN”), and its factory “Sao Ta Seafoods Factory”), 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.”), UTXI Aquatic Products Processing Corporation (“UTXICO”) (and its branch Hoang Phuong Seafood Factory), Viet Foods Co., Ltd., Vietnam Clean Seafood Corporation (“VinaCleanfood”), Viet 1-Mei Frozen Foods Co., Ltd. (“Viet 1-Mei”).

<sup>9</sup> “Tails” in this context means the tail fan, which includes the telson and the uropods.

shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of the order. In addition, food preparations, which are not “prepared meals,” that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of the order.

Excluded from the scope are: 1) breaded shrimp and prawns (HTS subheading 1605.20.10.20); 2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; 3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.00.20 and 0306.23.00.40); 4) shrimp and prawns in prepared meals (HTS subheading 1605.20.05.10); 5) dried shrimp and prawns; 6) canned warmwater shrimp and prawns (HTS subheading 1605.20.10.40); and 7) certain battered shrimp. Battered shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (“IQF”) freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by these orders are currently classified under the following HTS subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. These HTS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.<sup>10</sup>

## **DISCUSSION OF THE ISSUES**

### **General Issues**

#### **Comment 1: Surrogate Country**

##### **MPG Case Brief:**

- The Department should continue to use Bangladesh as the surrogate country for the final results because it meets all of the Department’s surrogate country criteria.

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<sup>10</sup> On April 26, 2011, the Department amended the order to include dusted shrimp, pursuant to the U.S. Court of International Trade (“CIT”) decision in Ad Hoc Shrimp Trade Action Committee v. United States, 703 F. Supp. 2d 1330 (CIT 2010) and the U.S. International Trade Commission (“ITC”) determination, which found the domestic like product to include dusted shrimp. See Certain Frozen Warmwater Shrimp from Brazil, India, the People’s Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision, 76 FR 23277 (April 26, 2011); see also Ad Hoc Shrimp Trade Action Committee v. United States, 703 F. Supp. 2d 1330 (CIT 2010) and Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam (Investigation Nos. 731-TA-1063, 1064, 1066-1068 (Review), USITC Publication 4221, March 2011).

- There is no other country which meets the surrogate country criteria.
  - Besides Bangladesh, the Department only has usable surrogate value (“SV”) information for India and Indonesia. However, Indonesia was not among the countries the Department determined to have comparable per capita gross national incomes (“GNIs”) and to be at a comparable level of economic development as Vietnam.
  - The Department’s exclusion of Indonesia from the list of countries at comparable levels of economic development as Vietnam, renders Indonesia a less attractive surrogate country than Bangladesh.
  - While Indonesia has been designated as the primary surrogate country in other proceedings involving Vietnam, this designation has usually been in circumstances where 1) there was a clear superiority of the available Indonesian data and 2) the Department designated Indonesia as being at a comparable level of economic development.
- The vast majority of the normal value (“NV”) for frozen warmwater shrimp is derived from the SV for shrimp and the financial ratios of market economy (“ME”) producers of the subject merchandise.
- The effect of other factors of production (“FOPs”) on the NV is marginal when compared with shrimp and the financial ratios. While other input and consumable values may affect the NV, an erroneous shrimp or financial ratio value can completely distort the NV used in the comparison with export prices (“EPs”).
- With respect to data: 1) the data for Bangladesh are clearly equal to or better than the data for Indonesia; when the Department used Indonesia as a surrogate country in the past it still had to rely on a Bangladesh shrimp producer, Gemini Sea Food Limited’s (“Gemini”), for its surrogate financial ratios.

**Stapimex and SR Respondents’ Case Brief:**

- The Department should use Indonesia as the primary surrogate country, supplemented by Bangladeshi values, as done in the prior review because the data quality and availability issues with Bangladesh and analogous to the issues in Fish Fillets AR9.<sup>11</sup>
- Indonesia provides the best SV data and meets the statutory requirement that the Department value FOPs based on the best information available. In the preceding review, the Department found Indonesia to provide the best product-specific and case-specific information. Additionally, the Department found that the data from Indonesia were publicly available, tax and duty exclusive and the data were representative of a broad market average because the NACA<sup>12</sup> raw shrimp prices are country-wide.
- In the preceding review, the Department switched from using Bangladesh as the primary surrogate country to using Indonesia because Indonesia met all the surrogate country criteria (economic comparability, significant producer of comparable merchandise, and data availability).
  - The Department found the Indonesia data to be superior because they provide specific data regarding raw vannamei and black tiger shrimp.

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<sup>11</sup> See Stapimex/SR Respondents Case Brief at 3, citing to Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2011-2012, 79 FR 19053 (April 7, 2014) (“Fish Fillets AR9”).

<sup>12</sup> Network of Aquaculture Centres in the Asia-Pacific (“NACA”)

- The Indonesia data provide prices for multiple count sizes of both species, whereas the Bangladeshi data only provide prices for multiple count sizes of black tiger shrimp.
- Indonesian import values for all of the other raw materials were available for the POR whereas the Bangladeshi import values date back to 2007. As a result, the Department found that “Indonesian data for these inputs are more specific to the inputs used by the companies under review and provide the best source to value black tiger and vannamei shrimp.”<sup>13</sup>
- While the Department’s Surrogate Country list in this review did not include Indonesia, the recent Fish Fillets AR9 final results shows that the Department may select a country not on the surrogate country list as a primary surrogate country because it met all the surrogate country criteria, including sufficient economic comparability, and was ultimately preferable to Bangladesh due to data quality issues.

**Quoc Viet Case Brief:**

- The Department should use Indonesia as the primary surrogate country for valuing FOPs because: 1) Indonesia is at a level of economic development comparable to Vietnam and is a significant producer of identical merchandise; 2) there are Indonesian SVs for all of the primary FOPs to be valued in this administrative review; 3) the Department selected Indonesia as the primary surrogate country in Vietnam Shrimp AR7; 4) the Department is not limited to selecting primary surrogate countries from those on the list because data considerations may warrant the selection of a country not on the list; 5) the data considerations weigh in favor of Indonesia’s selection over any of the countries that were initially identified; and 6) the Department’s Preliminary Results already acknowledged that Indonesia is economically comparable to Vietnam through the reliance on prices from Indonesia to value shrimp scrap.
- The Department’s reliance on the Bangladeshi NACA study for valuing the shrimp raw material factors results in far less accurate AD margins than if the Department used the raw shrimp information available from Indonesia because the NACA data for Bangladesh reflect prices only for black tiger shrimp.
- Because Stapimex and MPG sold both vannamei and black tiger shrimp during the POR, the use of the NACA Bangladeshi black tiger shrimp values in the Preliminary Results resulted in a disconnect when those black tiger values were assigned to black tiger as well as to white vannamei shrimp material factors.
- The Indonesian NACA study includes Indonesian prices for both black tiger and vannamei shrimp raw material, which are more specific because they provide SVs for vannamei shrimp raw material while the Bangladeshi data do not, as the Department determined in the previous administrative review.

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<sup>13</sup> See Stapimex/SR Respondents Case Brief at 2, citing to Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2011-2012, 78 FR 56211 (September 12, 2013) (“Vietnam Shrimp AR7”).

- The relative specificity of competing data sources has always been the key consideration when making surrogate country selection decisions.<sup>14</sup>
- In this review, the relative specificity of the data from Indonesia and Bangladesh turns on the species of the shrimp itself, as identified in the control number (“CONNUM”) characteristic. The Department must carefully consider which of the available data will enable it to assign CONNUM-specific SVs, as it did when rejecting Indian shrimp SVs based on the lack of count size specificity.
- Vannamei surrogate prices are more specific surrogates for vannamei FOPs than are black tiger surrogate prices. And because the SVs are more specific, they are presumed to be more accurate.
- The Indonesia data provide surrogate prices for both vannamei and black tiger shrimp and therefore result in more accurate valuations of respondents’ factors is evident from the reasoning and administrative precedent discussed above.

### **MPG Rebuttal Brief:**

- The Department should not depart from the List of Surrogate countries without a compelling reason.
  - The Department’s policy is to designate early in the proceeding those countries which it considers at the same level of economic development as the country subject to the non-market economy (“NME”) methodology to narrow the field of potential surrogate countries to a manageable number.
  - The appropriate time to seek to include an additional country in the consideration of surrogate countries is the time at which surrogate country comments are due, which was not done in the instant review and SVs were not put on the record for Indonesia until after the Preliminary Results.
  - Departure from the Surrogate Country List should only be done in situations in which none of the countries which have been designated as surrogate countries have adequate useable data.
  - To consider Indonesia after the Preliminary Results and after the opportunity to comment on the Department’s Surrogate Country List defeats the purpose of the process established for determining the universe of countries to be considered.
- There is no evidence on the record that Indonesia is at a comparable level of development as Vietnam.
  - Stapimex acknowledged that “Indonesia is not at the same level of economic development as Vietnam.”<sup>15</sup> Thus, on its face Indonesia does not meet the test of economic comparability required under the law, 19 U.S.C. 1677b(c)(4), and, therefore, cannot be used as the primary surrogate country as a matter of law.
  - While the per capita GNI of Indonesia is not on the record of this proceeding, it is clear that Indonesia’s per capita GNI is well beyond the range which could reasonably be

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<sup>14</sup> Quoc Viet cites to PRC Hangers, wherein the surrogate country selection decision “hinged, in large part on the whether the carbon content of the competing surrogate value for wire rod most closely matched the carbon content of the wire rod consumed by the respondent.” See Quoc Viet Case Brief at 5, citing to Steel Wire Garment Hangers From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 2010–2011, 78 FR 28803 (May 16, 2013) (“PRC Hangers 2013”) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>15</sup> See Stapimex/SR Respondents Case Brief at 3, citing to Fish Fillets AR9.

- considered to be comparable to Vietnam's. Stretching the range of economic comparability to this level effectively undermines the economic comparability test and, therefore, the relevant provision of the statute.
- It is irrelevant whether the Indonesia data are better than the Bangladesh data because Stapimex provided no reason why the huge disparity in the level of economic development between Indonesia and Vietnam should override the use of Bangladesh as the primary surrogate country.
  - The Court of International Trade ("CIT") made it clear that relative GNI differences must be considered when determining which surrogate country to use.<sup>16</sup>
    - Even if Indonesia could be deemed to be economically comparable to Vietnam, the Department must consider whether the discrepancy in the level of economic development between Vietnam and Indonesia overrides relatively minor differences in the quality of data available from Bangladesh compared with Indonesia.
    - Given the enormous discrepancy between the per capita GNI of the two countries it would appear to be arbitrary and unreasonable to use Indonesia unless the data from Bangladesh were unusable. Since the Department used Bangladesh in the Preliminary Results, the data from Bangladesh is clearly usable.
    - Notwithstanding the fact that Indonesia is not economically comparable to Vietnam, the quality of the data from Indonesia is only marginally better than the quality of the data from Bangladesh; but, because Indonesia has not been recognized by the Department as being economically comparable, it is not necessary or even appropriate to analyze the relative quality of the data of the two countries.
  - With respect to FOP data:
    - Differences in shrimp values between Indonesian data and Bangladeshi data are easily overcome because the shrimp prices in both Bangladesh and Indonesia are equally contemporaneous and are derived from the same source.
    - The absence of vannamei prices in Bangladesh does not make the data unusable and is not dispositive of the issue. The fact that there are no black tiger prices from Bangladesh has not prevented the Department from using Bangladesh in the past, nor should it in this review.
    - There is only one set of usable financial statements on the record of this review and it is a set of financial statements from a Bangladeshi shrimp producer. Bangladesh's lack of vannamei prices can be remedied. However, the lack of usable financial statements for Indonesia renders Indonesia unusable and the quality of the data from Bangladesh superior.
    - The fact that the Bangladesh values are less contemporaneous than the Indonesian values does not justify using a country that is not at a comparable level of economic development as the primary surrogate country.
    - Non-shrimp FOPs are relatively minor compared to raw shrimp and financial ratios. Since these FOPs have a relatively small impact on the NV, the fact that they are not contemporaneous will have a marginal impact on the NV.

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<sup>16</sup> MPG notes the CIT has stated that "Commerce's policy of disregarding relative GNI differences among potential surrogates for whom quality data is available and who are significant producers of comparable merchandise is not reasonable, because it arbitrarily discounts the value of economic comparability relative to the remaining eligibility criteria." See MPG Rebuttal Brief at 4 citing to Ad Hoc Shrimp Trade Action Comm. v. United States, 882 F.Supp.2d 1366, 1374 (CIT 2012).

- There are no apparent anomalies created by inflating the non-contemporaneous Bangladeshi non-shrimp SVs.

### **Quoc Viet Rebuttal Brief:**

- MPG’s arguments promoting Bangladesh as a better alternative to Indonesia are incorrect. MPG is mistaken that there is not a clear superiority of the Indonesian data available in comparison to the data available from Bangladesh. Based on the totality of circumstances, the best available information for valuing the FOPs in this review are Indonesian SVs, and the Department therefore must select Indonesia as the primary surrogate country for the final results.
- As in Vietnam Shrimp AR7, the Department should continue to use Gemini as the basis for calculating surrogate financial ratios even where Indonesia is selected as the primary surrogate country. The Department should follow its approach from Vietnam Shrimp AR7 because the Indonesian data offer superior data for valuing the main FOP.
  - When comparing the Indonesia and Bangladesh data, the evidence shows that use of the Indonesian data would result in more product-specific calculations, and thus more accurate calculations.
  - In the fifth administrative review of shrimp from the People’s Republic of China (“PRC”), data considerations were the paramount indicators of superior (and inferior) potential surrogate countries on the basis of shrimp species distinction. The circumstances in that case support the selection of Indonesia as the primary surrogate country in this review where: (1) the Department knows that the respondents all produce/sell both black tiger and vannamei shrimp; (2) shrimp species is a CONNUM characteristic; (3) shrimp species has an impact on selling prices; (4) both black tiger and vannamei SVs are available in Indonesia; and (5) there is no SV for vannamei shrimp available in Bangladesh.

### **Stapimex and SR Respondents’ Rebuttal Brief:**

- Indonesian data are superior to Bangladeshi data in this case because the Indonesian prices reported in the NACA study cover both species of shrimp (black tiger and vannamei) sold by the mandatory respondents, while NACA provides Bangladeshi values for only black tiger shrimp.
  - The species distinction has become increasingly important for the Vietnamese shrimp industry, where a majority of the shrimp that both mandatory respondents sold to the United States during the POR was of the vannamei species.
  - Given that vannamei shrimp has become the dominant product sold to the United States, Indonesia is clearly the better choice as it provides SVs for both species of shrimp.
  - The Indonesian shrimp prices and the mandatory respondents’ finished goods selling prices show that black tiger shrimp sells for a higher price than vannamei shrimp by count size comparison.
  - Respondents’ dumping margins would be more accurate if their U.S. sales of white shrimp were compared to a NV that incorporated a vannamei shrimp value rather than black tiger shrimp values.
  - To ignore this distinction in species when data are available to value each species violates the requirement to calculate accurate dumping margins. This was a major contributing reason leading the Department to choose Indonesian data in the prior review.

- If the Department maintains Bangladesh as the surrogate country, it must account for the difference in species value because the raw material shrimp SV is critical to the calculation of NV. In the event the Department decides to maintain Bangladesh as the primary surrogate country, it should take advantage of the fact that the NACA study contains Indonesian prices for white shrimp.
- As in Fish Fillets AR9, because the non-exhaustive list is only a starting point for the surrogate country selection process, the Department also considers other countries at the same level of economic development that interested parties propose, as well as other countries that are not at the same level of economic development as the NME country, but nevertheless still at a level comparable to that of the NME country, such as Indonesia in this review. The latter countries are considered when data or significant producer considerations potentially outweigh the fact that these countries are not at the same level of economic development as the NME country.

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

The Department disagrees with Stapimex, the SR Respondents, and Quoc Viet with respect to our selection of a surrogate country. In the Preliminary Results, the Department stated that “in accordance with section 773(c)(4) of the {Tariff Act of 1930, as amended (“the Act”)}, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.”<sup>17</sup> The Department issued a memorandum in which it determined that Bangladesh, Bolivia, India, Nicaragua, Pakistan, and the Philippines are countries that have a per capita GNI comparable to Vietnam in terms of economic development.<sup>18</sup> Based on the information contained in the Surrogate Country Memo, interested parties provided comments regarding the Department's selection of the surrogate country.

### Level of Economic Comparability

The Department fulfills the statutory requirement to value FOPs, to the extent possible, by using data from “one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country.”<sup>19</sup> Section 773(c)(4)(A) of the Act is silent with respect to how or on what basis the Department may determine that a country is at a level of economic development comparable to the NME country. However, 19 CFR 351.408(b) state that, in making this determination, the Department will place primary emphasis on per capita gross domestic product as the measure of economic comparability. It is the Department's long-standing practice to identify countries at the same level of economic development as an NME country, on the basis of per capita GNI data reported in the World Bank's World

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<sup>17</sup> See Preliminary Results, and accompanying Preliminary Decision Memorandum at 11; see also Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (“Policy Bulletin”).

<sup>18</sup> See Department's Letter to All Interested Parties, “Eighth Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Surrogate Country List,” dated July 2, 2013 (“Surrogate Country Memo”).

<sup>19</sup> See section 773(c)(4) of the Act.

Development Report.<sup>20</sup> In this case, the GNI data published in 2013 was based on data from the year 2011.<sup>21</sup> As explained in our Surrogate Country Memo, on the basis of GNI, the Department considers Bangladesh, Bolivia, India, Nicaragua, Pakistan, and the Philippines all to be at a level of economic development comparable to Vietnam for surrogate country-selection purposes.<sup>22</sup> The annual GNI levels for the list of potential surrogate countries ranged from US\$ 780 to US\$ 2,210.

The parties that argue that the Department should select Indonesia as the surrogate country for the final results cite to recent determinations where the Department selected primary surrogate countries that were not on the list generated by the Department as potential surrogate countries, but were deemed to be at a level of economic development comparable to the NME country (*i.e.*, Fish Fillets AR9 and Plywood). However, there are several factors that differentiate this case from Fish Fillets AR9 and Plywood. First, there is no substantiated evidence on this record that Indonesia is at a level of economic development comparable to that of Vietnam. While MPG made some arguments regarding Indonesia's GNI in its rebuttal brief, in which it opposed the use of Indonesia, these arguments were unsubstantiated by any record evidence that we can rely upon in evaluating whether Indonesia is at a level of economic development comparable to Vietnam.<sup>23</sup> Apart from MPG's rebuttal brief's reference to an unsubstantiated figure alleged to be Indonesia's GNI, no interested party supplemented the administrative record by including any official GNI data from the World Bank, which is public data available to all interested parties.

Moreover, in Fish Fillets AR9, the Department went beyond its issued Surrogate Country List and selected a country found to be at a different, although still comparable, level of economic development as Vietnam due to severe data quality issues with the alternative sources on that record.<sup>24</sup> Specifically, in Fish Fillets AR9, the Department departed from its Surrogate Country List most importantly because the Bangladeshi data for the main input, whole, live *pangasius* fish, did not satisfy the Department's SV data criteria. As explained in Fish Fillets AR9, the Department's policy is that, if more than one country satisfies the level of economic development and significant producer criteria for surrogate country selection purposes, "then the country with the best factors data is selected as the primary surrogate country."<sup>25</sup> Importantly, the Policy Bulletin explains that "data quality is a critical consideration affecting surrogate country selection" and that "a country that perfectly meets the requirements of economic comparability and significant producer is not of much use as a primary surrogate if crucial factor

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<sup>20</sup> See, e.g., Hardwood and Decorative Plywood From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 58273 (September 23, 2013) ("Plywood") and accompanying Issues and Decision Memorandum at Comment 7; see also Pure Magnesium from the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review of the Antidumping Duty Order, 75 FR 80791 (December 23, 2010) and accompanying Issues and Decision Memorandum at Comment 4.

<sup>21</sup> See Surrogate Country Memo.

<sup>22</sup> *Id.*, and Preliminary Results, and accompanying Preliminary Decision Memorandum at 12.

<sup>23</sup> See MPG Rebuttal Brief at 3, wherein MPG provided an alleged GNI figure for Indonesia, which was not supported by any evidentiary documentation or sources.

<sup>24</sup> See Stapimex/SR Respondents Case Brief at 3 citing to Fish Fillets AR9, where they stated that "the Department said that 'data concerns related to the primary input of the subject merchandise – whole live fish – support the Department's determination to select Indonesia as the primary surrogate country because these data considerations outweigh the fact that Indonesia is not at the same level of economic development as Vietnam.'"

<sup>25</sup> See Fish Fillets AR9 at Comment 1A; see also Policy Bulletin.

price data from that country are inadequate or unavailable.”<sup>26</sup> Unlike Fish Fillets AR9, where we stated that the quality of the Bangladeshi data were grossly inadequate,<sup>27</sup> here Bangladeshi data for the main input, raw shrimp, which represents the broad market average with count size data points covering the vast majority of respondents’ reported count sizes, are indeed usable, adequate and available. As a result, we determined that Bangladesh is the most appropriate surrogate country because it satisfied all the criteria required under section 773(c)(4) of the Act. Accordingly, there was no reason for the Department to seek other information to supplement the record in search of another country that would satisfy the statutory criteria.<sup>28</sup>

This case also differs from Plywood because the record in Plywood contained GNI data for the ultimate surrogate country selected, Bulgaria and, thus, the Department was able to examine the appropriateness of selecting Bulgaria and found it to be at the same level of economic comparability as the PRC, based on Bulgaria’s GNI.<sup>29</sup> In both respective cases, the Department examined GNI data of the proposed surrogates in comparison with the NME country. This circumstance does not exist here, because substantiated evidence of Indonesia’s GNI data is absent from the record. None of the parties that argue in favor of using Indonesia placed substantiated evidence concerning Indonesia’s GNI on the record.

Moreover, we find Stapimex’s argument unavailing with respect to departing from the Surrogate Country List here because the PORs in Fish Fillets AR9 and the instant review overlap. As we stated in Fish Fillets AR9, our practice is to “treat each segment of an antidumping proceeding as independent proceedings with separate records which lead to independent determinations.”<sup>30</sup> First, the Department generates a Surrogate Country List for each case, even if the source data are from the same year. In this case, both the product at issue and the GNI data for the countries on the Surrogate Country List in this case are different from those in Fish Fillets AR9.<sup>31</sup> That fact, in and of itself, indicates that it is inappropriate to draw any conclusions for this case regarding the level of economic development analysis performed in Fish Fillets AR9. As we stated in Fish Fillets AR9, “neither the statute nor the Department’s surrogate country selection criteria include, or consider, whether countries have been selected in previous and unrelated proceedings.”<sup>32</sup>

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<sup>26</sup> Id.

<sup>27</sup> See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results of the Antidumping Duty Administrative Review and New Shipper Review; 2011–2012, 78 FR 55676 (September 11, 2013) and accompanying Preliminary Decision Memorandum at 18, unchanged in Fish Fillets AR9.

<sup>28</sup> We have stated that we can depart from the Surrogate Country List if we find that none of the countries in the list are significant producers or if there are issues regarding the availability of SVs from the countries on the list. See, e.g., Fresh Garlic From the People’s Republic of China: Preliminary Results and Partial Rescission of the 18th Antidumping Duty Administrative Review; 2011–2012, 78 FR 77653 (December 24, 2013) and accompanying Preliminary Decision Memorandum, unchanged in Fresh Garlic From the People’s Republic of China: Final Results and Partial Rescission of the 18th Antidumping Duty Administrative Review; 2011–2012, 79 FR 36721 (June 30, 2014) (“Garlic 2014”).

