



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

A-552-802  
ARP: 2/1/13 – 1/31/14  
**Public Document**  
E&C/V: RJP/IG/AP

September 8, 2015

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

FROM: Christian Marsh *CM*  
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

## I. 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”) on March 9, 2015.<sup>1</sup> The period of review (“POR”) is February 1, 2013, through January 31, 2014. 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.

## II. BACKGROUND:

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

We conducted verification of Sao Ta Foods Joint Stock Company (“Fimex”) and Thuan Phuoc Co., Ltd. (“Thuan Phuoc”) between April 20, 2015, and May 4, 2015. On May 20, 2015, the Department notified interested parties of the case and rebuttal brief schedule, which we extended twice based on interested parties’ requests. On June 5, 2015, we extended the final results deadline by 60 days.<sup>2</sup>

<sup>1</sup> See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review; 2013–2014, 80 FR 12441 (March 9, 2015) (“Preliminary Results”).

<sup>2</sup> See “Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from James C. Doyle, Director, Office V, Antidumping and Countervailing Duty Operations, re; Extension of Deadline for Final Results of Antidumping Duty Administrative Review,” dated June 5, 2015.



On June 8, 2015, Petitioner<sup>3</sup> and VASEP<sup>4</sup> filed case briefs. On June 13, 2015, Petitioner, VASEP, and ASPA<sup>5</sup> filed rebuttal briefs. On August 3, 2015, the Department placed information on the record regarding the inflators used in the Preliminary Results and allowed parties to comment on the information.<sup>6</sup> On August 6, 2015, VASEP provided comments regarding the factual information.<sup>7</sup> No other parties commented on the information.

### III. 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>8</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 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

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<sup>3</sup> Petitioner is the Ad Hoc Shrimp Trade Action Committee.

<sup>4</sup> VASEP is the Vietnam Association of Seafood Exporters and Producers.

<sup>5</sup> ASPA is the American Shrimp Processors Association.

<sup>6</sup> See “Memorandum to the File, from Irene Gorelik, Analyst, Office V, re: Placing Information on the Record Regarding UN Comtrade Import Statistics Explanatory Notes,” dated August 3, 2015.

<sup>7</sup> See VASEP’s “Comments on Department’s August 4th Factual Information Placed on the Record,” dated August 6, 2015.

<sup>8</sup> “Tails” in this context means the tail fan, which includes the telson and the uropods.

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>9</sup>

#### **IV. DISCUSSION OF THE ISSUES**

##### **General Issues**

##### **Comment 1: Differential Pricing**

##### **A. Whether the Department Interpretation of Section 777A(d)(1)(B) of the Act is Reasonable and Permissible**

##### **VASEP Case Brief:**

- Although the statute is silent with how to address Section 777A(d)(1)(B) of the Act, in filling such a gap, the Department’s interpretation must be permissible and reasonable in accordance with Chevron.<sup>10</sup>

##### **Petitioner’s Rebuttal Brief:**

- Vasep’s argument is not a legal argument; it is a complaint that the statute does not do enough to advantage the interests of a particular party. Accordingly, the Department need not adjust its use of Cohen’s *d* thresholds for the final results.

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<sup>9</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).

<sup>10</sup> See Chevron, U.S.A. Inc. v. NRDC, 467 U.S. 837 (1984).

## Department's Position:

The Department agrees with VASEP that there is nothing in the statute that mandates how the Department measures whether there is a pattern of prices that differs significantly, how the Department explains why one of the standard comparison methods (*i.e.*, the average-to-average (A-to-A) method or the transaction-to-transaction (T-to-T) method) cannot account for such differences, or how the Department applies the average-to-transaction (A-to-T) method as an alternative comparison method. In carrying out the provisions of the law, Commerce has reasonably filled the gaps Congress left in the Act. As explained in the Preliminary Results and elsewhere in this memorandum, the Department's differential pricing analysis, including the use of the Cohen's *d* test as a component in this analysis, is reasonable, and in accordance with law.

With Congress' implementation of the Uruguay Round Agreements Act ("URAA"), section 777A(d) of the Act states:

(d) Determination of Less Than Fair Value.--

(1) Investigations.--

(A) In General. In an investigation under subtitle B, the administering authority shall determine whether the subject merchandise is being sold in the United States at less than fair value--

(i) by comparing the weighted average of the normal values to the weighted average of the export prices (and constructed export prices) for comparable merchandise, or

(ii) by comparing the normal values of individual transactions to the export prices (or constructed export prices) of individual transactions for comparable merchandise.

(B) Exception. The administering authority may determine whether the subject merchandise is being sold in the United States at less than fair value by comparing the weighted average of the normal values to the export prices (or constructed export prices) of individual transactions for comparable merchandise, if--

(i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and

(ii) the administering authority explains why such differences cannot be taken into account using a method described in paragraph (1)(A)(i) or (ii).

(2) Reviews.--In a review under section 751, when comparing export prices (or constructed export prices) of individual transactions to the weighted average price of sales of the foreign like product, the administering authority shall limit its averaging of prices to a period not exceeding the calendar month that corresponds most closely to the calendar month of the individual export sale.

The SAA expressly recognizes that:

New Section 777A(d)(1)(B) provides for a comparison of average normal values to individual export prices or constructed export prices in situations where an average-to-average or transaction-to-transaction methodology cannot account for a pattern of prices that differ significantly among purchasers, regions, or time periods, *i.e.*, where targeted dumping may be occurring.<sup>11</sup>

The SAA further discusses this new section of the statute and the Department's change in practice to using the A-to-A method in investigations:

In part the reluctance to use the average-to-average methodology had been based on a concern that such a methodology could conceal "targeted dumping." In such situations, an exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions."<sup>12</sup>

With the implementation of the URAA and subsequently the Final Modification for Reviews,<sup>13</sup> the standard comparison method normally used in both investigations and reviews is the A-to-A method. This is reiterated in the Department's regulations, which state that "the Secretary will use the average-to-average method unless the Secretary determines another method is appropriate in a particular case."<sup>14</sup> The application of the A-to-A method to calculate a company's weighted-average dumping margin has raised concerns that dumping may be masked or hidden. The SAA states that consideration of the A-to-T method, as an alternative comparison method, is in response to such concerns, and that this is "where targeted dumping *may* be occurring."<sup>15</sup> Neither the statute nor the SAA state that this is the only reason why the Department could resort to the A-to-T method, simply that this *may* be a situation where the A-to-T method would be appropriate. As stated in the statute, the requirements for considering whether to apply the A-to-T method are that there exist a pattern of prices that differ significantly and that the Department explains why either the A-to-A method or the T-to-T method cannot account for such differences.

The Department finds that the purpose of section 777A(d)(1)(B) of the Act is to evaluate whether the A-to-A method is the appropriate tool to measure whether, and if so to what extent, a given respondent is dumping the subject merchandise at issue in the U.S. market.<sup>16</sup> While "targeting" and "targeted dumping" may be used as a general expression to denote this provision of the statute,<sup>17</sup> these terms impose no additional requirements beyond those specified in the statute for the Department to otherwise determine that the A-to-A method is not appropriate based upon a

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<sup>11</sup> See SAA at 843.

<sup>12</sup> Id., at 842.

<sup>13</sup> See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification, 77 FR 8101 (February 14, 2012) ("Final Modification for Reviews").

<sup>14</sup> See 19 CFR 351.414(c).

<sup>15</sup> See SAA at 843 (emphasis added).

<sup>16</sup> See 19 CFR 351.414(c)(1).

<sup>17</sup> See Samsung v. United States, Slip Op. 15-58, p. 5 ("Commerce may apply the A-to-T methodology 'if (i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or period of time, and (ii) the administering authority explains why such differences cannot be taken into account using' the A-to-A or T-to-T methodologies. Id. § 1677f-1(d)(1)(B). Pricing that meets both conditions is known as 'targeted dumping.'").

finding that the two statutory requirements have been satisfied. Furthermore, “targeting” implies a purpose or intent on behalf of the exporter to focus on a sub-group of its U.S. sales. The court has already found that the purpose or intent behind an exporter’s pricing behavior in the U.S. market is not relevant to the Department’s analysis of the statutory provisions of section 777A(d)(1)(B) of the Act.<sup>18</sup> The CAFC has stated:

Section 1677f-1(d)(1)(B) does not require Commerce to determine the reasons why there is a pattern of export prices for comparable merchandise that differs significantly among purchasers, regions, or time periods, nor does it mandate which comparison methods Commerce must use in administrative reviews. As a result, Commerce looks to its practices in antidumping duty investigations for guidance. Here, the CIT did not err in finding there is no intent requirement in the statute, and we agree with the CIT that requiring Commerce to determine the intent of a targeted dumping respondent “would create a tremendous burden on Commerce that is not required or suggested by the statute.” *JBF RAK*, 991 F. Supp. 2d at 1355 (internal quotation marks and citation omitted).<sup>19</sup>

Section 777A(d)(1)(B)(i) of the Act, the “pattern” requirement, requires that the Department examine whether there exists a pattern of prices that differ significantly among purchasers, regions or time periods. The Department considers whether the respondent’s pricing behavior has created conditions in the U.S. market in which dumping may be “targeted” or masked. This is the result of higher U.S. prices offsetting lower U.S. prices where the dumping which may be found on lower prices U.S. sales is hidden by the higher U.S. prices, such that the A-to-A method would be unable to account for such conditions. As noted above, this relationship is specifically recognized in the SAA as where “an exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions.”<sup>20</sup>

To consider whether there exists a pattern of prices that differ significantly, in its differential pricing analysis, the Department uses the Cohen’s *d* and ratio tests. The Cohen’s *d* test answers the question as to whether the prices “among purchasers, regions or time periods” “differ significantly.” As the Department noted in the final determination of Xanthan Gum from the PRC in response to argument from Deosen, a respondent in that investigation:

Nothing in Deosen’s submitted articles undermines the Department’s reliance on the Cohen’s *d* test. Deosen’s reliance on the article “It’s the Effect Size, Stupid” does not undermine the validity of the Cohen’s *d* test or the Department’s reliance on it to satisfy the statutory language. Interestingly, the first sentence in the abstract of the article states: “Effect size is a simple way of quantifying the difference between two groups *and has many advantages over the use of tests of statistical significance alone.*” Effect size is the measurement that is derived from the Cohen’s *d* test. Although Deosen argues that effect size is a statistic that is “widely used in meta-analysis,” we note that the article also states that “{e}ffect

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<sup>18</sup> See *JBF RAK LLC v. United States*, 991 F. Supp. 2d 1343, 1355 (CIT 2014); *aff’d* *JBF RAK LLC v. United States*, 790 F.3d 1358 (Fed. Cir. 2015) (“*JBF RAK*”).