<sup>29</sup> See Plywood at Comment 7.

<sup>30</sup> See Fish Fillets AR9 at Comment 1A.

<sup>31</sup> Id., page 4, where the GNIs identified for Bangladesh (USD\$ 770) and Vietnam (USD\$ 1260), for example, differ from the GNIs on the Surrogate Country List in this case.

<sup>32</sup> Id.

Further, because each segment of an administrative proceeding stands on its own and has its own factual record and arguments, we have not considered decisions in past segments of this proceeding in considering whether Indonesia is at a level of economic development comparable to Vietnam in this review.<sup>33</sup> Although parties correctly note that we selected Indonesia as the primary surrogate country in Vietnam Shrimp AR7, we did so based on examination and analysis of evidence and the Surrogate Country List on the record of that particular administrative segment, which included GNI data for both Indonesia and Bangladesh for that POR—both of which provided usable data in that segment.

We recently stated in PRC Hangers 2014, that “unless we find that all of the countries determined to be at the same level of economic development as the PRC are not significant producers of comparable merchandise, are not reliable sources of publicly-available SV data, are not suitable for use based on other reasons, or we find that another country not on the surrogate country list is at a comparable level of economic development and is an appropriate surrogate, we will rely on data from one of these countries.”<sup>34</sup> However, here, we determined that Bangladesh fulfills the surrogate country selection criteria; thus, we have selected Bangladesh as the primary surrogate country. The standard we established in Fish Fillets AR9 is that:

Because the non-exhaustive list is only a starting point for the surrogate country selection process, the Department also considers other countries at the same level of economic development that interested parties propose, as well as other countries that are not at the same level of economic development as the NME country, but nevertheless still at a level comparable to that of the NME country, such as Indonesia in this review. The latter countries are considered when data or significant producer considerations potentially outweigh the fact that these countries are not at the same level of economic development as the NME country.<sup>35</sup>

However, unlike the circumstances in Fish Fillets AR9, here, the Bangladesh data meets those criteria. Specifically, in this case the Bangladesh data does not suffer from the data quality issues as it had in Fish Fillets AR9. Moreover, the record of this case does not contain substantiated evidence regarding Indonesia’s GNI that would enable us to make a finding that Indonesia was at a level of economic development comparable to Vietnam during this POR. As we discuss below, for this POR and in this proceeding, data from Bangladesh is superior to that of Indonesia.

### Significant Producer of Comparable or Identical Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. As we stated in the Preliminary

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<sup>33</sup> Id.

<sup>34</sup> See PRC Hangers 2014, and accompanying Issues and Decision Memorandum at Comment 1; see also Garlic 2014, and accompanying Issues and Decision Memorandum at Comment 1 where we stated that “we will only depart from the SC list and choose a country not on the list, if we find that none of the countries on the list are significant producers or if there are issues regarding the reliability, availability, and quality of data from the countries on the list.”

<sup>35</sup> See Fish Fillets AR9, and accompanying Issues and Decision Memorandum at Comment 1A.

Results, based on information from the Food and Agriculture Organization of the United Nations Fisheries Statistics (“UN FAO”), we determined that, of the six countries on the Surrogate Country List, only Bangladesh, India, Nicaragua, Pakistan and the Philippines report significant production of shrimp.<sup>36</sup> While, the UN FAO data on the record does not contain any production data for Indonesia, the NACA study on the record indicates that Indonesia is an apparent significant producer of comparable merchandise.<sup>37</sup>

### Data Considerations

In evaluating data availability, the Department’s practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, SVs which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR and exclusive of taxes and duties.<sup>38</sup> As a general matter, the Department prefers to use publicly available data representing a broad-market average to value SVs.<sup>39</sup> We also stated that:

the value of the main input, head-on, shell-on shrimp, is a critical FOP in the dumping calculation as it accounts for a significant percentage of NV. Moreover, the ability to value shrimp on a count-size basis is a significant consideration with respect to the data available on the record, as the subject merchandise and the raw shrimp input are both sold on a count-size specific basis. For these reasons, in prior administrative reviews, the Department rejected shrimp SVs with limited count sizes.<sup>40</sup>

Prior to the Preliminary Results, we reviewed data availability with respect to Bangladesh, India, Nicaragua, Pakistan and the Philippines because we determined these countries to be at the same level of economic comparability as Vietnam and they are significant producers of comparable merchandise. We concluded that, because there was no usable data or surrogate financial statements for Nicaragua, Pakistan, and the Philippines, they were disqualified from consideration as primary surrogate countries. Consequently, the Department only evaluated the data from India and Bangladesh. We subsequently disqualified India because the Indian data on the record did not provide price data points for a sufficient range of shrimp count sizes compared to the pricing data of the large range of count sizes that the Bangladeshi NACA data provide.<sup>41</sup> No parties make an argument that this determination should be set aside. Consequently, we valued the main input, shrimp, using the Bangladeshi NACA study, which has been a reliable source for the vast majority of administrative reviews of this AD order.

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<sup>36</sup> See Preliminary Results, and accompanying Preliminary Decision Memorandum, at 13, citing to Stapimex and MPG Surrogate Country Comments dated August 30, 2013, at Exhibit 1.

<sup>37</sup> See Stapimex and MPG SV Comments dated October 28, 2013, at SV-2.

<sup>38</sup> Id., at 14, citing to Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of the Eleventh Administrative Review and New Shipper Reviews, 72 FR 34438 (June 22, 2007) and accompanying Issues and Decision Memorandum at Comment 2A.

<sup>39</sup> See Preliminary Results, and accompanying Preliminary Decision Memorandum at 14.

<sup>40</sup> Id.

<sup>41</sup> Id., at 14-15.

After the Preliminary Results, we also examined the Indonesian data submitted by interested parties and addressed their data quality arguments in support of selecting Indonesia as the primary surrogate country. Despite finding the lack of evidence on this administrative record to conclude that Indonesia is at the same level of economic development compared to Vietnam, we examined the Indonesian data based on interested parties' arguments that Indonesian data are superior to the Bangladeshi data.

The parties arguing in favor of Indonesian data contend that shrimp species specificity is the paramount factor in using the Indonesian NACA data over the Bangladeshi NACA data. Specifically, they argue that Indonesia should be the primary surrogate country because the NACA data for Indonesia provides SV data for both black tiger and vannamei shrimp, both of which are produced and sold by the mandatory respondents. Using shrimp species specific data could be beneficial, if all other factors are equal. However, we disagree that species specificity alone renders Indonesian NACA data superior to the Bangladeshi NACA data, because other factors favor the use of Bangladeshi data. Accordingly, we do not rest our determination on a single sub-factor relevant to the data at issue, but rather examined each set of data.

As we stated in the Preliminary Results, the relatively limited availability of prices for a broad range of count sizes was the reason in disqualifying India as a potential surrogate country.<sup>42</sup> After having closely reviewed the Indonesian NACA data, we find that it also suffers from a similar concern, albeit to a somewhat lesser degree. Indonesian NACA data for both species lack prices for the broad range of count sizes. Specifically, it has data for four count sizes of black tiger and three count sizes of vannamei. In contrast, Bangladesh data has five count sizes for black tiger but no count size data for vannamei. While the Bangladeshi NACA data may lack vannamei shrimp prices, we examined the record data to evaluate the relative importance of reported count sizes vis a vis species. What the data show that: 1) a large portion of both respondents' sales are for the larger count sizes which the Indonesian data lacks for both species; 2) the Bangladeshi NACA data covers the vast majority of both respondents' count sizes; 3) contrary to Stapimex's argument, both respondents sold roughly equal quantities of black tiger shrimp and vannamei shrimp during the POR; 4) shrimp is, by far, the largest component of the NV for both respondents, and 5) a large percentage of both respondents' count sizes would not be covered by Indonesian NACA data.<sup>43</sup>

Furthermore, we note that, like shrimp species, shrimp count size is also part of the CONNUM. Stapimex, the SR Respondents, and Quoc Viet emphasize the importance of species without addressing the importance of count size variations. Both respondents report up to 15 count sizes for while reporting only two species of shrimp, which emphasizes the relative quantity of data points required to satisfy the valuation of a broad range of respondents' reported shrimp count

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<sup>42</sup> Id., at 14.

<sup>43</sup> See Memorandum to the File, through Catherine Bertrand, Program Manager, Office V, from Irene Gorelik, Senior Analyst, Office V, re: "Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Analysis for the Final Results for Minh Phu Group," dated concurrently with this memorandum ("MPG's Final Analysis Memo"); see also, Memorandum to the File, through Catherine Bertrand, Program Manager, Office V, from Bob Palmer, Senior Analyst, Office V, re: "Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Analysis for the Final Results for Soc Trang Seafood Joint Stock Company," dated concurrently with this memorandum ("Stapimex Final Analysis Memo"). A broader explanation is provided within the respondents' respective proprietary analysis memoranda.

sizes over the number of species sold.<sup>44</sup> Furthermore, the CIT affirmed our placement of great weight on count size stating that “because the count size of shrimp is unquestionably an important consideration, Commerce reasonably placed more weight on its specificity criterion than on its four other criteria.”<sup>45</sup> Moreover, the NACA study itself reports the importance of shrimp size in pricing, stating that “shrimp price depends on the size and seasonal crop, and has tended to increase rapidly...especially for bigger sizes for both {black tiger and vannamei}.”<sup>46</sup> The Indonesia NACA data lack prices for the largest count sizes of both species and also lack prices for the second largest count size of vannamei. Specifically, we note that both the Bangladeshi and Indonesian NACA data do not contain prices for count sizes over 100 pieces per kilogram, regardless of species. This requires the Department to derive prices for those count sizes from the existing NACA data. Therefore, for count sizes over 100 pieces per kilogram, both sets of data are equivalent.

However, we note that the Indonesian NACA data also lack prices for other count sizes as well, specifically, the largest shrimp count sizes.<sup>47</sup> Overall, the Indonesian NACA data account for only four count sizes of black tiger shrimp and three count sizes of vannamei shrimp. Using this data would therefore require even more adjustment than required for the Bangladeshi data to match to the mandatory respondents’ numerous count size ranges of shrimp input.<sup>48</sup> In terms of actual data analysis, the Indonesian black tiger prices cover about 85 percent of respondents’ reported count sizes, while the vannamei prices cover only between 49 percent and 57 percent of respondents’ reported count sizes.<sup>49</sup> Conversely, while the Bangladeshi NACA data may lack vannamei prices, it provides prices that cover over 94 percent of count sizes of black tiger shrimp reported by both respondents.<sup>50</sup> Thus, the fact that the Indonesian NACA data contain prices for both species is counterbalanced by the fact that they lack prices with respect to certain count sizes as compared to the Bangladeshi NACA data.

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<sup>44</sup> In the underlying investigation, after receiving comment from interested parties, the Department specifically placed count size as the third physical characteristic out of 14 total physical characteristics. By contrast, the Department placed species as the second to last physical characteristic. The relative placement of species is a clear indication of the relative importance of count sizes. See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the People’s Republic of China, 69 FR 42654, 42662 (July 16, 2004) unchanged in 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).

<sup>45</sup> See Allied Pacific Food (Dalian) Co. Ltd., v. United States, 716 F. Supp. 2d 1339, 1344-1345 (CIT 2010).

<sup>46</sup> See NACA study at page 3 contained within Stapimex and MPG SV Comments dated October 28, 2013, at SV-2,

<sup>47</sup> The Bangladeshi NACA data provides prices for five black tiger count sizes: Under 20 pcs/kg, 21-30 pcs/kg, 31-44 pcs/kg, 45-66 pcs/kg, and 67-100 pcs/kg. See “Memorandum to Catherine Bertrand, Program Manager, from Irene Gorelik, Analyst re; Eighth Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results,” dated March 17, 2014 (“Prelim SV Memo”), at Exhibit 4. However, the Indonesian NACA data provides prices for only four black tiger prices: 21-30 pcs/kg, 31-44 pcs/kg, 45-66 pcs/kg, and 67-100 pcs/kg. Moreover, the Indonesia NACA data provides even less data points for vannamei count size ranges, with only three: 31-44 pcs/kg, 45-66 pcs/kg, and 67-100 pcs/kg. See MPG and Stapimex SV Comments dated October 28, 2013, at SV-2. We note that the Bangladeshi NACA data and Indonesian NACA data are equally contemporaneous, as they are from the same NACA study.

<sup>48</sup> See also Comment 3, *infra* (discussing the multi-layered extrapolation that would be required for the Indonesian data).

<sup>49</sup> See MPG Final Analysis Memo and Stapimex Final Analysis Memo, wherein we conducted an analysis of respondents’ proprietary data vis a vis the count size availability of both sets of data.

<sup>50</sup> Id.

While we agree that the NACA data for Indonesia contain pricing for both the black tiger and vannamei species, but, as explained above, this is counterbalanced by the fact that they do not contain as many count-specific prices in the black tiger shrimp category as that of the Bangladeshi data, which have a fuller array of prices for black tiger shrimp that would cover more of the respondents' reported count sizes. And as we noted earlier, black tiger shrimp accounts for roughly the same quantity as vannamei shrimp sold by both mandatory respondents. Notwithstanding the above analysis, regardless of which data are superior, the fact that we are unable to determine, on this record, whether Indonesia is or is not at the same level of economic comparability to Vietnam weighs heavily against not considering Indonesia as a candidate for primary surrogate country. We found that the Bangladeshi data are not "grossly inadequate" which, as we noted, was the case in Fish Fillets AR9.

Moreover, Indonesia lacks surrogate financial statements. In contrast, the record contains the Gemini's Bangladeshi financial statements, which we used in our preliminary calculations. The importance of reliable financial statements is crucial in this case because in this case, the financial ratios account for the second largest component of the NV.<sup>51</sup> Similarly, Indonesia lacks an SV for labor. While labor is not an extremely large component of the NV, as compared to raw shrimp or the financial ratios, it contributes more to NV than most of the remaining non-shrimp FOPs.<sup>52</sup> As a result, Stapimex's, SR Respondent's, and Quoc Viet's arguments that Indonesia GTA data provide more contemporaneous data for non-shrimp FOPs compared with the non-contemporaneous Bangladeshi non-shrimp FOPs is unavailing here. The record shows that non-shrimp FOPs are comparatively negligible (compared to shrimp, financial ratios, and labor) in the calculation of the NV.<sup>53</sup> Thus, based on the above, unlike Fish Fillets AR9, we do not find that the Bangladeshi data to be "grossly inadequate." Rather, Bangladeshi data are available, usable, and cover all FOPs except for shrimp waste (a negligible portion of the NV), provide a contemporaneous set of surrogate financial statements, and a value for labor.

Stapimex/SR Respondents and Quoc Viet also argue that Indonesia is the more appropriate choice because the Department has long relied on Indonesia for the shrimp scrap/waste SV in all prior segments. We are unconvinced by the arguments that Indonesia is superior due to our long-standing reliance on the Indonesian SV for shrimp scrap/waste. The byproduct credit of the NV calculation is minor compared to the relative weight of shrimp input and surrogate financial data in the NV calculation (and even labor). Thus, the need to rely on the scrap value from another country does not, on its face, disqualify Bangladesh as the appropriate choice of surrogate country from the Surrogate Country List in favor of departing from our practice.

The relative gain of vannamei prices from Indonesian NACA data or contemporaneous non-shrimp SVs does not overcome the fact that: 1) the record does not contain substantiated evidence of Indonesia's level of economic development; 2) Indonesian NACA data, overall, provides fewer data points for the full range of shrimp count sizes for black tiger (the primary type of shrimp sold by both respondents); 3) there are no surrogate financial statements from Indonesia, and 4) there is no Indonesian SV to value labor. As we stated before, no SV source is

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<sup>51</sup> Id.

<sup>52</sup> See MPG Final Analysis Memo and Stapimex Final Analysis Memo, wherein we conducted an analysis of respondents' proprietary data vis a vis the count size availability of both sets of data.

<sup>53</sup> Id.

perfect.<sup>54</sup> However, as we stated above, where a country on the Surrogate Country List, which has passed our three-prong test required for surrogate country selection, and provides usable data to calculate an NV, it is unnecessary to depart from our Surrogate Country List.

While parties that argue in favor of using Indonesian data contend that the Indonesia is a superior choice because we selected it as the surrogate country in Vietnam Shrimp AR7, its singular selection in the prior review should not be viewed as a rejection of Bangladesh for other segments of the proceeding. Indeed, we selected Bangladesh as the surrogate country in the underlying investigation and in every subsequent administrative review except for Vietnam Shrimp AR7, even though the data did not provide separate count specific prices for black tiger and vannamei shrimp. The fact that we relied on Indonesia as a surrogate country in one segment does not signify that we determined Indonesia to be superior to Bangladesh for all future segments. Rather, we make surrogate country selection determinations based on the information on the record of each administrative segment. Accordingly, based on the overall consideration of the statutory criteria and the quality of data, the Department finds that Bangladesh continues to be the most appropriate surrogate country from which to obtain SVs.

## **Comment 2:**

### **A. Consideration of an Alternative Comparison Method in Administrative Reviews**

#### **Quoc Viet Case Brief:**

- Section 777A (d)(1)(B) of the Act, directs the Department’s authority to use an alternative pricing methodology only in original investigations. This authority to conduct an alternative pricing analysis does not appear anywhere else in the statute.
- Congress has not given the Department the authority to conduct differential pricing analysis during administrative reviews.

#### **MPG Case Brief:**

- The statute states the Department “may determine” to use the average-to-transaction (“A-to-T”) method only under certain specific circumstances. The Department should apply the A-to-T method only when those exceptional conditions are met.<sup>55</sup>

#### **AHSTAC and ASPA Rebuttal Brief:**

- The Department should continue to use the differential pricing analysis because the Department has the statutory authority to apply the differential pricing analysis and alternative methodologies as confirmed by the CIT.<sup>56</sup>

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<sup>54</sup> See, e.g., Folding Metal Tables and Chairs from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 72 FR 71355 (December 17, 2007) and accompanying Issues and Decision Memorandum at Comment 1C, quoting Certain Preserved Mushrooms from the People’s Republic of China: Final Results of New Shipper Review, 66 FR 45006 (August 27, 2001) and accompanying Issues and Decision Memorandum, at Comment 1.

<sup>55</sup> MPG cites to section 777A(d)(1)(B) of the Act.

<sup>56</sup> See Kelco v. United States, 978 F. Supp. 2d 1315, 1320-1322 (CIT 2014) (“Kelco”) (while that case involved the Department’s Nails test, the logic applies equally to the differential pricing analysis used in this review); see also Timken Company v. United States, 968 F. Supp. 2d 1279 (CIT 2014) (noting the statute is silent as to which methodology the Department uses in reviews).

- According to the statute, the Department is not required to limit application of the A-to-T comparison to only targeted dumped sales.

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

We disagree with Quoc Viet's assertion that the Department has no authority to consider the application of an alternative comparison method based on the A-to-T method in administrative reviews. Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." By definition, a "dumping margin" requires a comparison of NV and EP or constructed export price ("CEP"). Before making the comparison required, it is necessary to determine how to make the comparison. Quoc Viet maintains that Congress made no provision in section 777A(d)(2) of the Act for the Department to apply the A-to-T method in administrative reviews. Specifically, Quoc Viet argues that because Congress only conferred power upon the Department to consider an alternative comparison method (i.e., "conduct differential pricing analyses") in investigations, the Department cannot consider an alternative comparison method in this or any other administrative review. According to Quoc Viet, "{w}here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion," citing INS v. Cardoza-Fonseca.<sup>57</sup> Regarding the Quoc Viet's argument, we note that INS v. Cardoza-Fonseca considered different sections of the Immigration and Nationality Act, in which the same Congress simultaneously drafted a new standard for one section, and amended another section in which it left the old standard intact. The Supreme Court found that the contrast between the language used in the two standards indicated that Congress intended the two standards to differ.<sup>58</sup> The Supreme Court also explained that the legislative history demonstrated the congressional intent that different standards applied between the two sections of the INA. In contrast here, there is no such explicit differing standard in section 777A of the Act.

Quoc Viet argues that the Department has no statutory authority to consider the application of an alternative comparison method in administrative reviews. Interested parties also state that Congress made no provision for the Department to apply an alternative comparison method in an administrative review under section 777A(d) of the Act. Indeed, section 777A(d)(1) of the Act applies to "Investigations" and section 777A(d)(2) of the Act applies to "Reviews." Section 777A(d)(1) of the Act discusses, for investigations, the standard comparison methods (i.e., A-to-A and transaction-to-transaction ("T-to-T")) and then provides for an alternative comparison method (i.e., A-to-T) that is an exception to the standard methods when certain criteria are met. Section 777A(d)(2) of the Act discusses, for reviews, the maximum length of time over which the Department may calculate the weighted-average NV in administrative reviews when using the A-to-T method. Section 777A(d)(2) of the Act has no provision specifying the comparison method to be employed in administrative reviews. Thus, by Quoc Viet's logic, because the statute makes no provision for comparison methods in administrative reviews, the Department

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<sup>57</sup> Quoc Viet cites INS v. Cardoza-Fonseca, 480 U.S. 421, 432 (1987) ("INS v. Cardoza-Fonseca"). Quoc Viet also argues that "{T}he Supreme Court has noted that 'an agency literally has no power to act . . . unless and until Congress confers power upon it' . . .," citing FAG Italia S.p.A. v. United States, 291 F.3d 806, 816 (CAFC 2002) (quoting La. Pub. Serv. Comm'n v. FCC, 476 U.S. 355, 374 (1986)).

<sup>58</sup> See INS v. Cardoza-Fonseca, 480 U.S. 421, 432 (1987).

has no authority to make comparisons in administrative reviews at all. Quoc Viet’s statutory interpretation leads to an absurd result. We do not agree that Congress did not give the Department the authority to use a comparison method at all in administrative reviews, with the result that the Department would not be permitted to make a comparison of NVs and EPs or CEPs in order to calculate an AD margin as described in section 771(35)(A) of the Act. We find that, contrary to the respondents’ claim, the silence of the statute with regard to application of the A-to-T comparison method in administrative reviews does not preclude the Department from applying such a practice in administrative reviews. Indeed, the Court of Appeals for the Federal Circuit (“CAFC”) stated that the “court must, as we do, defer to Commerce’s reasonable construction of its governing statute where Congress leaves a gap in the construction of the statute that the administrative agency is explicitly authorized to fill or implicitly delegates legislative authority, as evidenced by the agency’s generally conferred authority and other statutory circumstances.”<sup>59</sup> Further, the CAFC stated that this “silence has been interpreted as ‘an invitation’ for an agency administering unfair trade law to ‘perform its duties in the way it believes most suitable’ and courts will uphold these decisions {s}o long as the {agency}’s analysis does not violate any statute and is not otherwise arbitrary and capricious.”<sup>60</sup>

To fill this gap in the statute, the Department promulgated regulations to specify how comparisons between NV and EP or CEP would be made in administrative reviews. With the implementation of the Uruguay Rounds Agreements Act (“URAA”), the Department promulgated the final rule in 1997, in which 19 CFR 351.414(c)(2) stated that the Department would normally use the A-to-T comparison method in administrative reviews. In 2010, the Department published its Proposed Modification for Reviews<sup>61</sup> pursuant to section 123(g)(1) of the URAA. This proposal was in reaction to several World Trade Organization (“WTO”) Dispute Settlement Body panel reports which had found that the denial of offsets for non-dumped sales in administrative reviews to be inconsistent with the WTO obligations of the United States. When considering the proposed revisions to 19 CFR 351.414, the Department gave proper notice and opportunity to comment to all interested parties. Pursuant to section 123(g)(1)(D) of the URAA, in September 2011, the USTR submitted a report to the House Ways and Means and Senate Finance Committees which described the proposed modifications, the reasons for the modifications, and a summary of the advice which the USTR had sought and obtained from relevant private sector advisory committees pursuant to section 123(g)(1)(B) of the URAA. Also, in September 2011, pursuant to section 123(g)(1)(E) of the URAA, the USTR, working with the Department, began consultations with both congressional committees concerning the proposed contents of the final rule and the final modification. As a result of this process, the Department published the Final Modification for Reviews.<sup>62</sup> These revisions were effective for all preliminary results of review issued after April 16, 2012, as is the situation for this administrative review.