<sup>19</sup> See *JBF RAK*, 790 F.3d at 1368.

<sup>20</sup> See SAA at 842.

size quantifies the size of the difference between two groups, and may therefore be said to be a *true measure of the significance of the difference*.” The article points out the precise purpose for which the Department relies on Cohen’s *d* test to satisfy the statutory language, to measure whether a difference is significant.<sup>21</sup>

The ratio test then assesses the extent of the prices that differ significantly to determine whether a pattern exists, such that conditions exist in the U.S. market which satisfy this first requirement where the Department must look further to determine whether the A-to-A method is the appropriate comparison method to calculate the respondent’s weighted-average dumping margin. As described in the Preliminary Decision Memo, the Department has established three ranges which determine whether, and to what extent, the A-to-T method will be considered as a possible alternative comparison method. These three ranges represent a measured approach by the Department where the remedy is proportional to the extent of the observed pattern of prices that differ significantly.

Section 777A(d)(1)(B)(ii) of the Act, the “explanation” requirement, then requires the Department to explain why the A-to-A method cannot account for “such differences,” *i.e.*, the conditions identified in the “pattern” requirement which may lead to hidden or masked dumping. To consider this requirement, the Department uses a “meaningful difference” test where it compares the weighted-average dumping margin calculated using the A-to-A method only and the weighted-average dumping margin calculated using an appropriate alternative comparison method based on the application of the A-to-T method. The simple comparison of these two results belies the extremely complex calculation and aggregation of individual dumping margins, but the concept of this comparison may be viewed as a comparison of a group of U.S. transactions-specific prices versus a single comparison based on the weighted-average of these U.S. prices (*i.e.*, the A-to-T method and the A-to-A method, respectively).

1. When all of the transaction-specific U.S. prices are greater than the normal value, then all the comparisons result in no dumping when using either comparison method and there is no meaningful difference.
2. When all of the transaction-specific U.S. prices are less than the normal value, then all comparisons result in dumping margins when using either comparison method and there is no meaningful difference because there are no offsets.
3. When only a few of the transaction-specific U.S. prices are less than the normal value, such that there is a de minimis amount of dumping, then, with or without offsets, the amount of dumping will remain at zero or de minimis levels when using either comparison method and there will be no meaningful difference in the results.
4. When only a few of the transaction-specific U.S. prices are greater than the normal value, such that there is an above de minimis amount of dumping with an un-meaningful

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<sup>21</sup> See 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 from the PRC”) and the accompanying Issues and Decision Memo at Comment 3 (emphasis in the original, internal citations omitted); quoting from Coe, “It’s the Effects Size, Stupid: What effect size is and why it is important,” Paper presented at the Annual Conference of British Educational Research Association (Sept. 2002); <http://www.leeds.ac.uk/educol/documents/00002182.htm>.

amount of non-dumped sales, then when the offsets are applied there is not a meaningful difference in the results of the two comparison methods.<sup>22</sup>

5. When some of the transaction-specific U.S. prices are below the normal value which result in an above de minimis level of dumping, and the remaining U.S. prices, which are above their normal value, generating offsets which change will change the amount of dumping in a meaningful amount then there will be a meaningful difference in the results because the amount of dumping has changed either by changing from being zero or de minimis to not being de minimis or changes by more than a relative 25%.

For categories 3, 4 and 5, whether an amount of dumping is above or below the de minimis level, or whether the amount of offsets present for non-dumped sales is meaningful, is all measured relative to the overall price level (i.e., to total sales value) of the merchandise being examined. Thus whether the differences observed in the exporter's U.S. prices are meaningful is gauged relative to the absolute price level of the exporter's subject merchandise. Only for category 5 will the Department find that the A-to-A method cannot account for such difference, which in conjunction with the "pattern" requirement being satisfied, may the Department consider the application of the A-to-T method. Thus, the situation represented in category 5 represent a difference in U.S. prices which is meaningful enough relative to the absolute price level of the subject merchandise and where the normal value falls within an even more limited range within this price difference such that when using the A-to-T method there is an above de minimis amount of dumping along with a meaningful amount of non-dumped sales whose offsets will meaningfully change the amount of dumping for the subject merchandise.

Accordingly, given the language of the statute and the guidance provided by the SAA, the Department finds that interpretation of the statute is reasonable and permissible to address the concerns related to hidden or masked dumping.

## **B. Whether the Cohen's *d* Coefficient Is a Measure of Whether Prices Differ Significantly**

### **VASEP Case Brief:**

- Cohen's *d* is not a measure of whether prices differ significantly.
- Cohen's *d* compares outcomes across studies by using standard deviation as a common measure. When comparing the means of the groups being compared, Cohen's *d* uses an arbitrary convention of small, medium, and large. The Department adopted these conventions to measure whether prices differ significantly despite 1) an absence of evidence that that this type of comparison is appropriate and 2) expert commentary stating that these conventions are arbitrary and not probative of the extent to which differences between groups actually are of importance.
- Jacob Cohen recognized that the adopted Cohen's *d* conventions of small, medium, and large are potentially arbitrary.<sup>23</sup> Further, other statistical scholars have found that Cohen's *d*

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<sup>22</sup> That is, the resulting weighted average dumping margins do not change by more than 25% relative to the rate calculated for the A-to-A method, or the rates do not change from being zero or de minimis for the A-to-A method to being above the de minimis threshold for the appropriate alternative comparison method. See Preliminary Decision Memo at pages 19-20.

thresholds should be used as a last resort and the “temptation to plug in a result and whack out a ready-made interpretation based on an arbitrary benchmark may hinder the researcher from thinking about what the results really mean.”<sup>24</sup>

- The Department must explain why Cohen’s *d* thresholds are valid in the context of the targeted dumping provision of the statute considering the concerns expressed by statistics experts regarding the automatic application of these thresholds. VASEP explains that a study conducted by statistics professors at George Washington University concluded that when seasonal as well as cyclical patterns in prices are not accounted for, *i.e.* appropriate adjustments to the data are not made before applying the Cohen’s *d* test, many companies that are not dumping and are obeying the law, will be erroneously identified as dumping.<sup>25</sup>
- The Department must explain why it does not need to make adjustments to its methodology necessary to adapt Cohen’s *d* from an appropriate test of behavioral statistics to an appropriate test of economic statistics.

#### **Petitioner’s Rebuttal Brief:**

- VASEP’s challenge to the use of the Cohen’s *d* test lacks merit because the Department has already addressed VASEP’s criticism of Cohen’s *d* thresholds in the previous administrative review<sup>26</sup> and in AR5 Nails.<sup>27</sup> VASEP has not provided legal arguments, but complains that the statute does not do enough to advantage the interests of a particular party.

#### **Department’s Position:**

The Department’s reliance on the Cohen’s *d* test is consistent with law. VASEP puts forth several reasons unrelated to the language of the Act as to why they believe the Department should modify its approach from the Preliminary Results. However, as VASEP acknowledges, there is nothing in the statute that mandates how the Department measures whether there is a pattern of prices that differs significantly.<sup>28</sup> Further, VASEP recognizes that in carrying out the purpose of the statute the Department must exercise its discretion to fill a gap in the law.<sup>29</sup> 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.

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<sup>23</sup> See Cohen, Jacob, Statistical Power Analysis for the Behavioral Sciences, Second Edition (1988) at 12, Letter to the Department from VASEP, dated January 13, 2015, (“VASEP Stat Submission”) at Exhibit 7.

<sup>24</sup> See VASEP’s Case Brief at 25, citing Ellis, Paul D., Thresholds for Interpreting Effective Size, found in VASEP Stat Submission at Exhibit 12.

<sup>25</sup> See Gastwirth, Modares and Pan, “Some Statistical Aspects of the Department’s Use of Cohen’s *d* in measuring differential pricing in Anti-Dumping Cases That Should Be Considered Before it is Adopted,” VASEP Stat Submission at Exhibit 20.

<sup>26</sup> Petitioner cites to Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Administrative Review, 2012-2013, 79 FR 57047 (September 24, 2014) (“Vietnam Shrimp AR8 Final”) and accompanying Issues and Decisions Memorandum at Comment 2c.

<sup>27</sup> Petitioner cites to Certain Steel Nails from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 80 FR 18816 (April 8, 2015) (“AR5 Nails”) and accompanying Issues and Decisions Memorandum at Comment 9.

<sup>28</sup> See VASEP’s Case Brief at 22.

<sup>29</sup> Id.

VASEP argues that the Cohen's *d* test was created for application in the behavioral sciences, for measuring the size of the effect of an intervention, and thus is completely disconnected from the problem of identifying targeted sales.<sup>30</sup> The Department finds VASEP's concerns misplaced. In examining whether there exists a pattern of prices that differ significantly, the Department is analyzing a respondent's pricing behavior in the U.S. market. This behavior may be influenced by economic forces, government statutes and policies, company priorities or management decisions. An analysis of pricing behavior is a sub-component of economics, which falls within the purview of the behavioral sciences.<sup>31</sup> Therefore, the Department continues to find that the inclusion of the Cohen's *d* test in its analysis is appropriate.

The Department disagrees with VASEP's claim that the Cohen's *d* test's thresholds of "small," "medium," and "large" are arbitrary, and that consequently 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. In his text Statistical Power Analysis for the Behavioral Sciences,<sup>32</sup> Dr. Cohen himself describes these three cut-offs.<sup>33</sup> The effect size at the small threshold "is the order of magnitude of the difference in mean IQ between twins and nontwins, the latter being the larger. It is also approximately the size of the difference in mean height between 15- and 16-year-old girls."<sup>34</sup> For the medium threshold, the "effect size is conceived as one large enough to be visible to the naked eye. That is, in the course of normal experience, one would become aware of an average difference in IQ between clerical and semiskilled workers or between members of professional and managerial occupational groups" or "the magnitude of the difference in height between 14- and 18-year-old girls."<sup>35</sup> For the large threshold, the difference "is represented by the mean IQ difference estimated between holders of the Ph.D. degree and typical college freshmen, or between college graduates and persons with only a 50-50 chance of passing an academic high school curriculum. These seem like grossly perceptible and therefore large differences, as does the mean difference in height between 13- and 18-year-old girls..."<sup>36</sup>

Although these descriptions by Dr. Cohen are qualitative in nature, they are not arbitrary but represent real world observations. From Webster's dictionary,<sup>37</sup> "significant" has the following meanings:

1. having meaning;
2. a. having or likely to have influence or effect, of a noticeably or measurably large amount;  
b. probably caused by something other than mere chance.

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<sup>30</sup> See VASEP's Case Brief at 23-28.

<sup>31</sup> See AR5 Nails at Comment 9.