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<sup>59</sup> See United States Steel Corp. v. United States, 621 F.3d 1351, 1357 (CAFC 2010).

<sup>60</sup> See Mid Continent Nail Corp. v. United States, 712 F. Supp. 2d 1370, 1376-77 (CIT 2010), citing US. Steel Group v. United States, 96 F.3d 1352, 1362 (CAFC 1996).

<sup>61</sup> See Antidumping Proceedings: Calculation of Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings: Proposed Rule; Proposed Modification; Request for Comment, 75 FR 81533 (December 28, 2010) (“Proposed Modification for Reviews”).

<sup>62</sup> See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification, 77 FR 8101 (February 14, 2012) (“Final Modification for Reviews”).

The Department's regulations at 19 CFR 351.414 (b) (2012) describes the methods by which NV can be compared to EP and CEP in AD investigations and administrative reviews (*i.e.*, average-to-average ("A-to-A"), T-to-T, and A-to-T). These comparison methods are distinct from each other. When using T-to-T or A-to-T comparisons, a comparison is made for each export transaction to the United States. When using A-to-A comparisons, a comparison is made for each group of comparable export transactions for which the EPs, or CEPs, have been averaged together (*i.e.*, for an averaging group). The Department does not interpret the Act or the SAA to prohibit the use of the A-to-A comparison method in administrative reviews, nor does the Act or the SAA mandate the use of the A-to-T comparison method in administrative reviews; 19 CFR 351.414(c)(1) (2012) fills the gap in the statute concerning the choice of a comparison method in the context of administrative reviews. Because Congress did not specify the comparison method for administrative reviews, the Department has great discretion in selecting the appropriate comparison method in administrative reviews.

In particular, the Department determined that in both less-than-fair-value investigations and administrative reviews, the A-to-A method will be used unless the Department determines another method is appropriate in a particular case. The Department further disagrees with the companies' contention that section 751 (a)(2)(A) of the Act precludes the use of the A-to-T comparison method in administrative reviews. Section 777A(d) of the Act provides for three distinct comparison methods by which dumping margins may be calculated. Section 751(a)(2) of the Act, in contrast, makes no reference to a specific comparison method to be used in administrative reviews. Accordingly, the Department considers that any of the three comparison methods satisfies the requirements of section 751(a)(2) of the Act. Moreover, section 751(a)(2) of the Act makes no reference to either the weighted-average dumping margin or the importer-specific AD assessment rate. These particular results of review are not specifically mandated by section 751(a)(2) of the Act, but instead are features of the Department's longstanding practice in administrative reviews. Both the weighted-average dumping margin and the importer-specific AD assessment rate are the result of aggregating the comparison results obtained using one of the three comparison methods. While the calculation of these results depends on transaction-specific data, and these results are the basis for establishing cash deposit requirements at the time of entry and AD assessments at the time of liquidation, they do not involve entry-by-entry comparisons of NV with EP or CEP. The CAFC affirmed these features of the Department's practice, confirming that section 751(a)(2) of the Act does not mandate an entry-by-entry determination of dumping and ADs.<sup>63</sup> In light of the foregoing, the Department finds that it has authority to apply the A-to-T comparison method in administrative reviews.

## **B. Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Less-Than-Fair-Value Investigations**

### **MPG and Stapimex/SR Respondents' Case Briefs**

- The Department's justification for withdrawing the withdrawn regulation was inadequate and remains inadequate notwithstanding the non-application of previously withdrawn provisions governing targeted dumping in AD investigations.

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<sup>63</sup> See, e.g., Timken Co. v. United States, 354 F.3d 1334, 1341-42 (CAFC 2004), cert. denied 543 U.S. 976 (November 1, 2004); and Corus Staal BV v. DOC, 395 F.3d 1343, 1347 (CAFC 2005), cert. denied, 126 S.Ct.1023 (January 9, 2006).

- In Gold East,<sup>64</sup> the CIT found that the Withdrawn Regulation<sup>65</sup> remained operative because it had not been properly withdrawn by the Department.
- The Department must continue to apply the withdrawn regulation until it provides a reasoned analysis of why the regulation has been withdrawn.

#### **ASPA Rebuttal Brief:**

- In the Preliminary Results, the Department appropriately rejected previous arguments to apply the withdrawn regulation to this review and should continue to do so for the final results.
- Pursuant to the CIT's decision in Gold East, the Department explained that there was no need to determine whether the withdrawn regulation applies to reviews as the change in practice limiting the use of the A-to-T methodology in reviews only applied to reviews with preliminary results issued after April 16, 2012.<sup>66</sup>
- The Department explained its differential pricing analysis. For the final results, the Department should accordingly reference Kelco and its repeated use of the differential pricing analysis in recent reviews.<sup>67</sup>

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

The Department disagrees with respondents' claim that 19 CFR 351.414 (2007)<sup>68</sup> remains in effect, thereby limiting the application of the A-to-T comparison method. The 2008 Withdrawal involved a regulation which only applied in less-than-fair-value investigations and not in administrative reviews. Likewise, the Gold East Paper decision involved a less-than-fair-value investigation and not a review. Additionally, the litigation involved in Gold East Paper is not final.<sup>69</sup> Furthermore, as explained above, the Department's promulgation of a revised regulation, 19 CFR 351.414, specifically dealt with filling the gap in the statutory language regarding the selection of an appropriate comparison method in the context of administrative reviews. This process was done with proper notice and opportunity to comment, and no party could reasonably have been left with the impression that the Department would be bound by the withdrawn targeted dumping regulations, which concerned investigations, in administrative reviews. Accordingly, in this administrative review, it is unnecessary for the Department to reach the

<sup>64</sup> MPG cites Gold East (Jiangsu) Paper v. United States, 918 F. Supp. 2d at 1327-28 (CIT 2013) ("Gold East Paper").

<sup>65</sup> See Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations, 73 FR 74930, 74931 (December 10, 2008) ("2008 Withdrawal").

<sup>66</sup> ASPA cites to Non-Application of Previously Withdrawn Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations, 79 FR 22371, 22373 (April 22, 2014).

<sup>67</sup> ASPA cites to CP KelcoOY and CP Kelco US, Inc. v. United States, 978 F. Supp. 2d 1315 (CIT 2014), Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review: 2011-2012, 78 FR 70533 (November 26, 2013) ("Activated Carbon 2013") and accompanying Issues and Decision Memorandum at Comment 3; Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33351 (June 4, 2013) ("Xanthan Gum 2013") and accompanying Issues and Decision Memorandum at Comments 5 and 6, and Certain Steel Nails From the People's Republic of China Final Results of the Fourth Antidumping Duty Administrative Review, 79 FR 19316 (April 8, 2014) ("Nails 2014").

<sup>68</sup> The Department notes that 2008 Withdrawal only applied to 19 CFR 351.414(d)(5), 351.414(f), 351.414(g).

<sup>69</sup> In Baroque Timber v. United States, the CIT opined *in dicta* on the earlier CIT decision, Gold East Paper. See Baroque Timber v. United States, 925 F. Supp. 2d at 1340, n. 10. By its own statement, however, the CIT did "not reach the merits of the Plaintiff's targeted dumping challenges," so the CIT's description of the Gold East decision in that decision is of no bearing on the Department's withdrawal of its targeted dumping regulations.

issue of whether the regulation, which applied to investigations (but not administrative reviews), was properly withdrawn.

The targeted dumping regulation was properly withdrawn pursuant to the APA.<sup>70</sup> During the withdrawal process, the Department engaged the public to participate in its rulemaking process. In fact, the Department's withdrawal of its regulations in December 2008 came after two rounds of soliciting public comments on the appropriate targeted dumping analysis. The Department solicited the first round of comments in October 2007, more than one year before it withdrew the regulation, by posting a notice in the Federal Register seeking public comments on what guidelines, thresholds, and tests it should use in conducting an analysis under section 777A(d)(1)(B) of the Act.<sup>71</sup> As the notice explained, because the Department had received very few targeted dumping allegations under the regulations then in effect, it solicited comments from the public to determine how best to implement the remedy provided under the statute to address masked dumping. The notice posed specific questions, and allowed the public 30 days to submit comments. Various parties submitted comments in response to the Department's request.<sup>72</sup> After considering those comments, the Department published a proposed new methodology in May 2008 and again requested public comment.<sup>73</sup> Among other things, the Department specifically sought comments "on what standards, if any, {it} should adopt for accepting an allegation of targeted dumping."<sup>74</sup> Several of the submissions<sup>75</sup> received from parties explained that the Department's proposed methodology was inconsistent with the statute and should not be adopted.<sup>76</sup> Moreover, several entities explicitly stated that the Department should not establish minimum thresholds for accepting allegations of targeted dumping because the statute contains no such requirements.<sup>77</sup>

These comments suggested that the regulation was impeding the development of an effective remedy for masked dumping. Indeed, after considering the parties' comments the Department explained that because "the provisions were promulgated without the benefit of any experience on the issue of targeted dumping, the Department may have established thresholds or other criteria that have prevented the use of this comparison methodology to unmask dumping."<sup>78</sup> For this reason, the Department determined that the regulation had to be withdrawn.<sup>79</sup> Although this withdrawal was effective immediately, the Department again invited parties to submit comments,

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<sup>70</sup> Administrative Procedures Act ("APA")

<sup>71</sup> See Targeted Dumping.

<sup>72</sup> See Public Comments Received December 10, 2007, Department of Commerce, [\(December 10, 2007\)](http://enforcement.trade.gov/download/targeted-dumping/comments-20071210/td-cmt-20071210-index) (listing the entities that commented).

<sup>73</sup> See Proposed Methodology for Identifying and Analyzing Targeted Dumping in Antidumping Investigations, 73 FR 26371, 26372 (May 9, 2008).

<sup>74</sup> See *id.*

<sup>75</sup> The public comments received June 23, 2008 and submitted on behalf of several domestic parties can be accessed at: <http://enforcement.trade.gov/download/targeted-dumping/comments-20080623/td-cmt-20080623-index>.

<sup>76</sup> See, e.g., "Comments on Targeted Dumping Methodology, Comments," (Interested Party Comments), dated June 23, 2008, at 2.

<sup>77</sup> See, e.g., letter from Committee to Support U.S. Trade Laws, to the Department: "Comments on Targeted Dumping Methodology" at 25.

<sup>78</sup> See 2008 Withdrawal.

<sup>79</sup> *Id.*

and gave them a full 30 days to do so.<sup>80</sup> The comment period ended on January 9, 2009, with several parties submitting comments.<sup>81</sup>

The course of the Department's decision-making demonstrates that it sought to actively engage the public. This type of public participation is fully consistent with the APA's notice-and-comment requirement.<sup>82</sup> Moreover, various courts rejected the idea that an agency must give the parties an opportunity to comment before every step of regulatory development.<sup>83</sup> Rather, where the public is given the opportunity to comment meaningfully consistent with the statute, the APA's requirements are satisfied. The touchstone of any APA analysis is whether the agency, as a whole, acted in a way that is consistent with the statute's purpose.<sup>84</sup> Here, similar to the agency in Mineta, the Department provided the parties more than one opportunity to submit comments before issuing the final rule. As in Mineta, the Department also considered the comments submitted and based its final decision, at least in part, upon those comments. Just as the court in Mineta found all of those facts to indicate that the agency's actions were consistent with the APA, so too the Department's actions here demonstrate that it fulfilled the notice and comment requirements of the APA. The APA does not require that a final rule that the agency promulgates must be identical to the rule that it proposed and upon which it solicited comments.<sup>85</sup> Here, the Department actively engaged the public in its rulemaking process; it solicited comments and considered the submissions it received. In fact, that the numerous comments prompted the Department to withdraw the regulation demonstrates that the Department provided the public with an adequate opportunity to participate. In doing so, the Department fully complied with the APA.

Further, even if the two rounds of comments that the Department solicited before the withdrawal of the regulation were insufficient to satisfy the APA's requirements, the Department properly declined to solicit further comments pursuant to the APA's "good cause" exception. This exception provides that an agency is not required to engage in notice and comment if it determines that doing so would be "impracticable, unnecessary, or contrary to the public interest."<sup>86</sup> The CAFC recognized that this exception can relieve an agency from issuing notice and soliciting comment where doing so would delay the relief that Congress intended to provide; in National Customs Brokers, the CAFC rejected a plaintiff's argument that the U.S. Customs Service failed to follow properly the APA in promulgating certain interim regulations when it had published these regulations without giving the parties a prior opportunity to comment.<sup>87</sup> Moreover, although the U.S. Customs Service solicited comments on the published regulations, it stated that it "would not consider substantive comments until after it implemented the

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<sup>80</sup> Id.

<sup>81</sup> See Public Comments Received January 23, 2009, Department of Commerce, (January 23, 2009).

<sup>82</sup> See, e.g., Arizona (holding that the EPA's decision to not implement a rule upon which it had sought comments did not violate the APA's notice and comment requirements because the parties should have understood that the agency was in the process of deciding what rule would be proper).

<sup>83</sup> See Federal Express Corp. v. Mineta, 373 F. 3d 112, 120 (D.C. Cir. 2004) ("Mineta") (holding that the Department of Transportation's promulgation of four rules, each with immediate effect, only after the issuance of which the public was given the opportunity to comment, afforded proper notice and comment).

<sup>84</sup> Id.

<sup>85</sup> See, e.g., First Am. Discount Corp. v. CFTC, 222 F.3d 1008, 1015 (D.C. Cir. 2000) ("First Am.").

<sup>86</sup> See 5 USC 553(b)(B).

<sup>87</sup> See, e.g., National Customs Brokers and Forwarders Ass'n of Am., Inc. v. United States, 59 F.3d 1219, 1223 (CAFC 1995) ("National Customs Brokers").

regulations and reviewed the comments in light of experience” administering those regulations.<sup>88</sup> The U.S. Customs Service explained that “good cause” existed to comply with the APA’s usual notice and comment requirements because the new requirements did not impose new obligations on parties, and emphasized its belief that the regulations should “become effective as soon as possible” so that the public could benefit from “the relief that Congress intended.”<sup>89</sup> The CAFC recognized that this explanation was a proper invocation of the “good cause” exception and explained that soliciting and considering comments was both unnecessary (because Congress had passed a statute that superseded the regulation) “and contrary to the public interest because the public would benefit from the amended regulations.”<sup>90</sup> For this reason, the CAFC affirmed the regulation against the plaintiff’s challenge.<sup>91</sup>

In short, the regulation at issue may have had the unintentional effect of preventing the Department from employing an appropriate remedy to consider whether the A-to-A method is the appropriate tool with which to measure each respondent’s amount of dumping. Such effect would have been contrary to congressional intent. Notwithstanding that we satisfied the APA’s requirements as discussed above, the Department’s revocation of such a regulation without additional notice and comment was based upon a recognized invocation of the “public interest” exception because good cause existed to waive the notice and comment period. Accordingly, there was no basis for the Department to base its analysis in the instant proceeding upon the withdrawn regulation

### C. Differential Pricing Analysis

#### Quoc Viet Case Brief:

- The Department’s thresholds used in the differential pricing analysis (i.e., 0.8 for passing the Cohen’s *d* test, the 33 percent and 66 percent cut-offs for selecting an alternate comparison methodology, and the 25 percent change in comparison methodology results) are arbitrary, are not supported by record evidence, or promulgated as regulations in accordance with procedural requirements of the APA.
- The Department should modify its analysis based on the facts of this case because a minimum of two observations in either the test group or the base group yields results for individual comparisons that have relatively little meaning, are statistically insignificant, and produce unreliable results.
- If the Department continues to use the different pricing analysis in the final results, the Department should increase the minimum number of observations required in the test and comparison groups from two to five observations in order to make a comparison in the Cohen’s *d* test. Quoc Viet states that in measuring variability, that the standard deviation will yield more meaningful results in that “as a sample size increases, the sample becomes more normally distributed.”<sup>92</sup> This change will eliminate “meaningless comparisons” that are statistically insignificant and unreliable.

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<sup>88</sup> Id., at 1220-21.

<sup>89</sup> Id., at 1223.

<sup>90</sup> Id., at 1224 (emphasis).

<sup>91</sup> Id.

<sup>92</sup> See Quoc Viet’s case brief at 18.

- Quoc Viet argues that relying on so few (*i.e.*, two to four) observations in each test and comparison group should also be unnecessary because the two respondents who have reported “hundreds and thousands of U.S. sales during the POR.”<sup>93</sup> Thus it is unreasonable and inaccurate for the Department to rely on so few observations in each test and/or comparison group. Rather, the Department should rely on broader product groupings to make these comparisons.

### **MPG and Stapimex/SR Respondents’ Case Briefs:**

- The Department must perform its final targeted dumping (*i.e.*, differential pricing) analysis in a manner that is consistent with the statute and true to the Department’s stated method of analysis. For the final results, the Department should change its differential pricing analysis for the following reasons:
  - The Department incorrectly considers the Cohen’s *d* test as a meaningful measure of the difference between two means while ignoring the “t-test” which is actually a recognized measure of statistical significance. Although the Department relies on finding a “large” difference in the means of the test and comparison groups, it does not try to distinguish “the true difference between the means and the statistical ‘noise’ inherent in any set of data that varies.”<sup>94</sup> MPG further claims that the “Cohen’s *d* test might measure a difference that is greater than the convention of 0.8 as ‘large,’ but that measured difference might be completely unreliable and merely a construct of the small sample size and random noise in the data.”<sup>95</sup>
  - The Department should disaggregate the results of application of the Cohen’s *d* test and make separate and distinct determinations by customer, region, and period.
  - In applying Cohen’s *d* test, the Department incorrectly considers the absolute value of the difference, and not just positive differences that may suggest “targeting.” The Department should only consider the lower-priced sales as part of a pattern as it is only these sales with which dumping may be hidden. “Taken to its extreme,” according to MPG, “it is possible that only high priced sales of a particular CONNUM would pass the Cohen’s *d* test at 0.8 {resulting in} no hidden dumping because there are no low prices passing the test.”<sup>96</sup>
  - The Department should use a higher threshold for the Cohen’s *d* coefficient than the 0.8 value used in the Preliminary Results for determining “large.” This value is less than the one standard deviation threshold that the Department used in the standard deviation portion of the Nails test.<sup>97</sup> The Department should consider using a higher threshold for finding that sales in a test group pass the Cohen’s *d* test, such as 1.0, 1.3, 1.4, 1.7 or even 2.0.
  - The Department should not exclude the test-group sales from the comparison-group sales used in calculating the Cohen’s *d* coefficient. For example, where one customer (A) accounts for 90 percent of a product’s sales and a second customer (B) accounts for the remaining 10 percent of the product’s sales. If the sales to the test group are excluded

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<sup>93</sup> Id., at 19.

<sup>94</sup> See MPG’s case brief at 9.

<sup>95</sup> Id.

<sup>96</sup> Id., at 16.

<sup>97</sup> See Certain Steel Nails from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 33977 (June 16, 2008) (“Nails test”).

from the comparison group, and customer A's sales are found to pass the Cohen's *d* test, then customer B's sales will also pass the Cohen's *d* test. This skews the results of the analysis as the Department should be using all sales in the comparison group, which MPG implies would result in customer A's sales not passing the Cohen's *d* test if its sales, *i.e.*, 90 percent of all sales, are being compared to themselves.

- The Department incorrectly determines the pooled standard deviation based on a simple average, rather than a weighted average, of the standard deviations of the test and comparison groups, and thus biases the results of the Cohen's *d* test. MPG provides another hypothetical example to demonstrate that if the pooled standard deviation is calculated using weights based on sale quantity that the results of the Cohen's *d* test change from passing to not passing.
- Should the Department continue to find the existence of differential pricing, it should not apply the alternative remedy to all transactions, but rather limit application of the alternative remedy to "such differences," *i.e.*, to the sales which have been identified as being part of the pattern of prices that differ significantly. MPG states that this was the Department's original approach when it promulgated the targeted dumping regulations in 1997,<sup>98</sup> and that the Department even stated that applying the A-to-T method to all sales "in many instances this approach would be unreasonable and unduly punitive."<sup>99</sup>
- The Department has not met the statutory requirement of finding transactions that are a "pattern" that "differ significantly."<sup>100</sup> These two statutory requirements relate to a subset of alleged targeted transactions not the universe of transactions.
- The Department's past approach fails to explain why any differences cannot be taken into account. Even if the Department explained why the transactions with "such differences" that meet the "pattern" and "differ significantly" requirements cannot be taken into account that does not explain why other transactions without "such differences" cannot be taken into account.

#### **ASPA Case Brief:**

- In the Preliminary Results, the Department applied the A-to-T method to only the portion of MPG's U.S. sales that passed the Cohen's *d* test. For the final results, the Department should apply the A-to-T method to all of MPG's U.S. sales.
- The Department failed to unmask the full amount of dumping that has occurred. In the Preliminary Results, the Department calculated weighted-average dumping margins of 0.00 percent when using the A-to-A method only; 4.98 percent when using the A-to-T method only for those U.S. sales which passed the Cohen's *d* test and using the A-to-A method for the U.S. sales which did not pass the Cohen's *d* test; and 8.24 percent when using the A-to-T method for all U.S. sales.
- ASPA cites to Shrimp from India,<sup>101</sup> where the Department recognized that it needed to apply the A-to-T method to effectively address masked dumping. ASPA recognizes that

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<sup>98</sup> See 19 CFR 351.414(f)(2) (1997)

<sup>99</sup> See Antidumping Duties; Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments, 61 FR 7308, 7350 (February 27, 1996) ("AD/CVD Proposed Rulemaking").

<sup>100</sup> MPG cites section 777A(d)(1)(B) of the Act.

<sup>101</sup> See Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination, 2011-2012, 78 FR 42492 (July 16, 2013), and the accompanying Issues and Decision Memorandum at Comment 1.

the Department changed its approach to examining whether there exists a pattern of prices that differ significantly; however, ASPA asserts that the necessity of applying the alternative A-to-T method to all U.S. sales to unmask dumping still exists unless the Department explains otherwise.

#### **AHSTAC and ASPA Rebuttal Briefs:**

- In the Preliminary Results, the Department explained its differential pricing methodology. Further, the CIT rejected identical challenges to the thresholds employed by the Department.<sup>102</sup>
- The Department's differential pricing analysis is supported by substantial evidence and otherwise in accordance with the law. Further, MPG has not presented any facts or arguments for the Department to deviate from its differential pricing determinations in recent administrative reviews.<sup>103</sup>

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

As an initial matter, we note that the companies' arguments do not rely on the language of the statute. The companies do not argue that the Department's reliance on the Cohen's *d* test violates the statutory language. Rather, the companies put forth several reasons unrelated to the statutory language why they believe the Department should modify its approach from the Preliminary Results. However, there is nothing in the statute that mandates how the Department measures whether there is a pattern of prices that differs significantly. On the contrary, carrying out the purpose of the statute here is a gap filling exercise by the Department. As explained in the Preliminary Results and elsewhere in this memorandum, the Department's differential pricing analysis is reasonable, and the use of Cohen's *d* test as a component in this analysis is in no way contrary to the law.