<sup>32</sup> Cohen, Jacob, Statistical Power Analysis for the Behavioral Sciences, Lawrence Erlbaum Associates, Publishers (1988) (see letter from VASEP "Resubmission of Factual Information of Differential Pricing In the Ninth Review" (submitted January 13, 2015), Exhibit 7).

<sup>33</sup> Id., at 24-27.

<sup>34</sup> Id., at 25-26.

<sup>35</sup> Id., at 26 (citations omitted).

<sup>36</sup> Id., at 27 (citations omitted).

<sup>37</sup> See Webster's Ninth New Collegiate Dictionary (1986), p. 1096.

Thus, the term “prices that differ significantly” connotes different prices where the difference has meaning, where it has or may have influence or effect, where it is noticeably or measurably large, and where it may be beyond something that occurs by chance. Certainly the examples for both Cohen’s medium and large thresholds for effect size reasonably meet this level of difference. But as the Department noted in its Preliminary Decision Memo, the Department used the large threshold because “the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups...”<sup>38</sup> In other words, the significance required by the Department in its Cohen's *d* test affords the greatest meaning to the difference of the means of the prices among purchasers, regions and time periods. Furthermore, as originally stated in Xanthan Gum from the PRC:

In “Difference Between Two Means,” the author states that “there is no objective answer” to the question of what constitutes a large effect. Although Deosen focuses on this excerpt for the proposition that the “guidelines are somewhat arbitrary,” the author also notes that the guidelines suggested by Cohen as to what constitutes a small effect size, medium effect size, and large effect size “have been widely adopted.” The author further explains that Cohen's *d* is a “commonly used measure” to “consider the difference between means in standardized units.”<sup>39</sup>

Besides Dr. Cohen, VASEP also points to the concerns expressed by other scholars<sup>40</sup> as summarized by Paul Ellis<sup>41</sup> where the “advantages the interpretation of results using Cohen’s criteria remains a controversial practice.”<sup>42</sup> However, VASEP omits Dr. Ellis’ discussion of the advantages of Dr. Cohen’s thresholds, which has led to their wide acceptance. Dr. Ellis states:

The previous discussion reveals that the importance of an effect is influenced by when it occurs, where it occurs, and for whom it occurs. But in some cases these may not be easy assessments to make. A far simpler way to interpret an effect is to refer to conventions governing effect size. The best known of these are the thresholds proposed by Jacob Cohen. In his authoritative *Statistical Power Analysis for the Behavioral Sciences*, Cohen (1988) outlined a number of criteria for gauging small, medium, and large effect sizes estimated using different statistical procedures. ...

Cohen’s cut-offs provide a good basis for interpreting effect size and for resolving disputes about the importance of one's results. ...

Cohen's effect size classes have two selling points. First, they are easy to grasp. You just compare your numbers with his thresholds to get a ready-made

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<sup>38</sup> See Preliminary Decision Memo at 19.

<sup>39</sup> See Xanthan Gum From the PRC at Comment 3 (internal citations omitted); quoting from David Lane, et al., Chapter 19 “Effect Size,” Section 2 “Difference Between Two Means.”

<sup>40</sup> See VASEP’s case brief at 25-26.

<sup>41</sup> Ellis, Paul D., *The Essential Guide to Effect Sizes*, Cambridge University Press (2010) (see letter from VASEP “Resubmission of Factual Information of Differential Pricing In the Ninth Review” (submitted January 13, 2015), Exhibit 7).

<sup>42</sup> *Id.*, at 41.

interpretation of your result. Second, although they are arbitrary, they are sufficiently grounded in logic for Cohen to hope that his cut-offs "will be found to be reasonable by reasonable people". In deciding the boundaries for the three size classes, Cohen began by defining a medium effect as one that is "visible to the naked eye of the careful observer" To use his example, a medium effect is equivalent to the difference in height between fourteen- and eighteen-year-old girls, which is about one inch. He then defined a small effect as one that is less than a medium effect, but greater than a trivial effect. Small effects are equivalent to the height difference between fifteen- and sixteen-year-old girls, which is about half an inch. Finally, a large effect was defined as one that was as far above a medium effect as a small one was below it. In this case, a large effect is equivalent to the height difference between thirteen- and eighteen-year-old girls, which is just over an inch and a half.<sup>43</sup>

Thus, although there are critics of the use of Dr. Cohen's thresholds, Dr. Cohen, Dr. Ellis, as well as numerous other academic scholars find advantages to their use such that these thresholds "have been widely adopted." Therefore, the Department continues to find reasonable the application of the "large" threshold in its Cohen's *d* test when determining whether the differences in prices are significant in the U.S. market.

VASEP's reliance on the paper written by three professors from George Washington University<sup>44</sup> is also unavailing. The thrust of the paper is that the Department should adjust the pricing data for "seasonal as well as cyclical patterns, {because} when these are not accounted for, i.e., appropriate adjustments to the data are {not} made before applying the DOC methodology, many companies that are not dumping and are obeying the law, will be erroneously identified as dumping."<sup>45</sup> VASEP asserts that the numerous simulations conducted by the authors "indicated 'the importance of adjusting for normal price patters' when using Cohen's *d* as a mechanism to uncover hidden dumping."<sup>46</sup> First, the Cohen's *d* test is not to "uncover hidden dumping," but as described above is to determine whether the prices differences between purchasers, regions or time periods is significant. Second, the authors assume that the data which is being examined are random samples with normal distributions:

We assume sales prices are like a random sample from a normal distribution with the same mean \$4.08 and standard deviation (STD) \$0.48; the prices are truly independent of the region, quarter and purchaser. This scenario is consistent with *no dumping* as the distribution of sales prices is the same for any combination of region, quarter or season or purchaser.<sup>47</sup>

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<sup>43</sup> Id., at 40-41 (internal citations omitted).

<sup>44</sup> Gastwirth, Joseph L., Modarres, Reza and Pan, Qing, Some Statistical Aspects of the Department's Use of Cohen's *D* in Measuring Differential Pricing in Anti-Dumping Cases That Should Be Considered Before It Is Formally Adopted (Gastwirth, Modarres and Pan Paper) (see letter from VASEP "Resubmission of Factual Information of Differential Pricing In the Ninth Review" (submitted January 13, 2015), Exhibit 20).

<sup>45</sup> Id., at 4.

<sup>46</sup> See VASEP Case Brief at 27.

<sup>47</sup> See Gastwirth, Modarres and Pan Paper at 2-2 (emphasis in the original).

This is also not part of the Department’s analysis. Furthermore, in calculating the weighted-average dumping margins, which may include unmasking dumping, the Department makes all of the adjustments required by the statute to the reported prices and its analysis, including for seasonal/cyclical patterns. Therefore, these considerations are accounted for in the Department analysis and the assertions by the authors are misplaced.

Accordingly, we disagree with VASEP’s arguments with respect to the analysis employed by the Department, including the use of the Cohen's *d* and ratio tests, for discerning whether a pattern of prices that differ significantly exists. We determine that this test is reasonable and is permissible in accordance with the language of the Act and the SAA.

### **C. Whether the Department’s “One-Size-Fits-All” Approach to Determine If Prices Differ Significantly Reflects the Purpose of the Law or Is Consistent With the Legislative History**

#### **VASEP Case Brief:**

- VASEP presents several scenarios, each of which it claims demonstrates that the Department’s “one-size-fits-all” approach, as exhibited in its Cohen’s *d* test, is unreasonable. As VASEP states “Significantly” is itself an ambiguous word that has different meanings in different contexts and at different times.<sup>48</sup>
- In VASEP’s first scenario, it posits that the Department should measure the difference in U.S. prices based on the level of the U.S. prices. The example provided by VASEP is that a one year difference in age is different when considering the age difference between a one and two year old, and the age difference between a 99 and 100 year old. Thus, the difference is “largely determine based on context.”<sup>49</sup>
- Next, VASEP states that if “the pattern of prices normally differs by 30% because of seasonality or other factors, one might well conclude that prices do not differ significantly from year to year or period to period.”<sup>50</sup> VASEP then refers to the Gastwirth, Modarres and Pan Paper insisting that the Department make an adjustment to the reported prices for such factors.
- VASEP’s third scenario first recognizes the “domestic” (*i.e.*, comparison market) prices are used as a basis for comparisons, as normal values, with export prices. VASEP also recognizes that normal values may be based on either constructed value or factors of production.

Thus, for purposes of the calculation of the margins of dumping, differences in export prices must necessarily relate to differences in normal value. Changes in export prices that parallel changes in normal value over the same time period would have no effect on the margins of dumping. Similarly, changes in export prices that parallel changes in constructed value over the same time period, both in market and non-market economy inquiries, would have no effect on the margins of dumping.<sup>51</sup>

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<sup>48</sup> See VASEP Case Brief at 28.

<sup>49</sup> *Id.*, at 29.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*, at 29-30.

As a result, the Department should measure the differences in U.S. prices relative to the differences exhibited in normal values.

- VASEP asserts that this third scenario is supported by the SAA where it states

In addition, the Administration intends that in determining whether a pattern of significant price differences exist, Commerce will proceed on a case-by-case basis, because **small differences may be significant in one industry or type of product, but not for another.**<sup>52</sup>

- To support its assertion in this third scenario, VASEP compares quarterly average U.S. prices for the Minh Phu Group, by count size, with shrimp prices as reported by the IMF over the period of review. VASEP states that the changes in prices evidenced by this information are “more than would be necessary to trigger passing Cohen’s *d* as ‘large’ in order to avoid dumping.”<sup>53</sup> VASEP provides an additional example based on CONNUM-specific Minh Phu Group’s price data, with the conclusion that “the changes in prices have nothing to do with targeted dumping but only with Minh Phu Group’s intention to avoid or eliminate dumping.”<sup>54</sup>
- VASEP also claims that its analysis in this third scenario, based on changes in prices over time, also applies equally to changes among purchasers and regions.

### **Department’s Position:**

The Department disagrees with VASEP that its approach using the Cohen’s *d* test is unreasonable, and that the Department must adopt one of the alternative proposals by VASEP to evaluate whether prices differ significantly among purchasers, regions or time periods. As an initial matter, the term “significantly” as in “differ significantly” is not an amorphous word, the definition of which changes to meet one’s purpose. As noted above, Webster’s dictionary defines “significantly” as:

1. having meaning;
2. a. having or likely to have influence or effect, of a noticeably or measurably large amount;  
b. probably caused by something other than mere chance.

Thus, the term “differ significantly” connotes differences that have meaning, where they have or may have influence or effect, where they are noticeably or measurably large, and where they may be beyond something that occurs by chance. As discussed above, the Department’s use of the Cohen’s *d* coefficient with the “large” threshold, as established and described by Dr. Cohen, reasonably fulfills this concept.