We disagree with Quoc Viet's argument regarding the necessity of following the APA requirements when the Department introduced the differential pricing analysis. We note the notice and comment requirements of the APA do not apply "to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice."<sup>104</sup> Further, as the Department noted, we normally make these types of changes in practice (e.g., the change from the targeted dumping analysis, including the Nails test, to the current differential pricing analysis) in the context of our proceedings, on a case-by-case basis.<sup>105</sup> As the CAFC recognized, the Department is entitled to make changes and adopt a new approach in the context of its proceedings, provided it explains the basis for the change, and the change is a reasonable interpretation of the statute.<sup>106</sup> As with the Department's prior interpretation of the provision at

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<sup>102</sup> AHSTAC cites to Preliminary Results, and accompanying Preliminary Decision Memorandum at 18-19 and to Kelco, at 1320-1322.

<sup>103</sup> AHSTAC cites to Activated Carbon 2013, 78 FR at 70533, Xanthan Gum 2013, 78 FR at 33351, and Nails 2014, 79 FR at 19316.

<sup>104</sup> See 5 U.S.C. § 553(b)(3)(A).

<sup>105</sup> See Differential Pricing Analysis; Request for Comments, 79 FR 26720, 26722 (May 9, 2014) ("Differential Pricing Comment Request").

<sup>106</sup> See Saha Thai Steel Pipe Company v. United States, 635 F.3d 1335, 1341 (CAFC 2011); Washington Raspberry, 859 F.2d at 902-03. See also Carlisle Tire, 634 F. Supp. at 423 (discussing exceptions to the notice and comment requirements of the APA).

issue, the Department adopted the targeted dumping analysis, including the Nails test, in the context of its proceedings.<sup>107</sup> There, the Department explained the basis for its interpretation and provided parties with an opportunity to comment. Similarly, with respect to the Department's differential pricing analysis, the Department explained the basis for the change in practice and provided Quoc Viet with an opportunity to comment on the Department's interpretation and methodology. Moreover, as the Department noted, as it "gains greater experience with addressing potentially hidden or masked dumping that can occur when the Department determines weighted-average dumping margins using the average-to-average comparison method, the Department expects to continue to develop its approach with respect to the use of an alternative comparison method."<sup>108</sup> Further developments and changes, along with further refinements are expected in the context of its proceedings based upon an examination of the facts and the parties' comments in each case. Accordingly, the Department's development of the differential pricing analysis and its application in this case are consistent with established law.

We disagree with Quoc Viet's contention that the Department requires five observations rather than two observations for each test and comparison group before calculating the Cohen's *d* coefficient, and that by not doing so would mean that the results are meaningless, unreliable and statistically invalid. The Department's use of the Cohen's *d* test is based on the entire population of U.S. sales by each of the respondents, and, therefore, there are no estimates involved in the results and "statistical significance" is not a relevant consideration. Moreover, for the Department's application of the Cohen's *d* test, it is unnecessary to consider sampling size, randomness of the sample, or to include a measure of the statistical significance of its results, as this analysis includes all of the respondent's sales in the U.S. market. The Cohen's *d* test "is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group."<sup>109</sup> Within the Cohen's *d* test, the Cohen's *d* coefficient is calculated based on the means and variances of the test group and the comparison group. The test and comparison groups include all of the U.S. sales of comparable merchandise reported by the respondent. As such, the means and variances calculated for these two groups are the actual values for both the test and comparison groups, and are not estimates which include sampling errors. Statistical significance is used to evaluate whether the results of an analysis rises above sampling error (*i.e.*, noise) present in the analysis and is dependent on the sampling technique and sample size. The Department's application of the Cohen's *d* test is based on the mean and variance calculated using the entire population of the respondent's sales in the U.S. market and, therefore, these values contain no sampling error. Accordingly, sampling technique, sample size, and statistical significance are not a relevant consideration in this context.

We also disagree with Quoc Viet's statement that the Department should require more observations in each test and comparison group because there are "hundreds and thousands" of U.S. sales reported by each respondent. The number of sales in each test and comparison group is not only dependent upon how many sales a respondent may report during a POR, but also on how many distinct groups of purchasers, regions, time periods and groups of comparable

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<sup>107</sup> See Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 33977 (June 16, 2008).

<sup>108</sup> See Differential Pricing Comment Request, 79 FR at 26722.

<sup>109</sup> See Preliminary Results, and accompanying Preliminary Decision Memorandum at 16 (emphasis added).

merchandise are represented within a respondent's U.S. sales data. Furthermore, it would be unreasonable that the distribution of the number of observations in each test and comparison group would be consistent across all of the categories. Therefore, Quoc Viet's argument is misplaced that simply because a respondent has reported "hundreds and thousands" of U.S. sales that this should have some determinative impact on the number of required observations in each test and comparison group.

Quoc Viet also recommends that the Department consider some broader grouping of products in order to make the price comparisons in the Cohen's *d* test, but provides no details on this recommendation. Accordingly, the Department is unable to address this concern further.

According to MPG, it is insufficient for the Department to determine that a "significant difference" exists, despite the fact that this is the express statutory language. MPG claims that the difference must also be shown to have "statistical significance" before the Department may consider use of the alternative methodology. MPG claims that the Department must employ the t-test to determine statistical significance in order for the Department's analysis to be lawful. MPG's claim has no basis in the statutory language, which only requires a finding of a pattern of prices that differ "significantly." The statute does not require that the difference be "statistically" significant, only that it be significant. MPG fails to demonstrate that the Department's reliance on the Cohen's *d* test, which is a generally recognized statistical measure of effect size, is unreasonable and that some higher threshold, not enumerated in the statutory language, must be satisfied.

If Congress intended to require a particular result be obtained with a t-test to ensure the "statistical significance" of price differences that mask dumping as a condition for applying an alternative comparison method, Congress presumably would have used language more precise than "differ significantly." The Department, tasked with implementing the AD law, resolving statutory ambiguities, and filling gaps in the statute, reasonably does not agree with MPG that the term "significantly" in the statute can mean only "statistically significant", which in turn can only be determined by application of a t-test. The statutory provision includes no such directive. The analysis we employed, including the use of the Cohen's *d* test, reasonably fills the statutory gap as to how to determine whether a pattern of prices "differ significantly." Further, the use of the t-test as well as other statistical measures is to determine from a sample (*i.e.*, the data at hand) of a larger population an estimate of what the actual values (*e.g.*, the mean or variance) of the larger population may be with a "statistical significance" attached to that estimate. MPG's argument assumes that the statutory term "significantly" can only refer to "statistical significance." On the contrary, the Department chose to make use of a generally recognized measure of effect size in a practical analysis of an exporter's pricing data to make a determination the statute calls upon the Department to make.

Moreover, as discussed above in response to a similar comment from Quoc Viet, the Department's use of the Cohen's *d* test is based on the entire population of U.S. sales by the respondents, and, therefore, there are no estimates involved in the results and accordingly "statistical significance" is not a relevant consideration. The Department's application of the Cohen's *d* test is based on the mean and variance calculated using the entire population of the respondent's sales in the U.S. market and, therefore, these values contain no sampling error.

We disagree with MPG that the Department should consider the results of the Cohen's *d* test by purchaser, by region, and by time period separately from one another. The Department considered all information on the record of this review in its analysis and drew reasonable inferences as to what that data show. Under the Cohen's *d* test and ratio tests, the Department considers the pricing behavior of the producer or exporter in the U.S. market as a whole. The Department does not find the results of the Cohen's *d* test by purchaser, region or time period to be analogous to an aggregation of "apples and oranges" but rather to be different aspects of a single pricing behavior of the producer or exporter. This analysis, based on the Cohen's *d* and ratio tests, informs the Department as to whether there exists a pattern of prices that differ significantly for the producer or exporter as a whole. There is no provision in the statute requiring the Department to determine the existence of a pattern of prices that differ significantly by selecting only one of either purchaser, region or time period. Likewise, the results of the differential pricing analysis, including both criteria provided in the statute, will determine whether the A-to-A method is the appropriate comparison method with which the Department calculates a single weighted-average dumping margin for the producer or exporter as a whole.

The companies are confusing the results of examining individual test groups within the Cohen's *d* test with the aggregation of these individual results within the ratio test to determine whether there exists a pattern of prices that differ significantly. As described in the Preliminary Results, the Cohen's *d* test evaluates whether sales of comparable merchandise to a particular purchaser, region or time period exhibit prices that are significantly different from sales to all other purchasers, regions or time periods, respectively. The comparison results are then aggregated for the producer or exporter as a whole to determine whether there exists a pattern of prices that differ significantly for that producer or exporter. If such a pattern is found to exist, then the Department will examine whether the standard A-to-A method can account for such differences. The purpose of this analysis is to determine whether the A-to-A method is an appropriate tool with which to measure the respondents' amount of dumping. The Department undertakes a similar process when measuring this amount of dumping. Specifically, the Department makes comparisons between NVs and EPs or CEPs for comparable merchandise, and then aggregates these comparison results to determine the amount of dumping for that respondent as a whole. Therefore, the Department continues to find that its use of the Cohen's *d* and ratio tests in the Preliminary Results is consistent with the statute and is a reasonable execution of its mandate to calculate the weighted-average dumping margin for the companies.

The Department disagrees with MPG's claim that the Cohen's *d* test's thresholds of "small," "medium," and "large" are arbitrary,<sup>110</sup> and that the Department should use a higher threshold for the Cohen's *d* coefficient in order to find that the sales of the test group pass the Cohen's *d* test. Although MPG contends that these guidelines are somewhat arbitrary, we note that the guidelines as to what constitutes a small effect size, medium effect size, and large effect size "have been widely adopted."<sup>111</sup> Further, the Cohen's *d* test is a "commonly used measure" to "consider the difference between means in standardized units."<sup>112</sup> Despite MPG's contention, the Department finds the Cohen's *d* test is a reasonable tool for use as part of an analysis to determine whether a pattern of prices differ significantly.<sup>113</sup>

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<sup>110</sup> See MPG Case Brief at 7.

<sup>111</sup> See Activated Carbon 2013, and accompanying Issues and Decision Memorandum at Comment 4.

<sup>112</sup> Id.

<sup>113</sup> Id.; see also Nails 2014, and accompanying Issues and Decision Memorandum at Comment 7.

The companies argue that characterization of a difference as, for example, “large,” is dependent on the standard deviation to which it is compared. Such concern, however, is alleviated in a situation where sampling is not used and the universe of data is known. For that reason, the companies’ claim that a “measured difference might be completely unreliable and completely a construct of the small sample size and random noise in the data” is not of concern when using Cohen’s *d* coefficient in the context of the differential pricing analysis.<sup>114</sup> When using the Cohen’s *d* test, the Department should have before it all reported sales from a company during the POR, rather than a sample of those sales. The Cohen’s *d* test is run on a company’s entire population of U.S. sales, thereby eliminating all uncertainty that may result from relying on a sample of data. For example, in a typical case an exporter reports all of its sales made to the United States of the subject merchandise. Given that the Department has the entire population of data in each case, concerns about sampling errors are simply misplaced.

Contrary to MPG’s claim, the statute does not require that the Department consider only lower priced sales in the differential pricing analysis. The Department has the discretion to consider sales information on the record in its analysis and to draw reasonable inferences as to what the data show. Contrary to MPG’s claim, it is reasonable for the Department to consider both lower priced and higher priced sales in the Cohen’s *d* analysis because higher priced sales are equally capable as lower priced sales to create a pattern of prices that differ significantly. Further, higher priced sales will offset lower priced sales, either implicitly through the calculation of a weighted-average price or explicitly through the granting of offsets, that can mask dumping. The statute states that the Department may apply the A-to-T comparison method if “there is a *pattern of export prices . . .* for comparable merchandise that *differ* significantly among purchasers, regions, or periods of time,” and the Department “explains why *such differences* cannot be taken into account” using the A-to-A comparison method.<sup>115</sup> The statute directs the Department to consider whether a pattern of prices differ significantly. The statutory language references prices that “differ” and does not specify whether the prices differ by being lower or higher than the remaining prices. The statute does not provide that the Department considers only higher priced sales or only lower priced sales when conducting its analysis, nor does the statute specify whether the difference must be the result of certain sales being priced higher or lower than other sales. The Department has explained that higher priced sales and lower priced sales do not operate independently; all sales are relevant to the analysis.<sup>116</sup> Lower or higher priced sales could be dumped or could be masking other dumped sales—this is immaterial in the Cohen’s *d* test and in answering the question of whether there is a pattern of EPs that differ significantly because this analysis includes no comparisons with NVs and section 777A(d)(1)(B)(i) of the Act contemplates no such comparisons. By considering all sales, higher priced sales and lower priced sales, the Department is able to analyze an exporter’s pricing practice and to identify whether there is a pattern of prices that differ significantly. Moreover, finding such a pattern of prices that differ significantly among purchasers, regions, or periods of time, signals that the exporter is discriminating between purchasers, regions, or periods of time within the U.S. market rather than following a more uniform pricing behavior. Where the evidence indicates that the exporter is engaged in a discriminating pricing behavior, there is cause to continue with the analysis to determine whether the A-to-A method or the T-to-T method can account for such

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<sup>114</sup> See Activated Carbon 2013, and accompanying Issues and Decision Memorandum at Comment 4.

<sup>115</sup> See section 777A(d)(1)(B) of the Act (emphasis added).

<sup>116</sup> See Plywood, and accompanying Issues and Decision Memorandum at Comment 5.

pricing behavior. Accordingly, both higher and lower priced sales are relevant to the Department's analysis of the exporter's pricing behavior.

Further, the Department finds that MPG's "extreme" example (i.e., to demonstrate the inappropriateness of considering both lower- and higher-priced sales as contributing to a pattern of prices that differ significantly) is a prime example which demonstrates the need to consider that higher-priced sales can pass the Cohen's *d* test. If for comparable merchandise, sales to a single customer are markedly higher than the weighted-average price to all customers, and the prices to all other customers are slightly below this weighted-average price only the higher-priced sales to the one customer pass the Cohen's *d* test, which the Department should disallow. Assuming, *arguendo*, that the NV for this merchandise is equal to the weighted-average price to all sales. For an A-to-A comparison, there is no dumping. However, with the A-to-T method, comparisons with the lower-priced sales all result in dumping, whereas the comparisons with the higher-priced sales to the one customer result in potential offsets, perhaps enough to mask the entire amount of dumping found for the vast majority of sales of this product. MPG's "extreme" example illustrates the reason why higher-priced sales, along with lower-priced sales, must be considered as potentially contributing to a pattern of prices that differ significantly.

The Department disagrees with MPG's assertion that the sales in each test group should also be included in the comparison group rather than have the test and comparison groups be independent (i.e., mutually-exclusive) of each other. This would result in purchasers', regions or time period's sale prices being compared to themselves. Section 777A(d)(1)(B)(i) of the Act states that there must exist a pattern of prices for comparable merchandise that differ significantly "among purchasers, regions, or periods of time." It does not state between a purchaser, region and time period and all sales of the comparable merchandise. Thus, the Department has reasonably structured the Cohen's *d* test to compare the mean price to a given purchaser, region or time period with the mean price to all other purchasers, regions or time periods, respectively. As for the example provided by MPG, the Department disagrees that the results of the Cohen's *d* test would be skewed. In this example, if the mean sale price to customer A differ significantly from the mean sale price to customer B, then the reverse should also be true, that is that the mean sale price to customer B should also differ significantly from the mean sale price to customer A. This, however, is more likely a more extreme example than the "extreme" example discussed above.

MPG argues that the Department should use a weighted-average rather than a simple average of the variances for the test and comparison groups when calculating the pooled standard deviation of the Cohen's *d* coefficient.<sup>117</sup> MPG claims that the correct approach is a weighted-average, based on the frequency of observations, to adjust for differences in sizes between the test and comparison groups, and that a simple average gives too much weight to the variance from the test groups.<sup>118</sup> As explained above with respect to other issues, there is no statutory directive with respect to how the Department should determine whether a pattern of prices that differ significantly exists, let alone how to calculate the pooled standard deviation of the Cohen's *d* coefficient. The Department's intent is to rely on a reasonable approach that affords predictability. The Department finds here that the best way to accomplish this goal is to use a

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<sup>117</sup> See MPG Case Brief, at 30-32.

<sup>118</sup> Id.

simple average (*i.e.*, giving equal weight to the test and comparison groups) when determining the pooled standard deviation. By using a simple average, the respondent's pricing practices to each group will be weighted equally, and the magnitude of the sales to one group does not skew the outcome (although we note that within both the test group and comparison group, the Department uses weight averaging when calculating the variance for each group). MPG provides an example that it claims demonstrates that the Department is "over weighing" the test group.<sup>119</sup> MPG's example attempts to demonstrate that the simple average approach leads to distorted results.<sup>120</sup> This example, however, actually provides further support for the Department's use of a simple average. If, in MPG's hypothetical, the standard deviations are reversed between the test and comparison groups, the exact opposite result is derived. The Department is not persuaded that the results yielded by this example based on hypothetical data demonstrate that the Department's proposed approach is unreasonable generally or as applied in this administrative review. Therefore, we disagree with MPG's claim that the proper approach is to account for differences in the size of each group. Rather, the Department finds it reasonable to use a simple average, in which the respondent's pricing practices to each group will be weighted equally, and the magnitude of the sales to one group does not skew the outcome. In sum, MPG presented a suggested alternative methodology for the Department to employ. MPG's arguments, however, fall short of demonstrating that the Department's current methodology and use of the Cohen's *d* test does not comply with the statute, fails to address the requirements of section 777A(d)(1)(B)(i) of the Act, or is unreasonable.

In addition, we disagree with MPG that the Department must limit the application of the A-to-T method to "such differences," *i.e.*, to the U.S. sales which are identified as part of a pattern of prices that differ significantly. When the criteria for application of the A-to-T method are satisfied, section 777A(d)(1)(B) of the Act does not specify how to apply of the A-to-T method. Instead, the provision expressly permits the Department to determine dumping margins by comparing weighted-average NVs to the EPs (or CEPs) of individual transactions.

In the Preliminary Results, the Department explained that the differential pricing analysis relied on a measured, tiered approach to considering an alternative comparison method based on the A-to-T method. Depending on the extent of the pattern of prices that differ significantly which has been identified when examining the first statutory requirement, the Department then considered an alternative comparison method based on applying the A-to-T method to either all U.S. sales, a subset of U.S. sales, or no U.S. sales:

If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of export prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the identified pattern of export prices that differ significantly support consideration of the application of an average-to-transaction method to those sales identified by the Cohen's *d* test as

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<sup>119</sup> Id.

<sup>120</sup> Id.

part of the pattern of significant price differences as an alternative to the average-to-average method. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.<sup>121</sup>

The Department finds that this approach is reasonable because whether, as an alternative methodology, the A-to-T comparison method is applied to all U.S. sales, a subset of U.S. sales, or no U.S. sales, depends on what proportion of U.S. sales pass the Cohen's *d* test. Thus, there is a direct correlation between the U.S. sales that establish a pattern of prices that differ significantly and to what portion of the U.S. sales the A-to-T comparison method is applied.

The Department disagrees with MPG's claim that application of the A-to-T method to all U.S. sales would be "unreasonable and unduly punitive." The complete text which includes MPG's quotation further supports the Department's tiered approach. In responding to comments to the Department's proposed regulations for implementation of the URAA,<sup>122</sup> the Department stated:

At least one commentator suggested that if targeted dumping is found with respect to a particular firm, the average-to-transaction method should be used with respect to all of that firm's sales. The Department has not adopted this suggestion, because in many instances such an approach would be unreasonable and unduly punitive. For example, if targeted dumping accounted for only 1 percent of a firm's total sales, there would not appear to be any basis for applying the average-to-transaction method to those sales accounting for the remaining 99 percent.

At the other extreme, some commentators suggested that the average-to-transaction method always should be limited to those sales that constitute targeted dumping. The Department has not adopted this suggestion either, because there may be situations in which targeted dumping by a firm is so pervasive that the average-to-transaction method becomes the best benchmark for gauging the fairness of that firm's pricing practices.<sup>123</sup>

Therefore, even at the time when the Department had not yet examined the question of whether to consider an alternative comparison methodology, it recognized the need for a measured approach in applying the A-to-T method under section 777A(d)(1)(B) of the Act.

Likewise, when the Department issued its final rule and promulgated the revised regulations,<sup>124</sup> For less-than-fair-value investigations, 19 CFR 351.414(f)(2) (1997) stated:

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<sup>121</sup> See Preliminary Results, and accompanying Preliminary Decision Memorandum at 20-21.

<sup>122</sup> See AD/CVD Proposed Rulemaking.

<sup>123</sup> Id., 61 FR at 7350.

<sup>124</sup> See Antidumping Duties: Countervailing Duties: Final Rule, 62 FR 27296 (May 19, 1997) ("AD/CVD Final Rule").

Limitation of average-to-transaction method to targeted dumping. Where the criteria for identifying targeted dumping under paragraph (f)(1) of this section are satisfied, the Secretary *normally* will limit the application of the average-to-transaction method to those sales that constitute targeted dumping under paragraph (f)(1)(i) of this section. (emphasis added)

Comments to the AD/CVD Proposed Rulemaking followed the same line as those described above, with the Department electing to maintain the regulation as proposed, and recognizing that a broader application may be warranted where “targeted dumping is so widespread it may be administratively impractical to segregate targeted dumping pricing from the normal pricing behavior ... {or} where a firm engages extensively in the practice of targeted dumping, the only adequate yardstick available to measure such pricing behavior may be the average-to-transaction methodology.”<sup>125</sup> Accordingly, the Department continued to recognize the importance of an appropriate, measured approach to the application of the A-to-T method.

With the withdrawal of the regulations governing targeted dumping, in less-than-fair-value investigations, including 19 CFR 351.414(f)(2) (1997),<sup>126</sup> and subsequently the introduction of the differential pricing analysis,<sup>127</sup> the Department’s revised approach to addressing masked dumping under section 777A(d)(1)(B) of the Act, the Department maintained this measured tiered approach in its consideration of the A-to-T method as an alternative comparison methodology to the A-to-A or T-to-T methods. Although this now-withdrawn regulation does not apply to this administrative review, as discussed above, MPG asserts that such considerations do not apply here. We disagree. The Department has continued its general approach to applying the A-to-T method to all U.S. sales, a portion of U.S. sales, or no U.S. sales depending on a case-by-case basis for each respondent.

The Department also disagrees with ASPA’s claim that the Department must apply the A-to-T method to all of MPG’s U.S. sales because of the meaningful difference in the weighted-average dumping margins calculated when applying the A-to-T method to the portion of MPG’s U.S. sales which pass the Cohen’s *d* test and the A-to-A method to the portion of MPG’s U.S. sales which do not pass the Cohen’s *d* test, and when applying the A-to-T method to all of MPG’s U.S. sales. As discussed above in response to MPG’s similar comment, the Department has set forth a framework for consideration of the A-to-T method based on the extent of the pattern of prices that differ significantly. Simply because there is a difference in the weighted-average dumping margins which are calculated using two different comparison methods does not automatically infer that masked dumping is being revealed. As described above, since the implementation of the URAA, the Department consideration of the application of an alternative comparison method must be supported by the facts on the record, including the existence and extent of the identified pattern of prices that differ significantly.

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<sup>125</sup> Id., 62 FR at 27375.

<sup>126</sup> See, generally, AD/CVD Final Rule

<sup>127</sup> See, generally, Xanthan Gum 2013, 78 FR 33351.