The Cohen’s *d* coefficient, itself, is one of a number of measures of effect size. For this measure, the difference in the means of two groups (e.g., the average U.S. prices of a test group and a

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<sup>52</sup> See SAA at 843 (emphasis added by VASEP).

<sup>53</sup> See VASEP’s Case Brief at 32.

<sup>54</sup> *Id.*, at 33.

comparison group), is gauged relative to the variance, or the spread, of U.S. prices in each group. When the variance of U.S. prices present in each of these groups is small (i.e., there is little variation in the prices), then the difference in the average U.S. prices need only be relatively small to be considered significant. However, if the variance of the U.S. prices is much greater, then the difference in the average U.S. prices must necessarily be larger in order to be found significant. The Department finds that this approach of gauging the size of the difference in prices relative to the range of prices present in the U.S. sales data to reasonable implement the language of the statute “prices ... that differ significantly.”

VASEP’s first scenario appears to recommend that the Department gauge the differences in the U.S. prices relative to the U.S. price rather than the variance of the U.S. prices for comparable merchandise. The Department does not find this approach to be more reasonable or preferable to that used in the Preliminary Determination. Furthermore, this analysis is effectively included in the Department’s analysis when examining the “explanation” requirement. In the simplified situation of a single product, the difference in the margin calculations between the A-to-A method and the A-to-T method, where the normal value under both methods is the same, is a difference between the transaction-specific U.S. prices and the weighted-average U.S. price. These differences are measured relative to the U.S. price. As discussed above in Section A, when the normal value falls in a range inside of the range of transaction-specific U.S. prices, then there will be a meaningful difference in the calculated results such that the A-to-A method would not be able to account for the price differences. Otherwise, under the four other situations described above, the A-to-A method would be able to account for the differences in U.S. prices such that an alternative comparison method would not be applied. Therefore, although VASEP’s first scenario may be reasonable, it does not make the Department’s approach with the Cohen’s d test unreasonable, and further this approach is already incorporated into the Department’s examination of the “explanation” requirement.

For VASEP’s second scenario, the Department disagrees with VASEP’s argument that it must adjust the U.S. prices or its analysis to account for some causal link for the price differences or for the intentions of the exporter in establishing its pricing behavior. The statute has no provision which requires the Department to consider any such factors when examining whether there exists a pattern of prices which differ significantly. The court has already found that the purpose or intent behind an exporter’s pricing behavior in the U.S. market is not relevant to the Department’s analysis of the statutory provisions of section 777A(d)(1)(B) of the Act.<sup>55</sup> The CAFC stated:

Section 1677f-1(d)(1)(B) does not require Commerce to determine the reasons why there is a pattern of export prices for comparable merchandise that differs significantly among purchasers, regions, or time periods, nor does it mandate which comparison methods Commerce must use in administrative reviews. As a result, Commerce looks to its practices in antidumping duty investigations for guidance. Here, the CIT did not err in finding there is no intent requirement in the statute, and we agree with the CIT that requiring Commerce to determine the intent of a targeted dumping respondent “would create a tremendous burden on

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<sup>55</sup> See JBF RAK, 790 F.3d at 1368.

Commerce that is not required or suggested by the statute.” JBF RAK, 991 F. Supp. 2d at 1355 (internal quotation marks and citation omitted).<sup>56</sup>

The Department disagrees with VASEP’s third scenario which is an amalgamation of gauging the differences in U.S. prices relative to differences in normal values and/or comparison market sale prices (scenario one) with making adjustments to the U.S. price differences or the analysis to account for changes in normal values, production costs and/or world prices (scenario two). Besides the fact that these alternatives are different than the Department’s current approach, VASEP has failed to explain how these alternatives are reasonable or even supported by the language of the statute. Section 777A(d)(1)(B)(i) requires the existence of a pattern of U.S. prices that differ significantly. The statute makes no provision that the Department consider normal values, comparison market sale prices, production costs, or world prices. As such, the Department finds these proposals unreasonable.

Furthermore, VASEP’s proposals in scenario three are all based on price and other differences over time. VASEP also claims that “the same problems arising out of the Department’s methodology with respect to time period also apply to region and purchaser.”<sup>57</sup> The Department fails to understand how VASEP’s arguments related to time periods in scenario three can be transferred to an analysis based on regions or purchasers, and VASEP provides no further explanation. Although MPG’s U.S. prices can be organized by U.S. purchaser and U.S. region, considering normal values, comparison market prices, production costs or world prices by U.S. purchaser or U.S. region is impossible. Therefore, VASEP’s assertion that its time-period-based proposals are equally valid for U.S. prices differences among regions or purchasers is nonsensical.

#### **D. Whether the Department Failed to Explain Why the Average-to-Average Method Cannot Account for “Target Dumping”**

##### **VASEP Case Brief:**

- The Department’s target dumping methodology using a single NV based on surrogate values for inputs to compare with specific transaction prices over an entire POR is contrary to section 777A(d)(2) of the Act and the legislative history in the SAA.
- The Department must explain why it has compared the results of average-to-average (“A-A”) comparison with the results of A-T comparison that uses a single NV for the POR and compares the individual export prices to this single NV rather than comparing the monthly NV to the corresponding monthly U.S. price.
- The dumping margins using the A-T method are not generated because any sales are differentially priced or targeted dumped, but because the Department is using a non-contemporaneous NV.

##### **Petitioner’s Rebuttal Brief:**

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<sup>56</sup> Id.

<sup>57</sup> See VASEP’s Case Brief at 30.