## Surrogate Value Issues

### Comment 3: Shrimp Surrogate Value

#### Quoc Viet Case Brief:

- The Department’s reliance on Bangladeshi NACA study for valuing the shrimp raw material factors results in far less accurate AD margins than if the Department had used the raw shrimp information available from Indonesia because the NACA data for Bangladesh reflect prices only for black tiger shrimp.
- Because the respondents in this segment of the proceeding sold both vannamei and black tiger shrimp, the use of the Bangladeshi NACA black tiger shrimp values in the Preliminary Results resulted in a disconnect when those black tiger values were assigned to black tiger as well as to white vannamei shrimp material factors.
- The Indonesian NACA study includes Indonesian prices for both black tiger and vannamei shrimp raw material. The Indonesia data are more specific because they provide SVs for vannamei shrimp raw material while the Bangladeshi data do not, as the Department determined in the previous administrative review.
- The relative specificity of competing data sources has always been the key consideration when making surrogate country selection decisions.<sup>128</sup>
  - In this review, the relative specificity of the data from Indonesia and Bangladesh turns on the species of the shrimp itself, as identified in the CONNUM. The Department must carefully consider which of the available data will enable it to assign CONNUM-specific SVs, as it did when rejecting Indian shrimp SVs based on the lack of count size specificity.
  - Vannamei surrogate prices are more specific surrogates for vannamei FOPs than are black tiger surrogate prices. And because the SVs are more specific, they are presumed to be more accurate.
  - The Indonesia data provide surrogate prices for both vannamei and black tiger shrimp and therefore result in more accurate valuations of respondents’ factors.

#### MPG Rebuttal Brief:

- It is easy to derive a vannamei price for Bangladesh by simply taking the ratio of black tiger prices to vannamei prices of the same size in Indonesia and applying that ratio to the prices in Bangladesh. This gap in pricing information for Bangladesh is resolved easily without having to resort to use of raw shrimp prices from a country that is not economically comparable to Vietnam.

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<sup>128</sup> Quoc Viet cites to PRC Hangers 2013, wherein the surrogate country selection decision “hinged, in large part on the whether the carbon content of the competing surrogate value for wire rod most closely matched the carbon content of the wire rod consumed by the respondent.” See Quoc Viet Case Brief at 5, citing to PRC Hangers 2013, and accompanying Issues and Decision Memorandum at Comment 1.

### **Stapimex/SR Respondents' Rebuttal Brief:**

- The species distinction has become increasingly important for the Vietnamese shrimp industry, where a majority of the shrimp that both mandatory respondents sold to the United States during the POR was of the vannamei species.
- Respondents' dumping margins would be far more accurately calculated if their U.S. sales of white shrimp were compared to a NV that incorporated a value for vannamei shrimp rather than black tiger shrimp. For the Department to ignore this distinction in species when data are available to value each species would violate the requirement to calculate dumping margins as accurately as possible.
- In the event the Department decides to maintain Bangladesh as the primary surrogate country, it should take advantage of the Indonesian NACA prices for white shrimp.
  - First would be to simply use the Indonesian values for vannamei shrimp, even if Bangladeshi values are used for most other FOPs, which would be consistent with how the Department has used an Indonesian by-product value in all prior reviews in which Bangladesh was selected as the primary surrogate country. It is also consistent with the Department's use of Bangladeshi financial ratios when it chose Indonesia as the surrogate country in AR7.
  - Alternatively, the Department could reduce the Bangladeshi black tiger values by the percentage difference between the Indonesian values for black tiger versus vannamei shrimp. Either of these solutions would produce a more accurate result than ignoring the species distinction, as was done in the Preliminary Results.

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

We disagree with the respondents regarding the use of Indonesia NACA data to supplant or supplement Bangladeshi NACA data. As we determined above, Bangladesh satisfies the Department's surrogate country selection criteria and provides usable data. Pursuant to 19 CFR 351.408(c)(2) and our practice, the Department normally will value all factors in a single surrogate country. The CIT has held this preference for valuing factors in a single surrogate country to be reasonable. According to the CIT, deriving surrogate data from one surrogate country limits the amount of distortion introduced into the NV calculations because a domestic producer would be more likely to purchase a product available in the domestic market.<sup>129</sup>

We continue to find that, based on record evidence, Bangladesh meets all of our criteria to serve as the primary surrogate country for the final results, as we are able to obtain Bangladeshi data for the calculation of SVs for the main input, shrimp (albeit only black tiger shrimp) and non-shrimp FOPs, except for the shrimp scrap/waste value—a small fraction of the NV. We determine that we have usable financial statements from Bangladesh on the record; we also have more detailed labor SVs that are more product-specific labor rates from Bangladesh. Therefore,

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<sup>129</sup> See, e.g., Clearon Corp. v. United States, 35 Int'l Trade Rep. (BNA) 1013; Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review: 2011-2012, 79 FR 44008 (July 29, 2014) and accompanying Issues and Decision Memorandum at Comment 2.

we continue to rely upon the preference to value all but one FOPs using a single surrogate country.<sup>130</sup>

Furthermore, interested parties have not demonstrated that using data with prices for only a limited range of count sizes, albeit for two species, would result in a more accurate margin calculation than using the prices available for almost all count sizes albeit for only one of the species produced and sold by the mandatory respondents. As noted above, the mandatory respondents report well over 10 count sizes of shrimp, and only two species. We cannot conclude from the record that accounting for prices on a species-specific basis is more accurate than accounting for prices for almost all the count sizes. For example, Indonesian data does not contain prices not only for the largest count-size of shrimp for both species, but also for the second largest size of the vannamei species. The record evidence shows that “shrimp price depends on the size and seasonal crop...especially for bigger size {shrimp}.”<sup>131</sup> There is no indication on the record that shrimp prices in Bangladesh are species-driven; thus to apply a pricing structure from a country whose economic comparability to Vietnam we are unable to examine is inappropriate. Furthermore, there is no record evidence to suggest that the shrimp price structure between Indonesian black tiger prices and vannamei prices would be the same or similar to that in Bangladesh. To ascribe Indonesia’s pricing structure to Bangladesh would first require several successive calculations, the first being to estimate the missing count sizes to remedy the data deficiencies in the Indonesian data. The estimation, then, would need to be applied to the result and then to Bangladeshi shrimp data. The Department’s concern does not lie in the complexity of the calculation; instead, after remedying the relative lack of count size value data in the data for Indonesia, any improvement in inaccuracy would likely be outweighed, or at least counterbalanced by, the accuracy loss inherent in this multistep estimation. In short, what the data for Bangladesh lacks in vannamei prices is outweighed by other factors, such as Bangladesh’s economic comparability to Vietnam, as well as the availability of Bangladeshi surrogate financial statements, labor SV, and a larger range of pricing for count sizes of black tiger shrimp, particularly the largest, most expensive shrimp count size.

Finally, we underscore that parties have not provided any evidence on the record regarding Indonesia’s level of economic development compared to Vietnam. The existence of Indonesian data, in isolation of the other statutory criteria, does not compel the Department to depart from our current practice. Thus, it is inappropriate to seek SVs for the main input, shrimp, from a source other than the primary surrogate country that fully satisfied the statutory criteria under 773(c)(4) of the Act —Bangladesh. We are continuing to rely on Bangladeshi NACA data for the reasons discussed above and in Comment 1.

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<sup>130</sup> See 19 CFR 351.408(c); see also Clearon Corp. v. United States, Slip Op. 13-22 at 6 (CIT 2013) (acknowledging that the Department’s preference is reasonable because “deriving the surrogate data from one surrogate country limits the amount of distortion introduced into its calculations”); see also Peer Bearing Co.-Changshan v. United States, 804 F.Supp.2d 1337, 1353 (CIT 2011) (citation omitted) (“the preference for use of data from a single surrogate country could support a choice of data as the best available information where the other available data ‘upon a fair comparison, are otherwise seen to be fairly equal.’”); Bristol Metals L.P. v. United States, 703 F.Supp.2d 1370, 1374 (CIT 2010).

<sup>131</sup> See MPG and Stapimex SV Submission dated October 28, 2013, at SV-2.

#### **Comment 4: Bangladeshi Inflator Data**

##### **MPG and Stapimex/SR Respondents' Case Brief:**

- The Department incorrectly utilized a Bangladeshi inflator to inflate U.S. dollar denominated SVs in its Preliminary Results.
- In using the 2007 UN Comtrade data from Bangladesh to value the Vietnamese Respondents' FOPs, the Department failed to take into account its past practice with respect to the use of U.S. dollar denominated SVs. Specifically, even though these data were denominated in USD, the Department used a Bangladeshi inflation rate to inflate these data to present value, a rate of 46.77 percent.
- There is a significant body of precedent in Department proceedings that document that this is incorrect, and the Department should have instead used the U.S. inflation rate of 10.9 percent, placed on the record by the Vietnamese Respondents on April 28, 2014. The use of U.S. inflation rates when an SV is denominated in U.S. dollars ("USD") is a well-established practice followed by the Department.<sup>132</sup>
- Consistent with its long-standing policy, the Department should modify the inflator used for Bangladeshi SVs denominated in USD to utilize the USD inflation rate placed on the record by the Vietnamese Respondents in their April 28, 2014, submission.

##### **AHSTAC Rebuttal Brief:**

- A review of agency practice indicates that, contrary to the claim presented by Vietnamese parties, the Department has repeatedly followed a practice of adjustments of SV utilizing price indices for the surrogate country. This practice has been followed in prior reviews regarding this AD order as well as several other proceedings regarding other products beyond shrimp.
- The arguments submitted by the Vietnamese parties do not acknowledge the agency's pervasive practice. Nevertheless, consistent with the established practice, in proceedings related to this AD order, the Department adjusts SVs denominated in USD with the price index of the surrogate country from which the data are obtained.
- The Department's practice is, in fact, to adjust SV derived from Bangladeshi UN Comtrade data through use of a Bangladeshi inflator. The Department should continue this practice in the final results.

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

The Department disagrees with MPG and Stapimex and SR Respondents with respect to the inflator used in the Preliminary Results. In the Preliminary Results, we stated that "whenever possible, the Department used United Nations ComTrade Statistics ("UN Comtrade"), provided by the United Nations Department of Economic and Social Affairs' Statistics Division, as its

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<sup>132</sup> See MPG Case Brief at 40, citing to Final Determination of Sales at Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China, 62 FR 61964, 61987 (November 20, 1997) ("CTL Plate") and accompanying Issues and Decision Memorandum; Final Determination of Sales at Less than Fair Value: Creatine Monohydrate from the People's Republic of China, 64 FR 71104, 71110 (December 20, 1999) ("Creatine") and accompanying Issues and Decision Memorandum at Comment 5; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of 2002-2003, 69 FR 42041 (July 13, 2004) ("TRBs") and accompanying Issues and Decision Memorandum at Comment 3.

primary source of Bangladeshi surrogate value data.”<sup>133</sup> The Department specifically noted that the data reported to UN Comtrade are Bangladeshi import statistics, not U.S. import statistics. The Bangladeshi import statistics represent economic activity reported by Bangladesh for its import transactions with other countries. In other words, the Bangladeshi data we obtained from UN Comtrade do not represent economic activities that occur within the United States (*i.e.*, U.S. import statistics). The fact that the UN Comtrade data query results are expressed in USD does not signify that the commercial transactions were conducted in the United States. Indeed, the record shows that the reporting country is Bangladesh, thus signifying that Bangladesh reported its import statistics for economic activity transacted in Bangladesh.<sup>134</sup> Thus, we applied the inflator from the appropriate reporting country: Bangladesh.

The mandatory respondents’ cites to three other AD proceedings do not support their arguments regarding the proper inflation indices to apply here. With respect to CTL Plate, the Department specified that “it is a reasonable methodology to use a U.S. index for those values denominated in U.S. dollars, because price indices in the United States would directly impact those prices denominated in the U.S. dollars.”<sup>135</sup> With respect to Creatine and TRBs, while the Department agreed to apply a U.S. inflation rate in those cases,<sup>136</sup> the Department has since revised its practice with respect to applicable inflator indices. The mandatory respondents have overlooked our current practice with respect to inflator indices applied to SVs as discussed in Seamless Pipe from Romania.<sup>137</sup> Specifically, we stated that “although surrogate values quoted in U.S. dollars have been inflated using the U.S. PPI in past cases, in recent cases we have reviewed our inflation methodology and find that U.S. dollar-denominated surrogate values should be inflated based on the country in which the expense was incurred, not the currency in which it was reported.”<sup>138</sup> We further noted that “use of the U.S. PPI to inflate a dollar-denominated rate reflects the economic situation in the United States and not that in...” the home country, or the surrogate country, in this case.

Thus, the fact that UN Comtrade data are expressed in USD does not render the economic activity, such as import statistics, as reported by Bangladesh, a U.S. based economic activity. Because Bangladesh is the reporting country regarding its imports of goods, any assumptions that that economic activity occurs anywhere but Bangladesh is not supported by the record. Rather, the import prices reported by Bangladesh are simply expressed in USD, as opposed to being a U.S. economic activity. As noted in Seamless Pipe from Romania, the Department reviewed the disavowed methodology cited by the mandatory respondents and revised that practice. Moreover, we have consistently applied the Producer Price Index and/or the Consumer Price Index from the surrogate countries selected in the underlying investigation of this case and every administrative review thereafter. Thus, we find mandatory respondents’ arguments

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<sup>133</sup> See Prelim SV Memo, at page 2.

<sup>134</sup> *Id.*, at Exhibit 5.

<sup>135</sup> See CTL Plate, and accompanying Issues and Decision Memorandum at Comment 29.

<sup>136</sup> See Creatine, and accompanying Issues and Decision Memorandum at Comment 5 and TRBs, and accompanying Issues and Decision Memorandum at Comment 3.

<sup>137</sup> See Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Romania: Final Results of Antidumping Duty Administrative Review and Final Determination Not To Revoke Order in Part, 70 FR 7237 (February 11, 2005) (“Seamless Pipe from Romania”) and accompanying Issues and Decision Memorandum at Comment 7.

<sup>138</sup> *Id.*

regarding three cases from over a decade ago unavailing to disqualify the Department's more current practice, as discussed in Seamless Pipe from Romania. Consequently, we have not made any changes to the inflators which we properly and correctly applied in the Preliminary Results.

### **Comment 5: Calculation of Brokerage and Handling Expenses**

#### **MPG Case Brief:**

- The Department incorrectly calculated a per-unit SV for lift and containerization charges by 10,000 kilograms, contrary to the Department's determination and calculation in Vietnam Shrimp AR6.<sup>139</sup>
- In Vietnam Shrimp AR6, the Department determined that a standard container has a 20,800 kilogram capacity, which should be used as the denominator for these final results.
- All documentary evidence on the record indicates that both MPG and Stapimex actually ship their merchandise in significantly larger quantities than 10,000 kilograms.
- Page 74 of Doing Business--Bangladesh states that for the purposes of trading across borders, the expenses assume that the merchandise is "transported in a dry-cargo, 20-foot full container load," and not 10,000 kg.
- In the instant review we are under the exact same scenario as existed in Vietnam Shrimp AR6: namely that the actual source for the SV identifies only that the trading across borders values are for a full container load.
- The Department should not, and cannot, therefore deviate from industry standards, and from all other data on the record, including the actual experience of respondents regarding the quantity of material shipped in a given container.
- Every single source, whether it be general trade information, information utilized by the Department in the past, freight companies, or most importantly the experience of the respondents themselves, agrees that a 10,000 kg weight for a 20-foot container is unsupported by the facts, and should instead be closer to 20,000 kg (which is the low-end of the quantities shipped by the mandatory respondents in this case).
- Irrespective of the Department's decision on this issue in Vietnam Shrimp AR7, the Department cannot justify using an artificially depressed quantity in the denominator, which subsequently increases the SV in a manner inconsistent with the data on the record. As such, the SV for lift and containerization charges should be recalculated to divide by the container weight used in Vietnam Shrimp AR6.

#### **Stapimex/SR Respondents' Case Brief:**

- Stapimex/SR Respondents argue the identical points that MPG argue, with the exception of requesting the Department to use Doing Business—Indonesia, rather than Doing Business—Bangladesh, for the final results.

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<sup>139</sup> See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 77 FR 55800 (September 11, 2012) ("Vietnam Shrimp AR6").

## Department's Position:

The Department disagrees with MPG and Stapimex/SR Respondents with respect to the proper denominator for the calculation of brokerage and handling expenses. Both MPG and Stapimex/SR Respondents argue that the Department should disregard its determination in Vietnam Shrimp AR7, and, instead, follow its determination in Vietnam Shrimp AR6. We disagree. Vietnam Shrimp AR7 supersedes our determination in Vietnam Shrimp AR6, because the determination we made with respect to the brokerage and handling denominator in Vietnam Shrimp AR6 inadvertently contradicted our stated practice in prior cases. That is, when using Doing Business as a source to value brokerage and handling, we recognized that the “Doing Business reports a 10,000 kilogram container weight.”<sup>140</sup>

While MPG and Stapimex/SR Respondents argue that the Department's determination in Vietnam Shrimp AR6 was correct, we note that our determination in that review inadvertently contradicted our practice reflected in both Furniture 2011 and Tires 2012. Further, our determination regarding the appropriate brokerage and handling denominator, as applied in Furniture 2011, Tires 2012, and Nails 2013, has been applied consistently in proceedings following Vietnam Shrimp AR7, such as Garlic 2014<sup>141</sup>, Wood Flooring 2014<sup>142</sup> and Fish Fillets AR9.<sup>143</sup> This long-standing practice is reasonable based the reliability of the source (i.e., Doing Business) and its consistency across different countries that are surveyed for the collection of Doing Business data. We find that the consistency in which the surveyed participants (of multiple countries such as Bangladesh, India and the Philippines, etc.) are requested to report brokerage and handling expenses for a traded product transported in a dry-cargo, 20-foot full container assuming the container weighs 10 tons (i.e., 10,000 kg), renders this source as usable and accurate.<sup>144</sup>

In short, our determination in Vietnam Shrimp AR6 was inconsistent with prior proceedings and not applied in subsequent proceedings. Conversely, the Department's determination with respect to the brokerage and handling denominator in Vietnam Shrimp AR7 was consistent with our determinations in prior cases. Thus, as we stated in Vietnam Shrimp AR7, we will continue to use a 10,000 kilogram denominator for movement expenses, rather than the proposed 20,800 kilogram denominator. In past cases when using Doing Business as the source for valuing

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<sup>140</sup> See Vietnam Shrimp AR7 at Comment 5. See also Wooden Bedroom Furniture From the People's Republic of China: Final Results and Final Rescission in Part, 76 FR49729 (August 11, 2011) (“Furniture 2011”), and accompanying Issues and Decision Memorandum at Comment 6; Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of the 2009-2010 Antidumping Duty Administrative Review and Final Rescission, in Part, 77 FR14495 (March 12, 2012) (“Tires 2012”), and accompanying Issues and Decision Memorandum at Comment 11; and Certain Steel Nails From the People's Republic of China: Final Results of Third Antidumping Duty Administrative Review; 2010-2011, 78 FR 16651 (March 18, 2013) (“Nails 2013”), and accompanying Issues and Decision Memorandum at Comment 3R.

<sup>141</sup> See Garlic 2014, and accompanying Issues and Decision Memorandum at Comment 7.

<sup>142</sup> See Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 26712 (May 9, 2014) (“Wood Flooring 2014”) and accompanying Issues and Decision Memorandum at Comment 4.

<sup>143</sup> See Fish Fillets AR9, and accompanying Issues and Decision Memorandum at Comment 13B.

<sup>144</sup> See, e.g., Wooden Bedroom Furniture From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2012, 79 FR 51954 (September 2, 2014) and accompanying Issues and Decision Memorandum at Comment 8.

movement expenses in other reviews, we have recognized that Doing Business reports a 10,000 kilogram container weight. The methodology employed in reporting prices between Doing Business in Bangladesh, India, Indonesia and the Philippines are the same, and that using the 10,000 kilogram denominator is appropriate. Finally, with respect to the respondents' cite to their respective questionnaire responses showing evidence of a larger container weight, we find that these documents (i.e., a Customs and Border Protection ("CBP") 7501 form, a VAT invoice from a shipping line) do not render the Department's decision inaccurate. As noted earlier, Doing Business, the source that we are using for valuing movement expenses, compiles and reports the expense data on a 10,000 kilogram container weight basis rather than on 20,800 kilogram weight basis.<sup>145</sup> We note that our determination is not based upon the website referenced by the respondent, but rather on a standard calculation from a source used in many other proceedings.<sup>146</sup>

MPG, Stapimex and the SR Respondents argue that the Department ought to apply the respondent-specific container weights as the denominator. However, consistent with our practice, we decline to adjust the denominator based on respondents' experience.<sup>147</sup> We disagree that the denominator for this SV should be based on the experience of MPG and Stapimex because this 10,000 kilogram weight is part of the methodology used by Doing Business in calculating the freight cost. The cost of the shipments obtained by Doing Business reflects the cost of a 10,000 kilogram container and that "changing only the weight of the container results in a meaningless unit value."<sup>148</sup> And, as we stated in prior proceedings, "mixing different sources of data within the ratio calculation would add inconsistency to the calculation, which would yield a distorted result."<sup>149</sup> Therefore, for the final results, we continue to use the 10,000 kilogram denominator for calculating movement expenses.

Finally, we also disagree with Stapimex's suggestion that we calculate brokerage and handling using Doing Business--Indonesia. As noted above, for these final results we selected Bangladesh as the primary surrogate country, instead of Indonesia. As such, because Doing Business—Bangladesh provides reliable data from the primary surrogate country, we made no changes from the Preliminary Results with respect to the source used to value brokerage and handling expenses.

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<sup>145</sup> See Tires 2012, and accompanying Issues and Decision Memorandum at Comment 11.

<sup>146</sup> See, e.g., Furniture 2011, Tires 2012, Vietnam Shrimp AR7, and Nails 2013.

<sup>147</sup> See, e.g., Certain Steel Threaded Rod From the People's Republic of China; Final Results of Third Antidumping Duty Administrative Review; 2011-2012, 78 FR 66330 (November 5, 2013) and accompanying Issues and Decision Memorandum at Comment 6, where we stated that we "should continue to use the weight of 10 MT for a standard container because this is the weight reported in the Doing Business publication and the SV calculation must be internally consistent with the original data's reporting methodology."

<sup>148</sup> Id.

<sup>149</sup> Id.

## Comment 6: Labor Surrogate Value

### AHSTAC Case Brief:

- In the fifth administrative review, the Department ceased its longstanding practice of using multiple country data and instead exclusively employed the Bangladeshi wage rate through its single surrogate methodology employed for all other factors. Domestic Producers challenged this determination that led to three remands requiring the Department to better explain its labor valuation. The CIT litigation remains unresolved in the fifth and sixth administrative reviews.
- For the reasons found by the CIT in the fifth administrative review, the Department cannot employ exclusively Bangladeshi wage data to value labor in this review. The \$0.35 wage rate is well below the rate on the record for other countries that are economically comparable to Vietnam and significant producers of comparable merchandise. This evidence raises the very concerns that led the Department for decades to value labor by using multiple country data. The Department cannot reconcile its use of Bangladeshi data on this record in light of its prior agency findings.
- The record in this review, unlike prior segments, contains evidence of atrocious and rampant labor abuses throughout each stage of the Bangladeshi shrimp industry.
  - The media reports that Bangladeshi shrimp farmers eke out a destitute existence of bondage and that conditions are especially dire for contract workers.
  - No less than five nongovernmental organizations have published recent studies documenting the deplorable labor abuses at each level of the Bangladeshi shrimp supply chain.
  - While the methodological approaches differ, the findings are uniform: induced indebtedness; sexual violence; abuse and harassment; low earnings; compulsive and uncompensated overtime; wage withholding; exposure to health hazards; and child labor.
  - United States agencies and officials have in a variety of contexts taken public positions condemning Bangladesh for its labor conditions – including suspending Bangladesh’s GSP privileges – with specific reference to the shrimp industry. Other governments have similarly expressed grave concern with the labor situation in Bangladesh with an emphasis on shrimp.
- The Department cannot use the aberrant Bangladeshi wage data as it fails to meet the standard for best available information required by statute.
  - It would distort the calculations and preclude accuracy.
  - Department policy is to exclude aberrational values and the CIT has repeatedly required the agency to do so.
  - Using Bangladeshi data here would violate the statute and sanction the Bangladeshi data in a manner that contradicts the United States government.
  - The Department must instead value labor in this proceeding by either employing wage data from a secondary surrogate or averaging the data on the record from countries that are economically comparable to Vietnam and significant producers of comparable merchandise.

### **MPG Rebuttal Brief:**

- AHSTAC challenged the wage rate used in the Preliminary Results because the labor rates in Bangladesh are lower than the labor rates in other countries which the Department deemed to be at a comparable level of economic development.
- AHSTAC's assertions that Bangladesh wage rates cannot be used because they are aberrational based on documented labor abuses in Bangladesh should be rejected by the Department.
- AHSTAC's position on this issue has already been resolved in Ad Hoc Shrimp Trade Action Committee v. United States which directly addressed the same issue as is being raised by AHSTAC in its Case Brief.<sup>150</sup> In that decision, the CIT stated:
  - "Commerce's primary surrogate country analysis in this review reasonably accounted for the effect of the specific GNI differential between Bangladesh and Vietnam (i.e., the likely underestimation of the surrogate labor rate) by explaining that any accuracy-loss from an underestimated wage rate is outweighed by the accuracy gained from using Bangladeshi data for the remaining FOPs."<sup>151</sup>
  - "AHSTAC's argument that Bangladeshi wage data used in this review were aberrational is not persuasive."<sup>152</sup>
- AHSTAC's claim that Bangladesh labor rates are aberrational because of labor abuses in Bangladesh are made without any reference to 1) a statutory basis to examine labor rates in light of labor abuses 2) whether or not there exist similar abuses in the other countries at a comparable stage of economic development (i.e., in the other countries that were considered as potential surrogate countries).
  - While labor rights are an important focus of many U.S. negotiations of free trade agreements, there is no evidence in the statute that the Department is required to consider this factor in its evaluation of FOPs for labor.
  - Absent any evidence that similar abuses do not affect the labor rates in other countries at the comparable level of economic development, it is difficult to see how this claim vis-a-vis Bangladesh even if it were relevant would lead one to choose India or the Philippines as a better surrogate country.
- Notwithstanding all other arguments, AHSTAC's claim is irrelevant under the law because AHSTAC is suggesting that the Department must consider the cause of the labor rates in a particular surrogate country.
  - In this case, the Department would have to consider whether the labor rates are affected by the ability to unionize and strike, minimum wages set by the government, laws affecting the ability of employers to fire employees, failure to enforce regulations relating to wages and the workplace environment and numerous other factors which can affect the wages of workers in any country.
  - This is not the purpose of the NME methodology, is not required by law (and arguably not permitted), and is not relevant when the surrogate country is deemed to be an ME.
  - As a practical matter it would also complicate the surrogate country selection process by introducing an additional and extraneous factor into the selection process.

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<sup>150</sup> See MPG Case Brief at 9-10, citing to Ad Hoc Shrimp Trade Action Committee v. United States, Slip Op; 14-59, USCIT, (May 29, 2014).

<sup>151</sup> See MPG Case Brief at 9-10.

<sup>152</sup> Id.

### **Stapimex and SR Respondents' Rebuttal Brief:**

- The record on appeal in the fifth administrative review and the recent CIT decision in the sixth administrative review demonstrate that the Department can, and should, rely on BBS labor data in the event the Department chooses Bangladesh as the primary surrogate country. Doing so would not only be consistent with the Department's new labor methodology, but would also fulfill its statutory mandate of using the best information available.
- Nothing on the record suggests that Bangladeshi wage rates are aberrational. The fifth and sixth administrative review appeals to the CIT demonstrate that the Department should continue to rely on Bangladeshi labor data.
- AHSTAC argues that the repeated remands in the fifth administrative review demonstrate that the Department's reliance on BBS data in the Preliminary Results of the instant review is not supported by substantial evidence.
  - On their face the CIT's remands in the fifth administrative review indicate that the CIT did not take issue with the BBS data per se, but rather with the Department's explanation for its change in methodology to relying on a single surrogate country, even for labor, when the Department had previously conducted a multi-country approach to value labor. The CIT stated that "in the Final Results and 1st Remand Results, Commerce did not address the relative weight of this prior finding {regarding the positive linear correlation between GNI and wage rates} when determining that data from Bangladesh provide the best available information from which to value all of the surrogate FOPs in this review."
  - In response to this ruling by the CIT, the Department in its draft third remand results for the fifth administrative review returned to its use of Bangladeshi labor data because "the Department found the data from the primary surrogate country, Bangladesh, to be the best available information for valuing labor."
  - In light of a recent CIT decision in the sixth administrative review, it is expected that these draft results will be upheld.
- The recent decision in the sixth administrative review affirmed the Department's use of a single surrogate country to value all FOPs, even labor, and demonstrates that the Department not only has the authority to do so, but that such a decision will be upheld by the CIT as supported by substantial evidence.
  - In the appeal of the sixth administrative review, the CIT determined that "because Commerce reasonably applied its lawful new policy when calculating surrogate labor rates in this proceeding, Commerce's labor rate valuation is also affirmed."
  - The CIT specifically addressed why the Department's decision in the sixth administrative review was different from its decision in the fifth administrative review and indicated that "unlike Vietnam Shrimp AR5, Commerce specifically weighed the considerations that the court ultimately ordered Commerce to weigh in the remand of that prior review."
  - Accordingly, the CIT's remands in the fifth administrative review do not indicate a problem with the Bangladeshi labor rate and the Department's should continue to rely on the BBS data for the final results if the Department continues to proceed with Bangladesh as the primary surrogate country.
- Contrary to AHSTAC's claims, which were also made in the sixth administrative review, the Bangladeshi wage rates are not aberrational.
  - The CIT recently upheld the Department's decision in this regard, stating that AHSTAC's "argument that the Bangladeshi wage data used in this review were aberrational is not persuasive."

- The CIT upheld the Department’s rationale that “although the Bangladeshi labor data exhibit values lower than other countries on Commerce’s initial potential surrogates list, this does not mean that the numbers are aberrational. Rather ... Bangladesh’s labor data are merely the lowest value within the range of economically comparable countries on that list.”
- AHSTAC put forth these same arguments in the instant review within their surrogate country comments. Because the Department preliminarily found, as in the sixth administrative review, that the BBS data were the best data on the record, the Department already considered and rejected AHSTAC’s argument that the BBS labor data are aberrational.

**Department’s Position:**

The Department disagrees with AHSTAC’s arguments regarding the Bangladeshi labor SV. In the Preliminary Results, we stated that our methodology for valuing labor, revised as of June 21, 2011, is to use industry-specific labor rates from the primary surrogate country.<sup>153</sup> Furthermore, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (“ILO”) Yearbook of Labor Statistics (“Yearbook”). However, as we stated in the Preliminary Results and in prior reviews, Bangladesh does not report labor data to the ILO.<sup>154</sup> Thus, we are unable to use ILO’s Chapter 6A data or wage data reported under ILO’s Chapter 5B, as is the preference. Consequently, to value labor, we determined to use labor wage rate data for the shrimp industry for Bangladesh, published by the Bangladesh Bureau of Statistics.<sup>155</sup>

Despite AHSTAC’s arguments presented in the instant review (and in prior reviews), contrary to AHSTAC’s assertions, the litigation before the CIT revolves around the Department’s explanation of its revised labor wage rate methodology for NME cases, not the quality of the data of the Bangladesh Bureau of Statistics. Indeed, the CIT has specifically rejected AHSTAC’s arguments regarding the alleged aberrational wage rate used in Vietnam Shrimp AR6.<sup>156</sup> In Camau II, the CIT stated that “AHSTAC does not offer any basis for finding the Bangladeshi labor values aberrational beyond the fact that the Bangladeshi values are the lowest on the record... On this record, the Bangladeshi data are not aberrational, it is merely the lowest price in a range of prices.”<sup>157</sup>

The source of the wage rate used in Vietnam Shrimp AR6 is the same wage rate source we preliminarily used in the instant review. Because the CIT was not compelled by AHSTAC’s arguments that the wage rate is aberrational, we find it appropriate to continue to use that wage rate for the final results. AHSTAC has not provided any additional information beyond what it has previously submitted and/or argued regarding alleged labor issues in Bangladesh to compel us to make a different determination regarding the Bangladeshi wage rate source or the rate itself. Moreover, notwithstanding that the CIT has already opined in Camau II that the

<sup>153</sup> See Prelim SV Memo and Antidumping Methodologies in Proceedings Involving Non Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092 (June 21, 2011) (“Labor Methodologies”).

<sup>154</sup> See Vietnam Shrimp AR6, and accompanying Issues and Decision Memorandum at Comment 2C.

<sup>155</sup> See Prelim SV Memo at Exhibit 6.

<sup>156</sup> See Camau Frozen Seafood Processing Import Export Corporation v. United States, 929 F. Supp. 2d 1352, 1356 (CIT 2013) (“Camau II”).

<sup>157</sup> Id.

Bangladeshi wage was not aberrational, “unless or until there is a final judgment invalidating the Department’s determination, by statute, this administrative determination is presumed to be correct.”<sup>158</sup> Notwithstanding the arguments above, the CIT has affirmed the Department’s wage rate methodology and, in doing so, our use of the Bangladeshi wage rate.<sup>159</sup> Consequently, we continue to find that the Bangladeshi wage rate data obtained from the Bangladesh Bureau of Statistics to be the best available information on the record to value labor in the instant review. We have, therefore, made no changes from our Preliminary Results with respect to the labor SV.

## **Comment 7: Whether the Chlorine, Birlox, Salt and Skewer SVs are Aberrational**

### **A. Chlorine and Birlox**

#### **Stapimex/SR Respondents and MPG Case Briefs:**

- The Bangladeshi SV for chlorine and Birlox is aberrational because it does not reflect the actual costs experience by the respondents and is overpriced compared to other chlorine and Birlox SVs on the record.
- The CIT and CAFC required the Department to compare different sources of data on the record to select the best information available to value FOPs.
- The Department should use a weighted value of the Indian and Indonesian SVs on the record to derive a market price for chlorine and Birlox.

No other party commented on this issue.

#### **Department’s Position:**

We disagree with Stapimex/SR Respondents and MPG that the Bangladeshi SV for chlorine and Birlox used in the Preliminary Results is aberrational. In the Preliminary Results, the Department used Bangladeshi HTS 2801.10 to value chlorine and Birlox.<sup>160</sup>

Section 773(c)(1)(B) of the Act directs the Department to use “the best information available” from the appropriate ME country to value FOPs. In selecting the most appropriate SVs, the Department considers several factors including whether the SV is publicly available, contemporaneous with the POR, represents a broad market average, chosen from a single approved surrogate country, is tax and duty-exclusive, and is specific to the input.<sup>161</sup> The

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<sup>158</sup> See, e.g., Shandong Huarong Gen. Group Corp. v. United States, 122 F. Supp. 2d 143, 148 (CIT 2000) (“By statute, Commerce’s administrative review determinations are presumed to be correct and the burden of proving otherwise rests exclusively upon the party challenging such decision.” (citing 28 U.S.C. 2639a(1))). Because the results of the administrative reviews are presumed to be correct for a court action appealing them, they must also be presumed to be correct in the context of an administrative review.

<sup>159</sup> See Ad Hoc Shrimp Trade Action Comm. v. United States, 986 F. Supp. 2d 1362 (CIT 2014); Camau Frozen Seafood Processing Import Export Corporation v. United States, Consol. Ct. No. 11-00399, Docket No. 123 (CIT July 17, 2014) (affirming remand results that relied on labor wage data for the shrimp industry in Bangladesh, published by the Bangladesh Bureau of Statistics).

<sup>160</sup> See Prelim SV Memo at Exhibit 1.

<sup>161</sup> See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 11349 (March 17, 2009) (“Fish Fillets 2009”) and accompanying Issues and Decisions Memorandum at Comment 9.

Department's preference is to satisfy the breadth of the aforementioned selection criteria. However, where all of the criteria cannot be satisfied, the Department will choose a SV based on the best information available on the record.<sup>162</sup>

As stated above, the Department used Bangladeshi import data reported to UN Comtrade under HTS 2801.10 to value chlorine and Birlox. The data are from the approved surrogate country, represent a broad market average, are tax and duty-exclusive, and are specific to the input.<sup>163</sup>

We disagree with MPG, Stapimex, and SR Respondents arguments that the Bangladeshi HTS code 2801.10 used to value chlorine and Birlox is aberrational when compared to all other values on the record and not the type of chlorine used by the respondents. When determining whether data are aberrational, the Department has found that 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 SV.<sup>164</sup> Under the Department's current practice, interested parties must provide specific evidence showing the value is aberrational. If a party presents sufficient evidence to demonstrate a particular SV is aberrational, and therefore unreliable, the Department will examine all relevant price information on the record, including any appropriate benchmark data, in order to accurately value the input in question. With respect to benchmarking, the Department's current practice is to examine import data for potential surrogate countries for a given case, to the extent such import data are available, and/or examine data from the same HTS category for the surrogate country over multiple years to determine if the current data appear aberrational compared to historical values.<sup>165</sup>

The record does not contain historical data for chlorine from any of the countries on the Surrogate Country List which demonstrates that the Bangladeshi chlorine value is in any way distorted over time. MPG and Stapimex argue that the Bangladeshi chlorine value is aberrational when compared to other data on the record for chlorine. We find that comparing the Bangladeshi chlorine value to the Indian value for the same HTS number is unrevealing.<sup>166</sup> The exercise simply demonstrates that the Bangladeshi value for chlorine is higher than the value from India, not that it is aberrational. The Department has explained that comparing one high value with a lower value, even significantly lower, is insufficient evidence that one or the other is aberrational.<sup>167</sup> As we have stated before, without any additional reference points, a party can

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<sup>162</sup> Id.

<sup>163</sup> See Prelim SV Memo at 2-4.

<sup>164</sup> See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 76 FR 56158 (September 12, 2011) and accompanying Issues and Decisions Memorandum at Comment 12.

<sup>165</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) and accompanying Issues and Decisions Memorandum at Comment 6.

<sup>166</sup> We did not compare the Bangladesh SV to the Indonesian value (see Comment 1).

<sup>167</sup> See, e.g., 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) ("PRC Shrimp AR3") and accompanying Issues and Decision Memorandum at Comment 3C; Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, 74 FR 16838 (April 13, 2009) ("Citric Acid 2009") and accompanying Issues and Decision Memorandum at Comment 5B.

just as easily make the claim that either value is aberrational in comparison to the other, without sufficient evidence to draw a conclusion either way.<sup>168</sup>

With regard to their claim that Bangladeshi HTS number 2801.10 is not specific to the input they use, we note that in their collective SV submission, MPG and Stapimex provided the HTS number 2801.10 and the UNComtrade data to value chlorine—the very same HTS number that they now protest.<sup>169</sup> Finally, MPG reported on the record that Birlox is a cleaning agent like chlorine<sup>170</sup> and did not provide an HTS number specific to Birlox. Thus, we valued chlorine and Birlox, both cleaning agents, using the same HTS number. In other words, the Department applied the HTS number provided by the respondents. MPG did not report a distinction between the two cleaning agents; thus, we applied HTS 2801.10 to both chlorine and Birlox.<sup>171</sup>

With respect to MPG's and Stapimex's argument that the Bangladeshi SV is aberrational compared to the domestic price paid by the respondents, the Department has long considered NME prices to be unreliable.<sup>172</sup> Accordingly, we find it is unreasonable to compare the domestic chlorine price paid by the respondents to the Bangladeshi chlorine SV. Therefore, for these final results, we will continue to rely on the Bangladeshi value for chlorine as the SV for MPG's and Stapimex's chlorine and Birlox inputs as it meets the Department's SV selection criteria and evidence on the record does not demonstrate the Bangladeshi value is aberrational.

## **B. Salt**

### **Stapimex/SR Respondents and MPG Case Briefs:**

- The Bangladeshi SV for salt is aberrational because it does not reflect the actual costs experienced by the respondents and is overpriced compared to other salt SVs on the record. Further, the Bangladesh salt quantity represents only a small quantity of the salt used by the respondents. The quantity of salt in the SV should reflect the consumption quantity of the mandatory respondents.
- The CIT and CAFC required the Department to compare different sources of data on the record to select the best information available to value FOPs.
- The Department should use a weighted value of the Indian and Indonesian SVs on the record to derive a market price for salt.

No other party commented on this issue.

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

We disagree with Stapimex/SR Respondents and MPG that the Bangladeshi SV for salt used in the Preliminary Results is aberrational. As noted above, the Department considers several criteria in selecting the best available information to value FOPs. In the Preliminary Results, the

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<sup>168</sup> See Citric Acid 2009, and accompanying Issues and Decision Memorandum at Comment 5B.

<sup>169</sup> See MPG and Stapimex SV Submission dated October 28, 2013, at SV-3.

<sup>170</sup> See MPG Section D Questionnaire Response dated July 22, 2013, at 9.

<sup>171</sup> See Prelim SV Memo at Exhibit 5E.

<sup>172</sup> See section 773(c)(1) of the Act; see also Small Diameter Graphite Electrodes From the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order, 77 FR 47596 (August 9, 2012) and accompanying Issues and Decisions Memorandum at Comment 2.

Department used Bangladeshi import data reported to UN Comtrade under HTS 2501.00 to value salt. The data are from the approved surrogate country, represent a broad market average, are tax and duty-exclusive, and are specific to the input.<sup>173</sup>

Similar to MPG's and Stapimex/SR Respondents' argument above with respect to chlorine, these respondents argue that the Bangladeshi salt SV is aberrational because it is at a higher price than the price paid in Vietnam for salt and higher than the Indian and Indonesia salt values.

As stated above, the Department considers several criteria when evaluating whether a SV is aberrational and examines all relevant price information on the record, including any appropriate benchmark data, in order to accurately value the input in question.<sup>174</sup> Here, the record contains no historical salt information from any of the countries on the Surrogate Country List which allows us to determine whether the Bangladeshi salt SV used in this POR is aberrational. Additionally, there is no information on the record which demonstrates that Bangladeshi value for salt is not specific to the salt used by the respondents.

MPG and Stapimex/SR Respondents argue that the Bangladeshi salt value is aberrational when compared to other data on the record for salt. In determining whether a SV is aberrational, it is the Department's practice to compare it to the average unit values ("AUV") calculated using data for the input at issue of the other countries found by the Department to be economically comparable to the NME country.<sup>175</sup> As noted above, in this administrative review, the record does not contain substantiated evidence of Indonesia's GNI; thus, the Department could not make any determinations as to Indonesia's level of economic development compared to Vietnam. We selected Bangladesh as the primary surrogate country. As a result, we have not used Indonesian SVs, apart from shrimp scrap, to value FOPs or compared non-shrimp SV data from Indonesia to Vietnam's. In any case, in Camau II, the CIT dismissed arguments where a range of SVs for an input from differing sources indicates the selected SV is aberrational.<sup>176</sup>

As with chlorine above, we find that comparing the Bangladeshi salt value to the Indian value for the same HTS number is unrevealing. This simply demonstrates that the Bangladeshi value for salt is higher than the value from India, not that it is aberrational or that there is an unreasonable percentage difference between the two salt values. The Department previously explained that comparing one high value with a lower value, even significantly lower, is insufficient evidence that one or the other is aberrational.<sup>177</sup> As we stated before, without any additional reference points, a party can just as easily make the claim that either value is aberrational in comparison to the other, without sufficient evidence to draw a conclusion either way.<sup>178</sup>

We disagree with MPG's and Stapimex/SR Respondents' argument that the Bangladesh import quantity of salt should be representative of the quantity consumed by these companies during the POR. When making SV selection the Department considers whether the SV is publicly

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<sup>173</sup> See Prelim SV Memo at 2-4.

<sup>174</sup> See Citric Acid 2009, and accompanying Issues and Decision Memorandum at Comment 5B.

<sup>175</sup> See Trust Chem Co. v. United States, 791 F. Supp. 2d 1257 (CIT 2011)

<sup>176</sup> See Camau II, 929 F. Supp. 2d 1352, 1356.

<sup>177</sup> See, e.g., PRC Shrimp AR3, and accompanying Issues and Decision Memorandum at Comment 3C; Citric Acid 2009, and accompanying Issues and Decision Memorandum at Comment 5B.

<sup>178</sup> See Citric Acid 2009, and accompanying Issues and Decision Memorandum at Comment 5B.

available, contemporaneous with the POR, represents a broad market average, chosen from a single approved surrogate country, is tax and duty-exclusive, and is specific to the input.<sup>179</sup> Further, the Department consistently finds that small quantities alone are not inherently distortive.<sup>180</sup> The Department does not consider whether the quantity used to calculate the SV is representative of the quantity used by respondents, rather as previously stated the Department considers whether the SV source is publicly available, contemporaneous with the POR, represents a broad market average, chosen from a single approved surrogate country, is tax and duty-exclusive, and is specific to the input. Here, the Bangladeshi SV for salt meets these criteria. Therefore, because the Bangladeshi SV for salt meets the Department's SV selection criteria, is not otherwise aberrational, and represents the best available information, the Department will continue to use the Bangladeshi value as the SV for salt in these final results.

### C. Skewers

#### MPG Case Brief:

- The Bangladeshi SV for skewers is aberrational because it does not reflect the actual costs experience by the respondents and is overpriced compared to other skewer SVs on the record.
- The CIT and CAFC required the Department to compare different sources of data on the record to select the best information available to value FOPs.
- The Department should either: 1) disregard imports from Japan, China/Hong Kong SAR, and South Africa in its calculation of the Bangladeshi skewer SV or 2) use a weighted average price of the other data on the record of this proceeding (India and Indonesia).

No other party commented on this issue.

#### Department's Position:

We disagree with MPG that the Bangladeshi SV for skewers used in the Preliminary Results is aberrational. As noted above, the Department considers several criteria in selecting the best available information to value FOPs. In the Preliminary Results, the Department used Bangladeshi import data reported to UN Comtrade under HTS 4421.90 to value skewers. The data are from the approved surrogate country, represents a broad market average, are tax and duty-exclusive, and are specific to the input.<sup>181</sup>

MPG argues that Bangladeshi skewer SV is aberrational and that the imports from Japan, Hong Kong, and South Africa should be removed from the calculation of the skewer SV or the Department should use a weight average of the other skewer data on the record to calculate an SV. As stated above, the Department considers several criteria when evaluating whether an SV is aberrational and examines all relevant price information on the record, including any

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<sup>179</sup> See Fish Fillets 2009, and accompanying Issues and Decision Memorandum at Comment 9.

<sup>180</sup> See, e.g., Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results of Administrative Review, 2011-2012, 78 FR 56209 (September 12, 2013), and accompanying Issues and Decisions Memorandum at Comment 4.

<sup>181</sup> See Prelim SV Memo at 2-4.

appropriate benchmark data, in order to accurately value the input in question.<sup>182</sup> We find MPG's argument that the Bangladeshi skewer value is unreliable because of widely divergent AUV's has not been substantiated on the record. The Department previously explained that comparing one high value with a lower value, even significantly lower, is insufficient evidence that one or the other is aberrational.<sup>183</sup> As we stated before, without any additional reference points, a party can just as easily make the claim that either value is aberrational in comparison to the other, without sufficient evidence to draw a conclusion either way.<sup>184</sup> When import data are obtained from a wide range of countries--as is the case here with Bangladeshi imports from eleven countries--with a wide range of quantity and value, it is not normally deemed unusual to find a wide range of AUV's.<sup>185</sup> However, MPG has not placed any historical data or benchmarking data on the record to support its allegation that the divergent AUV's necessarily mean that data is unreliable. Moreover, in Camau II, the CIT stated that the existence of a range of different values on a record does not render any one of those values as aberrational.<sup>186</sup> Therefore, we will continue to use the Bangladeshi value for skewers because it represents the best available information on the record from the primary surrogate country in this administrative review.

#### **Comment 8: Certain Adjustments to Financial Ratios**

##### **Stapimex/SR Respondents and MPG Case Briefs:**

- For the final results, the Department should correct certain errors in its calculation of surrogate financial ratios when classifying, 1) classification of traded/finished goods; and 2) classification of packing materials & consumables.
- Specifically, the Department should: 1) include the change in inventory in the denominator of selling, general and administrative ("SG&A") expenses 2) include the line item for "Packing materials and Consumable stores in the direct material denominator.

No other party commented on this issue.

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

We disagree with MPG and Stapimex/SR Respondents that we need to make any adjustments to the surrogate financial ratios. With respect to the change in inventory in the denominator of SG&A, we note that the Department made this adjustment in the Preliminary Results.<sup>187</sup> Accordingly, no further adjustment is warranted.

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<sup>182</sup> See Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 77 FR 67337 (November 9, 2012) ("Activated Carbon 2012") and accompanying Issues and Decision Memorandum at Comment 1.C.(A).

<sup>183</sup> See, e.g., PRC Shrimp AR3, and accompanying Issues and Decision Memorandum at Comment 3C; Citric Acid 2009, and accompanying Issues and Decision Memorandum at Comment 5B.

<sup>184</sup> See Citric Acid 2009, and accompanying Issues and Decision Memorandum at Comment 5B.

<sup>185</sup> See Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 75 FR 49460 (August 13, 2010) and accompanying Issues and Decisions Memorandum at Comment 4.

<sup>186</sup> See Camau II, 929 F. Supp. 2d 1352, 1356.

<sup>187</sup> See Prelim SV Memo at Exhibit 9 (electronic version), specifically, the formula for SG&A.

With respect to MPG's and Stapimex/SR Respondents' request that we include the line item for "Packing materials and Consumable stores in the direct material denominator, we disagree. We note the Department has long applied the distinction between "packaging" materials and "packing" materials, finding that "'packaging' materials which are inescapably purchased as part of the subject merchandise by the ultimate consumer...are properly considered raw materials."<sup>188</sup> When deriving surrogate financial ratios, the Department excludes certain expenses and accounts for these expenses elsewhere<sup>189</sup> in order to avoid double-counting costs where the requisite data are available to do so.<sup>190</sup> Because we include packing costs in our dumping calculations, to include them in our calculation of the surrogate SG&A financial ratio would result in double-counting.<sup>191</sup> Therefore, we excluded packing costs from the surrogate ratio calculation because, based on the limited description in Gemini's financial statements, as "packing materials and consumable store,"<sup>192</sup> packing costs are best considered as packing which has been accounted for in the Department's margin calculation.

## Company Specific Issues

### Comment 9: Separate Rate Status for MPG Affiliate Names

#### MPG Case Brief:

- In the Preliminary Results, the Department failed to grant separate rate status for three additional names for affiliated company Minh Phu Hau Giang Seafood Co., Ltd.
- In its separate rate certification dated May 28, 2013, MPG requested that these names be granted separate rate status: Minh Phu-Hau Giang Seafood Corp.; Minh Phu-Hau Giang Seafood Processing Co., Ltd.; and Minh Phu-Hau Giang Seafood Processing Corporation.
  - The abbreviated name, Minh Phu-Hau Giang Seafood Corp. is listed on Minh Phu Hau Giang Seafood Co., Ltd.'s business registration certificate No. 642021000003 dated July 25, 2011 and March 28, 2011, included in Exhibit 1 of Section D of the separate rate certification.
  - Minh Phu-Hau Giang Seafood Processing Co., Ltd. is an abbreviated version of the full named listed on business registration certificate No. 642021000003 dated July 25, 2011, March 28, 2011, November 22, 2010, October 7, 2010, June 18, 2010, June 1, 2010, February 10, 2010, August 5, 2009, and April 29, 2008 included in Exhibit 1 of Section D of the MPG separate rate certification.

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<sup>188</sup> See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China, 70 FR 24502 (May 10, 2005) and accompanying Issues and Decision Memorandum at Comment 10.

<sup>189</sup> See First Administrative Review of Sodium Hexametaphosphate From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review, October 20, 2010 (75 FR 64695) and accompanying Issues and Decisions Memorandum at Comment 4.

<sup>190</sup> See, e.g., Helical Spring Lock Washers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 4175 (January 24, 2008) and accompanying Issues and Decision Memorandum at Comment 6A (where the Department articulated its practice to avoid double-counting costs in calculating dumping margins).

<sup>191</sup> See Wooden Bedroom Furniture from the People's Republic of China: Final Results of the 2004-2005 Semi-Annual New Shipper Reviews, 71 FR 70739 (December 6, 2006) and accompanying Issues and Decision Memorandum at Comment 13.

<sup>192</sup> See MPG and Stapimex SV Submission, dated October 28, 2013 at Exhibit SV-7.

- Minh Phu-Hau Giang Seafood Processing Corporation is listed as the direct translation of the company name on business registration certificate No. 642021000003 dated July 25, 2011, and March 28, 2011, included in Exhibit I of Section D of the MPG separate rate certification.

No other parties commented on this issue.

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

The Department disagrees, in part, with MPG regarding the inclusion of the additional names for which it requested separate rate status. As we stated in the past, the final margin calculated in this review for the MPG single entity applies only to shipments by the companies that were examined in this review as part of the collapsed entity.<sup>193</sup> While this single entity includes Minh Phu Hau Giang Seafood Co., Ltd., MPG reported that during this POR, “Minh Phu Hau Giang’s shipments were made through other members of the Minh Phu Group to the U.S. affiliate Seafood.”<sup>194</sup> Thus, according to MPG, Minh Phu Hau Giang Seafood Co., Ltd. did not export under its own name.<sup>195</sup>

Therefore, based on MPG’s reported information, there were no entries from Minh Phu Hau Giang Seafood Co., Ltd., or any other variations of that name that would require specific action for liquidation purposes for this review period. Nevertheless, in the event that Minh Phu Hau Giang Seafood Co., Ltd. exports subject merchandise using doing-business-as (“dba”) names, it would be entitled to the separate rate granted to the collapsed entity. We find that only two of the three names proffered by MPG can be considered dba names. Specifically, because Minh Phu-Hau Giang Seafood Processing Co., Ltd. and Minh Phu-Hau Giang Seafood Processing Corporation contain the additional word “Processing” in its name, we can reasonably consider this to be a potential dba name. However, Minh Phu-Hau Giang Seafood Corp. with only a hyphen added and the abbreviation Co. for “Corporation” abbreviated to “Corp.” is a variation of the official name, which we have already included: Minh Phu Hau Giang Seafood Co., Ltd. Therefore, for the final results, we will add Minh Phu-Hau Giang Seafood Processing Co., Ltd. and Minh Phu-Hau Giang Seafood Processing Corporation to the Federal Register notice and the CBP module.

### **Comment 10: Whether the Department Should Continue to Decline to Select Quoc Viet As A Voluntary Respondent**

#### **Quoc Viet Case Brief:**

- For the final results, the Department should assign Quoc Viet an AD margin based on its own POR sales and production experience.

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<sup>193</sup> See, e.g., Wooden Bedroom Furniture From the People’s Republic of China: Final Results and Final Rescission in Part, 75 FR 50992 (August 18, 2010) and accompanying Issues and Decision Memorandum at Comment 18.

<sup>194</sup> See MPG Separate Rate Certification dated May 28, 2013, at Attachment D, page 9.

<sup>195</sup> Id. Because we calculated a single cash deposit rate in the previous administrative review for the MPG single entity, any entries for the current POR exported by Minh Phu Hau Giang Seafood Co., Ltd. specifically would have had the benefit of that single entity rate. However, MPG has reported that Minh Phu Hau Giang Seafood Co., Ltd. did not export under its own name during this POR.

- As explained in Grobtest I and II, the Department is required to establish an individual rate for voluntary respondents unless unusual burdens prevent the Department from doing so and in this AR, the Department did not and has not faced unusual burdens that exceed those faced in typical AD reviews. Further, past reviews of Quoc Viet and the time remaining in this review indicate that the calculation of an individual rate for Quoc Viet would not inhibit the timely completion of the review.

**ASPA Rebuttal Brief:**

- The Department should continue to decline to select Quoc Viet as a voluntary respondent for the following reasons: 1) the Department faced unusual burdens in this administrative review that exceeds those faced in typical AD reviews and, 2) consistent with statutory requirements in section 777(a)(2) of the Act, this review is “so large” as to warrant the rejection of the request.

**Department’s Position:**

We agree with ASPA regarding Quoc Viet’s status in this review. The Department is not calculating an individual rate for Quoc Viet in these final results, and is assigning to Quoc Viet the separate rate calculated for separate rate respondents.

The Department notes that with respect to respondent selection, section 777A(c)(2) of the Act provides that when we are faced with a large number of companies such that its individual examination of all companies would be impracticable, we may limit our individual examination of companies to a reasonable number of such companies. In addition, section 777A(c)(2) of the Act permits us to determine margins for a reasonable number of exporters by limiting our examination either (1) through a sampling of exporters, producers, or types of products or (2) by selecting the exporters accounting for the largest volume of the subject merchandise.

In selecting respondents for individual examination, we took into consideration resources such as current and anticipated workload, and deadlines expected to coincide with the segment in question.<sup>196</sup> In the Respondent Selection Memo, we explained that it would not be practicable in this review to examine all 320 companies for which we had requests for review in light of, inter alia, our limited resources. Thus, in accordance with section 777A(c)(2) of the Act, we selected a reasonable number of respondents, specifically MPG (comprising several companies) and Stapimex, the two respondents accounting for the largest volume of exports of subject merchandise that could reasonably be reviewed.<sup>197</sup>

At the time the Department selected two mandatory respondents to investigate, it also specifically addressed voluntary respondents, stating:

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<sup>196</sup> See Memorandum to James C. Doyle, Director, Office 9, Antidumping and Countervailing Duty Operations, from Irene Gorelik, Analyst, Import Administration, re: “Antidumping Duty Administrative Review of Certain Frozen Warm water Shrimp from the Socialist Republic of Vietnam: Selection of Respondents for Individual Examination,” dated May 24, 2013 (“Respondent Selection Memo”).

<sup>197</sup> *Id.* at 8.

If any company, including Quoc Viet, wishes to be considered as a voluntary respondent and meets the requirements of section 782(a) of the Act and 19 CFR 351.204(d), the Department will consider whether to examine a voluntary respondent at the time that information necessary to establish eligibility for treatment as a voluntary respondent has been submitted.<sup>198</sup>

Quoc Viet employs the benefit of hindsight when it argues that the Department should have selected it as a voluntary respondent because selecting Quoc Viet would not have caused an undue burden on the Department. In the Voluntary Respondent Memo, the Department explained how the facts of the case, at that point in time, differed from the circumstances in the seventh administrative review where the Department selected Quoc Viet as a voluntary respondent. The Department explained that it had never individually examined one of the largest exporters selected for review, and as such, the additional time and resources that we would need to devote to becoming familiar with this company render the review of a third company in this review unduly burdensome and would inhibit the timely completion of the review.<sup>199</sup> Further, the Department distinguished the facts of this case from the circumstances in Grobest II. In Grobest II, the Court concluded that the Department failed to show undue burden because the burdens that the Department named in the remand results were “the same burdens that occur in every review.”<sup>200</sup> Based on the facts of the record at the time of the Voluntary Respondent Memo, the Department anticipated conducting potentially two changed circumstance reviews, and addressing complex issues and potentially issuing numerous deficiency questionnaires for the company which had never been individually examined.<sup>201</sup> While the Department ultimately conducted only one of potentially two changed circumstance reviews during the course of this administrative review, the Department took into consideration the reasonably anticipated workload when evaluating the resources available to conduct this administrative review at the time when the decision was made.

We recognize that section 782(a) of the Act establishes a separate standard for the treatment of voluntary respondents. As a result, the Department analyzed, under section 782(a)(2) of the Act, its ability to individually review an additional voluntary respondent separate from the mandatory respondent selection process provided for by section 777A(c)(2) of the Act. In determining whether the Department was able to individually review an additional company as a voluntary respondent, consistent with section 782(a) of the Act, it contemplated whether doing so would have been unduly burdensome and whether it would have inhibited the timely completion of the administrative review. In this instance, the Department considered the fact that the burdensome nature of reviewing an additional respondent does not lie solely in the acquisition of responses to the Department's initial Section A, C and D questionnaire. Instead, the majority of the burden lies in the analysis of each company's responses to the questionnaire, as well as the corresponding data for both U.S. sales and factors of production data. In doing so, we note that

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<sup>198</sup> Id.

<sup>199</sup> See Memorandum to James C. Doyle, Director, Office 9, through Catherine Bertrand, Program Manager, Office 9, from Irene Gorelik, Senior Trade Analyst, re: “Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Selection of Voluntary Respondent,” dated July 24, 2013 (“Voluntary Respondent Memo”) at 3.

<sup>200</sup> Id. at 3-4. See also Grobest & I-Mei Industrial (Vietnam) Co. v. United States, 853 F. Supp. 2d 1352 (CIT 2012) (“Grobest II”).

<sup>201</sup> Id.

this process frequently results in finding deficient responses to the initial questionnaire. As a result, such deficient responses require the Department to draft supplemental questionnaires, which unlike the Department's original questionnaire, are specific to each respondent and address each company's unique circumstances. When there is a new company as a mandatory respondent, as in this review, Commerce reasonably anticipated the need to devote additional time to analyze the original questionnaire responses, draft supplemental responses that may have been lengthier or more in number than previously examined companies, and in general require additional time to understand the company. The existence of a new mandatory thus created an additional burden to the Department.<sup>202</sup>

In addition to the need to examine the responses of both mandatory respondents and issue supplemental questionnaires, we also knew that we would need to analyze the 30 separate-rate applications and certifications we received for this review, issue numerous supplemental questionnaires to these applicants and analyze their supplemental responses. Moreover, at the request of MPG and Stapimex, we extended the deadlines for comments on the selection of surrogate country and SVs to August 30, 2013, and October 11, 2013, respectively.<sup>203</sup> After we received comments concerning the selection of surrogate country and SVs from interested parties, we analyzed the submissions and selected the surrogate country and the SVs for more than 30 FOPs and other line items.

By the time we began analyzing the first supplemental responses of the two selected respondents, the workload level had not decreased or changed in a way that would have allowed us to accept Quoc Viet as a voluntary respondent. Accordingly, we determined that acceptance of Quoc Viet as a voluntary respondent would be unduly burdensome and inhibit the timely completion of the review.

With respect to the particular issues in this case, the Department required considerable time to analyze the questionnaire responses, supplemental questionnaires, and the FOPs for the selected respondents. The process required to adequately analyze the complex, voluminous data and information submitted in this administrative review required significant time and resources such that it would not have been simple to additionally review Quoc Viet, as Quoc Viet contends. For example, because of the complexity of issues involving the selection of surrogate country and SVs, and because of the numerous extensions we granted at the request of various parties during the course of the review to submit information to the record, we fully extended the due date for the Preliminary Results.<sup>204</sup> Even with the fully extended deadline for the Preliminary Results, because of: (1) the complexity and details of the original and supplemental responses by MPG and Stapimex, (2) the large number of FOPs and other line items that required SVs, (3) the large number of separate-rate requests we received and analyzed, (4) conducting a changed circumstance review, and (5) the continuing level of workloads for other cases throughout this review as we described in the Respondent Selection Memo. Therefore, at the time of the

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<sup>202</sup> Id.

<sup>203</sup> See Letter to Interested Parties, dated August 12, 2013 and September 17, 2013, respectively.

<sup>204</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary, through James C. Doyle, Director, Office 9, from Bob Palmer, Senior Case Analyst, re: "Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," September 12, 2013.

Voluntary Respondent Memo, we reasonably determined that we could not spend the time and resources to accept Quoc Viet as a voluntary respondent, fully analyze Quoc Viet's information and data and issue the Preliminary Results even within the fully extended statutory due date. Regardless of any alleged simplicity in reviewing an additional company, the Department's past experience with this case demonstrates that examining another company such as Quoc Viet would have required that the Department allot additional time and assign additional staff to analyze its responses (in addition to the staff completing its other casework within the statutory deadlines) at a level beyond the capacity of the Department's resources. Accepting Quoc Viet as a voluntary respondent, therefore, would have been unduly burdensome and inhibited not only the timely completion of the preliminary results, as explained above, but also the further, timely completion of the final results in this administrative review.

The determination of whether examining voluntary respondents creates an undue burden and inhibits the timely and accurate completion of the investigation is made after the Department has chosen a reasonable number of mandatory respondents under section 777A(c) of the Act. Thus, the determination must be made within the context established after that initial decision and must necessarily be considered in light of the challenges presented by the companies already selected, in addition to any other particular circumstances that the specific investigation presents to the Department's resources. Contrary to respondents' claim, this standard does not require a showing that examination of this particular voluntary respondent would be more burdensome than the burden that exists for any other respondent.

#### **Comment 11: Whether the Rejection of Quoc Viet's Margin Calculation Submission was Contrary to Law**

##### **Quoc Viet Comments:**

- The Department has no legal or logical basis to reject the margin calculation because the statute and regulations do not address the generation of new information.
- Even if the Department considers margin calculation as factual information, the Department must consider it timely because it rebuts the factual information of the margins used to calculate the separate rate applied to Quoc Viet.

No other party commented on this issue.

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

On March 28, 2014, Quoc Viet submitted an AD margin calculation for itself using its submitted Section C and D data, the Department's margin calculation SAS program, and the SV information used by the Department in the Preliminary Results. The March 28, 2014, submission contained the SAS Program for calculating AD margins, the SAS Log of Quoc Viet's AD margin calculation and the SAS Output of Quoc Viet's AD margin. On April 7, 2014, Quoc Viet submitted a letter reiterating its request to be selected as a voluntary respondent. On April 16, 2014, the Department issued a letter rejecting Quoc Viet's March 28, 2014 submission and its April 7, 2014 letter indicating these submissions possessed untimely filed new factual

information.<sup>205</sup> The Department allowed Quoc Viet one day to resubmit its March 28, 2014, submission and April 7 submissions omitting the new factual information. April 18, 2014, Quoc Viet resubmitted its March 28, 2014 submission and its April 7 letter, in which it redacted the results of arithmetic from the SAS program. Also, in its April 18 submission, Quoc Viet requested that the Department reconsider its decision to reject this information and contended that the Department did not comply with 19 CFR 351.302(d)(1)(i) and 351.104(a)(2) when it removed the March 28, 2014 and April 7, 2014 submissions from the record. On April 30, 2014, the Department again rejected Quoc Viet's submission of SAS information and did not request that Quoc Viet resubmit any version of its prior submissions and explained that the "Department does not provide producers or exporters with authority to calculate or determine their own dumping margins based on information that is not being examined by the Department."<sup>206</sup> In the April 30 letter, the Department recognized that its regulations require the agency to maintain a copy of the rejected materials on the record solely for the purpose of establishing the basis for the rejection. On May 5, 2014, Quoc Viet submitted again the original SAS calculation and information and asked again that the Department reconsider its determination that these submissions contained new factual information. On May 6, 2014, the Department rejected the Quoc Viet's SAS information and supporting letter, but maintained copies of the rejected documents solely in order to establish and document the basis for the rejection.<sup>207</sup>

The Department's regulations define factual information as "data or statements of fact in support of allegations," and "other data or statements of fact..."<sup>208</sup> Further, the regulations state that "any interested party may submit factual information to rebut, clarify, or correct factual information submitted by any other interested party prior to the deadline provided in this section for submission of such factual information."<sup>209</sup> In accordance with 19 CFR 351.302(b)(2), the deadline for factual information is 140 days from the initiation of the administrative review. This administrative review was initiated on April 1, 2013; accordingly the factual information deadline in this proceeding was July 18, 2013.<sup>210</sup>

With respect to its self-calculated dumping margin, Quoc Viet contends that the results of calculations applied to record data cannot be considered factual information under the law. However, the Department's regulations define factual information to include "data" and even Quoc Viet appears to acknowledge, factual information includes "data."<sup>211</sup> While Quoc Viet's SAS program allegedly used information already on the record, which the Department did not review or analyze, the outcome of running a SAS program is data, and in this instance, data which had not previously existed on the record. Because data are factual information and the information from Quoc Viet's SAS program had not previously existed on the record, it is therefore new factual information as defined by 19 CFR 351.102(b)(21)(ii) (April 1, 2013

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<sup>205</sup> See Letter to Quoc Viet, re: "Rejection of March 28, 2014 and April 7, 2014 Submissions," dated April 16, 2014.

<sup>206</sup> See Letter to Quoc Viet, re: "Rejection of April 17, 2014 Submission," dated April 17, 2014.

<sup>207</sup> See Memorandum to the File, from Bob Palmer, Trade Compliance Analyst, Office V, re: "Rejection of New Information from Quoc Viet Seaproducts Processing Trading and Import-Export Co., Ltd.," dated May 6, 2014.

<sup>208</sup> See 19 CFR 351.102(a)(21)(ii-iii) (April 1, 2013 edition).

<sup>209</sup> See 19 CFR 351.302(c)(1) (April 1, 2013 edition).

<sup>210</sup> See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 78 FR 19197 (March 29, 2013) ("Initiation Notice"); see also 19 CFR 351.302 (b)(2) (April 1, 2013 edition).

<sup>211</sup> See Quoc Viet Case Brief at 36.

edition) and (iii). Further, because this new information was submitted after the factual information deadline of July 18, 2013, this information is untimely.

Quoc Viet contends that it placed the SAS program, log and output on the record to rebut the Preliminary Results.<sup>212</sup> We note that 19 CFR 351.301(c)(1) states:

Any interested party may submit factual information to rebut, clarify, or correct factual information submitted by any other interested party at any time prior to the deadline provided in this section for submission of such factual information. If factual information is submitted less than 10 days before, on, or after (normally only with the Department's permission) the applicable deadline for submission of such factual information, an interested party may submit factual information to rebut, clarify, or correct the factual information no later than 10 days after the date such factual information is served on the interested party or, if appropriate, made available under APO to the authorized applicant.

While Quoc Viet contends that the information placed on the record is to rebut information placed on the record by the Department, we note the Department does not meet the definition of an interested party;<sup>213</sup> it is the administering authority.<sup>214</sup> Accordingly, Quoc Viet's claim that it is permissible to accept its new factual information as a rebuttal of factual information from an interest party is inapposite. While the regulations allow for the placement of new information only as it pertains to publicly available information to value FOPs,<sup>215</sup> there is no provision in the statute or the Department's regulations which allows parties to provide new factual information to rebut the preliminary results of a review.

Quoc Viet argues that if the Department continues to find that the SAS information is new, it should be considered timely. As noted above, the Department inadvertently considered the new factual information timely although the SAS information was submitted past the deadline for submissions of factual information in this review. Because the Department had not requested this information and it was submitted after the deadline for new factual information, Quoc Viet's SAS program and related information is properly considered untimely. The Department's regulation 19 CFR 351.302(d)(1)(i) states that the Department will "not consider or retain in the official record of the proceeding...untimely filed factual information, written argument, or other material that the Secretary rejects." However, where a timely submitted document is rejected because it contains untimely filed new factual information, the Department normally includes in the record a copy of the rejected document solely to establish and document the basis for rejection in accordance with 19 CFR 351.104(a)(2)(ii). However, as Quoc Viet's SAS program, log and output constitute untimely filed new factual information, the Department rejected and will not use the rejected information in its determination, as required by 19 CFR 351.104(a)(2)(i).

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<sup>212</sup> Id.

<sup>213</sup> See 19 CFR 351.102(b)(29) (April 1, 2013 edition).

<sup>214</sup> See section 771(1) of the Act.

<sup>215</sup> See 19 CFR 351.301(c)(3) (April 1, 2013 edition).

## **Quang Ngai and Dachan**

### **Comment 12: Separate Rate Status of Quang Ngai and Dachan**

#### **Dachan<sup>216</sup> and Quang Ngai<sup>217</sup> Case Brief:**

- The Department should grant Dachan and Quang Ngai a separate rate as the record contains the necessary information to determine their separate rate eligibility.
- The Department abused its discretion when it arbitrarily rejected Dachan's and Quang Ngai's no shipment certifications and imposed a burden on the companies by denying them the rates issued by the Department for separate rate respondents in the previous administrative review.

#### **AHSTAC Rebuttal Brief:**

- Dachan and Quang Ngai did not meet the deadline to submit a no shipment certification. Because the record does not contain a separate rate application/certification or a "no shipment" letter from Dachan or Quang Ngai, the Department should consider them part of the Vietnam-wide entity.

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

We disagree with Dachan and Quang Ngai that they qualify for a separate rate in the instant review. In the Preliminary Results, the Department denied Dachan and Quang Ngai a separate rate because these companies have not provided any documentation supporting their eligibility for a separate rate.<sup>218</sup>

The analysis of this issue requires examination of prior segments involving another respondent, Gallant Ocean.<sup>219</sup> On May 28, 2013, Gallant Ocean submitted a separate rate application<sup>220</sup> which included its subsidiary, Quang Ngai, both of which had been granted a separate rate in Vietnam Shrimp AR6 and Vietnam Shrimp AR7.<sup>221</sup> Additionally, Gallant Ocean reported that during the POR, Quang Ngai changed its name to Dachan.<sup>222</sup> On June 20, 2013, we informed Gallant Ocean that a company that has undergone a change in corporate or legal structure, as described in the separate rate application, and is no longer the same company that was previously awarded separate rate status, is required to undergo a changed circumstances review as provided in 19 CFR 351.216(d).<sup>223</sup> On September 6, 2013, the Department instructed Gallant Ocean that, in accordance with Policy Bulletin 5.1, "{e}ach applicant seeking separate rate status must submit a separate and complete individual application regardless of any common ownership or affiliation between firms..." and provided it with the second opportunity to submit a separate rate

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<sup>216</sup> Gallant Dachan Seafood Co., Ltd. ("Dachan").

<sup>217</sup> Gallant Ocean (Quang Ngai) Co., Ltd. ("Quang Ngai").

<sup>218</sup> See Preliminary Results, and accompanying Preliminary Decision Memorandum at 9.

<sup>219</sup> Gallant Ocean (Vietnam) Co., Ltd. ("Gallant Ocean")

<sup>220</sup> See Letter from Gallant Ocean (Vietnam) Co., Ltd., "Separate Rate Application," dated May 28, 2013.

<sup>221</sup> See Vietnam Shrimp AR6, 77 FR at 55804; see also Vietnam Shrimp AR7, 78 FR at 56214.

<sup>222</sup> See Letter from Gallant Ocean, "Separate Rate Application," dated May 28, 2013 at 2.

<sup>223</sup> See Letter from the Department, re: "Separate Rate Application," dated June 20, 2013.

application.<sup>224</sup> On September 30, 2013, Gallant Ocean and Quang Ngai requested a changed circumstances review, requesting the Department find Dachan as the successor-in-interest to Quang Ngai.<sup>225</sup> On October 24, 2013, the Department again explained to Gallant Ocean that a separate rate application was needed from each company seeking separate rate status in this administrative review and provided it with the third opportunity to submit a separate rate application for each company.<sup>226</sup> On October 31, 2013, Gallant Ocean explained that neither Quang Ngai nor Dachan had exports during the POR and requested that they be allowed to submit letters certifying these companies had no shipments during the POR.<sup>227</sup> The Department agreed, and on November 1, 2013, the Department extended the deadline for filing no shipment letters and granted seven days to file a no shipment letter for both Quang Ngai and Dachan.<sup>228</sup> However, Quang Ngai and Dachan did not file their no shipment letters within the extended deadline and failed to request any further extension. The companies submitted their letter after the extended deadline passed. Therefore, the Department rejected their no shipment letters as untimely and removed them from the record.<sup>229</sup>

As noted above, Policy Bulletin 5.1, states “{e}ach applicant seeking separate rate status must submit a separate and complete individual application regardless of any common ownership or affiliation between firms...” Further, a company that has not filed a separate rate application/certification is not eligible for a separate rate, even if it is affiliated with another company seeking a separate rate. Additionally, a company that did not export subject merchandise to the United States during the relevant period is also not eligible for a separate rate.<sup>230</sup> Policy Bulletin 5.1 also very clearly states that “firms that produce the subject merchandise are not required to demonstrate their eligibility for separate rate status unless they also export the merchandise to the United States.”<sup>231</sup> The Department’s practice when the record

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<sup>224</sup> See Letter from the Department, re: “Separate Rate Application,” dated September 6, 2013; see also Policy Bulletin 5.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries (“Policy Bulletin 5.1”), dated April 5, 2005 found at: <http://enforcement.trade.gov/policy/bull05-1.pdf>; see also Separate Rate Application at page 3; found at: <http://enforcement.trade.gov/nme/sep-rate-files/20121031/srv-sr-app-20121031.pdf>

<sup>225</sup> See Letter from Gallant Ocean, “Changed Circumstance Review,” dated September 30, 2013. The Department published the final results of the changed circumstance review on February 28, 2014, see Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Changed Circumstances Review, 79 FR 11411 (February 28, 2014).

<sup>226</sup> See Letter from the Department, re: “Separate Rate Application,” dated October 24, 2013.

<sup>227</sup> See Letter from Gallant Ocean, re: “Separate Rate Application/Certification; Changed Circumstances Review,” dated October 31, 2013.

<sup>228</sup> See Letter from the Department, re: “Request for Leave to File No Shipment Certifications,” dated November 1, 2013.

<sup>229</sup> See Letter from the Department, re: “Rejection of Letter Submitted November 12, 2013,” dated November 19, 2013.

<sup>230</sup> See Policy Bulletin 5.1

<sup>231</sup> Id., at 6.

does not contain either a separate rate application, certification or no shipment letter is to consider that company not eligible for a separate rate.<sup>232</sup>

Quang Ngai and Dachan argue that because Quang Ngai received a separate rate in Vietnam Shrimp AR6 and Vietnam Shrimp AR7<sup>233</sup> as an affiliate of Gallant Ocean, they were confused as to the Department's practice regarding the Department's request that Quang Ngai file its own separate rate application.<sup>234</sup> We find Quang Ngai and Dachan's argument without merit. It is the Department's well established practice to require each company seeking a separate rate, whether or not affiliated, to establish their own eligibility for a separate rate.<sup>235</sup> Additionally, the Initiation Notice and separate rate applications clearly state each company seeking separate rate status is required to complete either a separate rate application or certification.<sup>236</sup> Moreover, whatever alleged confusion may have existed regarding the Department's practice at the start of this administrative review, the Department's requirements were clarified and the Department gave the parties an opportunity to participate accordingly. In this administrative review, we expressly instructed Quang Ngai and Dachan each to submit a separate rate application in accordance with our separate rate policy and, as mentioned above, provided Quang Ngai and Dachan with several opportunities to do so.<sup>237</sup> While Quang Ngai and Dachan contend that the record contains sufficient information to establish Quang Ngai's eligibility for a separate rate, we disagree because neither company filed a separate rate application. Further, as stated in the Preliminary Results, their no shipment letters were untimely and rejected.<sup>238</sup> Additionally, because Quang Ngai and Dachan failed to provide a timely no shipment certification, the Department did not confirm with CBP whether any entries of these companies appeared in the CBP data for the relevant period.

We disagree with Quang Ngai's and Dachan's contention that the Department abused its discretion and arbitrarily rejected their late no shipment letter.<sup>239</sup> As stated above, Quang Ngai and Dachan submitted the no shipment certifications one business day late after the extended

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<sup>232</sup> See, e.g., Honey From the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2011-2012, 78 FR 38941 (June 28, 2013) and accompanying Preliminary Decision Memorandum at page 3 ("during the review, Dongtai Peak did not file a separate rate application or certification, nor did it file a no shipments certification. Accordingly, because Dongtai Peak did not demonstrate its eligibility for a separate rate, the Department will preliminarily treat Dongtai Peak as part of the PRC-wide Entity."), unchanged in Honey From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 56860 (September 16, 2013) ("Honey 2011-2012"); see also Steel Wire Garment Hangers From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review; 2011-2012, 78 FR 70271, 70272 (November 25, 2013) unchanged in PRC Hangers 2014.

<sup>233</sup> Gallant Ocean and Quang Ngai received separate rates in both the sixth and seventh administrative review. See Vietnam Shrimp AR6, 77 FR at 55804 and Vietnam Shrimp AR7, 78 FR at 56214.

<sup>234</sup> See Gallant Ocean's Case Brief, dated April 23, 2014 at 6. We find the argument of "confusion" over the submission process unavailing because the Department provided clear instructions and opportunities for the companies to remedy their apparent confusion at the time.

<sup>235</sup> See e.g., Vietnam Shrimp AR7, and accompanying Issues and Decision Memorandum at Comment 11.

<sup>236</sup> See Initiation Notice, 77 FR at 19198 and Separate Rate Application at page 3; found at: <http://enforcement.trade.gov/nme/sep-rate-files/20121031/srv-sr-app-20121031.pdf>.

<sup>237</sup> See Letter from the Department, re: "Separate Rate Application," dated September 6, 2013; see also, Letter from the Department, re: "Separate Rate Application," dated October 24, 2013.

<sup>238</sup> See Preliminary Results, and accompanying Preliminary Decision Memorandum at 9.

<sup>239</sup> See Quang Ngai and Dachan Case Brief at 5-6.

deadline and failed to make any extension requests prior to the extended deadline's expiration.<sup>240</sup> The Department's regulations at 19 CFR 351.302(d) requires the Department to reject untimely filed submissions unless the Department extends the time limit. Moreover, Quang Ngai and Dachan did not request an extension of time nor provided good cause why the submissions were late. Moreover, there are numerous examples where the Department has rejected untimely filed submissions. For example, in Ukraine Hot-Rolled, the Department granted timely extension requests for questionnaire responses, but rejected three submissions that were received past the established deadlines.<sup>241</sup> Similarly, in Wooden Bedroom Furniture LTFV, the Department rejected Section A and supplemental Section A questionnaire responses that parties did not file by their respective deadlines, noting:

The Department's antidumping regulations provide that factual information solicited through the use of questionnaires must be submitted by the deadline stated in such questionnaires. By not submitting complete questionnaire responses in a timely manner, the respondents did not provide the Department with the information necessary to perform a separate-rates analysis. Furthermore, section 351.302(d) of the Department's regulations addresses untimely filed submissions and states that, unless an applicable time limit is extended, the Department will not consider or retain on the record untimely filed factual information. Otherwise, any party would be allowed to provide the Department with "information at the party's leisure and yet can expect the agency to review the information timely and issue a binding determination."<sup>242</sup>

The Department establishes deadlines to ensure that its ability to complete the proceeding is not jeopardized.<sup>243</sup> The CIT has long recognized the need to establish, and enforce, time limits for filing questionnaire responses, the purpose of which is to aid the Department in the administration of the dumping laws.<sup>244</sup> Further, the Federal Circuit in PSC VSMPO affirmed "Commerce's power to apply its own procedures for the timely resolution of antidumping reviews."<sup>245</sup> As explained above Quang Ngai and Dachan did not submit timely no shipment certifications or demonstrate good cause for the untimely submissions. Therefore, they were

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<sup>240</sup> The original deadline to submit no shipment certifications was May 28, 2013. See Initiation Notice at 19197. In our letter to Quang Ngai and Dachan we granted them an extension until November 8, 2013, after explaining our requirement. See Letter from the Department, re: "Request for Leave to File No Shipment Certifications," dated November 1, 2013.

<sup>241</sup> See Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Ukraine, 66 FR 50401 (October 3, 2001) ("Ukraine Hot-Rolled") and accompanying Issues and Decision Memorandum at Comment 5.

<sup>242</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) ("Wooden Bedroom Furniture LTFV") and accompanying Issues and Decision Memorandum at Comment 82 (internal citations omitted).

<sup>243</sup> See Honey 2011-2012, and accompanying Issues and Decision Memorandum at Comment 2.

<sup>244</sup> See e.g. Nippon Steel, 118 F. Supp. 2d at 1377; and Seattle Marine Fishing Supply, et al. v. United States, 679 F. Supp. 1119, 1128 (CIT 1998) (it was not unreasonable for the Department to refuse to accept untimely filed responses, where "the record displays the ITA followed statutory procedure" and the respondent "was afforded its chance to respond to the questionnaires, which it failed to do.")

<sup>245</sup> See PSC VSMPO-Avisma Corp. v. United States, 688 F.3d 751, 761 (Federal Circuit 2012) ("PSC VSMPO").

rejected consistent with the Department's practice and regulations.<sup>246</sup> Further, the Department had made it clear in the Initiation Notice and its letters to Gallant Ocean, Quang Ngai and Dachan that the companies need to file separate rate applications or no shipment certifications.<sup>247</sup> Further, the Department provided multiple opportunities, after the ordinary deadlines, for Quang Ngai and Dachan to make appropriate submissions and we established clear deadlines for these companies to do so.<sup>248</sup> Accordingly, it is not arbitrary for the Department to enforce these regulatory procedures and deadlines, when a party fails to provide a timely submission.

We disagree with Quang Ngai and Dachan that the rejection of their no shipment certification causes undue burden on these companies. In Grobest I, the Court held that the administrative burden to review an untimely filed separate rate certification did not outweigh the injury to plaintiff if Commerce did not accept the late filing, particularly in light of the fact that plaintiff had received separate rate status in the initial investigation and had maintained that status in each subsequent review.<sup>249</sup> Quang Ngai and Dachan<sup>250</sup> have an opportunity to request an administrative review to obtain separate rate status for the next POR, provided that they make entries during that period and make appropriate submissions in a timely manner. Moreover, unlike the plaintiff in Grobest I, Quang Ngai did not receive a separate rate in the investigation and maintain it in each subsequent review and Dachan has never been granted a separate rate in a prior review. Allowing a submission after an established (and previously extended) deadline, with no prior additional extension request made, places an unreasonable burden on the Department. The Department's rejection of these companies' untimely submissions cannot be viewed only in the context of this case, but in light of the need for the Department to administer and complete numerous proceedings within tight statutory deadlines. The Department must be able to administer its cases in an orderly fashion and expect companies to adhere to deadlines, in particular, as in this case, when parties had been provided ample instruction and additional time to file the correct documents. Therefore, for these final results, we continue to deny Dachan and Quang Ngai a separate rate because these companies have not provided any documentation supporting their eligibility for a separate rate.

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<sup>246</sup> See 19 CFR 351.302(c) and Hyosung Corp. v. United States, Slip Op. 2011-34, 7-9 (CIT 2011) ("Commerce may, for good cause, extend the time limit established for submission of the requested information. See 19 CFR 351.302(b). However, in order for Commerce to grant an extension of time, the party requesting an extension must do so in writing before the applicable time limit expires, including reasons for its request. See 19 CFR 351.302(c)").

<sup>247</sup> See Initiation Notice and Letter from the Department, re: "Separate Rate Application," dated September 6, 2013; see also Letter from the Department, re: "Separate Rate Application," dated October 24, 2013.

<sup>248</sup> Id.

<sup>249</sup> See Grobest I, 815 F. Supp. 2d at 1365-66 (CIT 2012).

<sup>250</sup> The Department found Dachan is the successor-in-interest to Quang Ngai. See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Changed Circumstance Review, 79 FR 11411 (February 28, 2014).

## **SR Respondents**

### **Comment 13: Whether to Include Abbreviated Company Names for Certain Separate Rate Companies**

#### **SR Respondents Case Brief:**

- The Department should grant Camau Seafood Processing and Service Joint-Stock Corporation's abbreviated name "CASES" a separate rate because this name is identified on its business certificate.
- The Department should grant Hai Viet Corporation's abbreviated name "Havico" a separate rate because this name is identified on its business certificate.

No other party commented on this issue.

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

We agree with SR Respondents. In the Preliminary Results, we did not include Camau Seafood Processing and Service Joint-Stock Corporation's abbreviated name CASES or Hai Viet Corporation's abbreviated name, Havico, because we are not including names which appear to be minor abbreviations or are otherwise duplicative.<sup>251</sup>

Here, we find it appropriate to include these names as they are identified on each company's business certificates as required by the Department's separate rate practice.<sup>252</sup> Further, we note these abbreviated names are identified on the U.S. sales documentation.<sup>253</sup> Therefore, we will include Camau Seafood Processing and Service Joint-Stock Corporation's abbreviated name CASES and Hai Viet Corporation's abbreviated name, Havico, as doing business names eligible for the separate rate granted each of these companies.

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<sup>251</sup> See Preliminary Results, and accompanying Preliminary Decision Memorandum at 6-7.

<sup>252</sup> See Policy Bulletin 5.1; see also Separate Rate Application found at <http://enforcement.trade.gov/nme/sep-rate-files/20121031/srv-sr-app-20121031.pdf>.

<sup>253</sup> See Camau Seafood Processing and Service Joint-Stock Corporation Separate Rate Application, dated May 28, 2013 at Exhibit 2 and Hai Viet Corporation Separate Rate Application, dated May 28, 2013 at Exhibit 2.

**RECOMMENDATION**

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the margin calculation program 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  
Acting Assistant Secretary  
for Enforcement and Compliance

\_\_\_\_\_  
Date

## Appendix I—Separate Rate Respondents

1. BIM Seafood Joint Stock Company
2. Cadovimex Seafood Import-Export and Processing Joint Stock Company
3. Cafatex Fishery Joint Stock Corporation
4. Can Tho Import Export Fishery Limited Company
5. Camau Seafood Processing and Service Joint Stock Company
6. Camau Frozen Seafood Processing Import Export Corporation
7. Coastal Fisheries Development Corporation
8. C.P. Vietnam Corporation
9. Cuu Long Seaproducts Company
10. Danang Seaproducts Import Export Corporation
11. Gallant Ocean (Vietnam) Co., Ltd.
12. Hai Viet Corporation
13. Investment Commerce Fisheries Corporation
14. Kim Anh Co., Ltd.
15. Minh Hai Export Frozen Seafood Processing Joint-Stock Company
16. Minh Hai Joint-Stock Seafoods Processing Company
17. Minh Hai Sea Products Import Export Company
18. Nha Trang Seaproducts Company
19. Nha Trang Fisheries Joint Stock Company
20. Phu Cuong Jostoco Seafood Corporation
21. Phuong Nam Foodstuff Corp.
22. Quoc Viet Seaproducts Processing Trading and Import-Export Co., Ltd.
23. Sao Ta Foods Joint Stock Company
24. Thong Thuan Company Limited
25. Thuan Phuoc Seafoods and Trading Corporation
26. UTXI Aquatic Products Processing Company
27. Viet Foods Co., Ltd.
28. Viet I-Mei Frozen Foods Co., Ltd.
29. Vietnam Clean Seafood Corporation
30. Viet Hai Seafood Co., Ltd.

## Appendix II—Companies Part of the Vietnam Wide Entity

1. Agrex Saigon
2. Amanda Foods (Vietnam) Ltd.  
Amanda Foods (Vietnam) Ltd. Ngoc Tri Seafood Company (Amanda's affiliate)  
Amanda Seafood Co., Ltd.
3. Bentre Aquaproduct Import & Export Joint Stock Company
4. Binh An Seafood Joint Stock Company
5. Can Tho Agricultural and Animal Products Import Export Company, aka,  
Can Tho Agricultural Products, aka  
Can Tho Agricultural Products Imex Company, aka,  
CATACO
6. Can Tho Import Export Seafood Joint Stock Company, aka  
CASEAMEX
7. Cau Tre Enterprise (C.T.E.)
8. CL Fish Co., Ltd. (Cuu Long Fish Company)
9. Cautre Export Goods Processing Joint Stock Company
10. Cautre Export Goods Processing Joint Stock Company (CTSE JSCO)
11. D & N Foods Processing (Danang Company Ltd.)
12. Duy Dai Corporation
13. Fine Foods Company (FFC)
14. Gallant Ocean (Quang Ngai) Co., Ltd.
15. Gallant Dachan Seafood Co., Ltd.
16. Gn Foods
17. Grobest  
Grobest & I-Mei Industrial (Vietnam) Co. Ltd.  
Grobest & I-Mei Industrial Vietnam  
Grobest & I-Mei Industry Vietnam
18. Hai Thanh Food Company Ltd.
19. Hai Vuong Co., Ltd.
20. Headway Co., Ltd.
21. Hoang Hai Company Ltd.
22. Hua Heong Food Industries Vietnam Co. Ltd.
23. Hoa Phat Aquatic Products Processing And Trading Service Co., Ltd.
24. Huynh Huong Trading and Import Export Joint Stock Company
25. Khanh Loi Seafood Factory
26. Kien Hung Seafood Company Vn
27. Kien Long Seafoods Co. Ltd.
28. Luan Vo Fishery Co., Ltd.
29. Lucky Shing Co., Ltd.
30. Minh Chau Imp. Exp. Seafood Processing Co., Ltd.
31. Mp Consol Co., Ltd.
32. Ngoc Chau Co., Ltd. and/or Ngoc Chau Seafood Processing Company
33. S.R.V. Freight Services Co., Ltd.
34. Sustainable Seafood
35. Tan Thanh Loi Frozen Food Co., Ltd.

36. Thanh Doan Seaproducts Import & Export Processing Joint-Stock Company (THADIMEXCO)
37. Thanh Hung Frozen Seafood Processing Import Export Co., Ltd.
38. Thanh Tri Seafood Processing Co. Ltd.
39. Tien Tien Garment Joint Stock Company
40. Tithi Co., Ltd.
41. Trang Corporation
42. Viet Cuong Seafood Processing Import Export Joint-Stock Company  
Viet Cuong Seafood Processing Import Export
43. Vietnam Northern Viking Technologies Co. Ltd.
44. Vinatex Danang
45. Vinh Loi Import Export Company (“Vimexco”), aka  
Vinh Loi Import Export Company (“VIMEX”), aka  
VIMEXCO aka  
VIMEX aka  
Vinh Loi Import/Export Co., aka  
Vinhloi Import Export Company aka  
Vinh Loi Import-Export Company  
Vinh Loi Import Export Company (“Vimexco”) and/or Vinh Loi Import Export  
Company (“VIMEX”)