- The Department has previously explained why prices differences cannot be accounted for using the A-A method.<sup>58</sup> Accordingly, the Department should continue to apply the A-T method when the Department finds there is a pattern of prices that differ significantly and the differences between the weighted-average dumping margins calculated using the A-A method and the A-T method is meaningful.

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

VASEP has completely distorted the application of the statute, and the Department finds its arguments inapposite to the instant administrative review. In its initial paragraph, VASEP states:<sup>59</sup>

A further distortion of the Department's methodology arises from the fact that it is using a single normal value based on annual costs (or surrogate values) for inputs to compare with specific transaction prices over the course of the entire period of review. This, of course, is contrary to the plain language of Section 777A(d)(2) which states:

In a review under section 751, when comparing export prices (or constructed export prices) of individual transactions to the weighted **average price of sales of the foreign like product**, the administering authority shall limit its averaging of prices to a period not exceeding the calendar month that corresponds most closely to the calendar month of the individual export sale.

In this review, Vietnam has continued to be considered a non-market economy.<sup>60</sup> As such, normal value is based on section 773(c) of the Act, which provides for the calculation of normal value based on factors of production and surrogate values. Accordingly, VASEP's assertions are nonsensical and misplaced.

### **E. Whether the Department Should Use an Approach Based on Actual Price Differences Rather Than on Standard Deviation**

#### **VASEP Case Brief:**

- The Department should explain why it is relying on statistical tests measuring standard deviations when it can measure pricing patterns based on actual prices and pricing differences based on the variability of those prices. VASEP explains that basing effective size on a measure of standard deviation does not provide an explanation of the significance of the differences in the pattern of pricing. VASEP explains that the Cohen's *d* results using

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<sup>58</sup> Petitioner cites to Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers From the Republic of Korea, 77 FR 75988 (December 26, 2012) and accompanying Issues and Decision Memorandum at Comment 3b, and Seamless Refined Copper Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 36719 (June 30, 2014) and accompanying Issues and Decision Memorandum at Comment 4.

<sup>59</sup> See VASEP's Case Brief at 36 (emphasis added).

<sup>60</sup> See Preliminary Decision Memo at page 6.

0.8 and 1.0 standard deviation bands demonstrate that there is a near 50-50 distribution of prices inside and outside these bands.

- The Department must explain how this demonstrates a “pattern of prices” that differ significantly. VASEP explains that the Department’s use of Cohen’s *d* and basing significance on a standard deviation is problematic because standard deviations reflect differences from the mean but not absolute differences in the prices. This methodology does not reveal whether there are any significant differences in the prices.
- The Department should use Cohen’s *d* in combination with the t-test to ensure that the determination is statistically significant.
- If the Department continues to apply the ratio test to determine whether prices differ significantly, the ratio test should reflect the extent to which the pattern of prices differs from a pattern of prices with normal distribution, the lowest ratio test should start at or above 47.4%

### **Department’s Position:**

The Department agrees with VASEP’s statement on page 39 of its case brief, wherein in stated that:

In statistics the standard deviation is used to measure the variation or dispersion from the average or mean. A low standard deviation indicates that the data points tend to be very close to the mean and a higher standard deviation indicates the data points are spread over a larger range.<sup>61</sup>

Beyond this simple observation regarding the characteristic of a measure of standard deviation, VASEP’s entire “argument” is not logical.

To take the first paragraph on page 39, which begins:

It is not clear why the Department is relying on statistical tests measuring variations in standard deviations when it can measure pricing patterns based on actual prices and pricing differences based on the variability of those prices.

The Department does measure pricing patterns based on “actual prices,” that is all of the actual U.S. prices reported by the respondent, and measures the pricing differences based on the variability of those prices. As described above, the Cohen’s *d* test gauges the difference in the average U.S. prices of the test group and the comparison group based on the variances of the U.S. prices in each group. This measure is called the “pooled standard deviation” which the Department calculates as the square root of the simple average of the variances<sup>62</sup> of the U.S. prices in each group. Thus, what VASEP is arguing that the Department should do is what the Department already is doing in its analysis. What VASEP states the Department is doing is “measuring variations in standard deviations” which, if it makes much sense, represents an

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<sup>61</sup> See VASEP’s Case Brief at 39.

<sup>62</sup> In general, the “variance” of a group of data is equal to the square of the standard deviation of that data; or conversely, the “standard deviation” of a group of data is equal to the square root of the variance of that data.

equality since standard deviation is a measure of the variations in the data, and variance has a given mathematical relationship with standard deviation, and vice-versa.

VASEP continues with the second sentence:

Indeed, the Department's approach would seem to be unreasonable in light of the objectives of its targeted dumping/differential pricing tests.

VASEP declares that the Department's approach is unreasonable but without identifying what, or how it, is unreasonable, and with respect to what unspecified objectives of the analysis.

VASEP then continues:

While denominating measurements in terms of standard deviations is a conventional method in statistics so as to standardize the measurements between different variables, it is not a common approach in measuring economic differences.

Here, the Department interprets VASEP's statement to refer to the concept of "effect size" where differences between different variables can be "standardized" when gauged using "standard deviations." Indeed, this is one of the advantages of using a measure of effect size is that it takes units of measure out of the results of a study such that the results of numerous studies done on different bases can be combined (i.e., a meta-analysis). However VASEP asserts that for some reason this does not apply to "economic differences." VASEP then provides an example presumably of an economic difference where effect size could not be used:

For example, changes in the consumer price index are measured in percentages based on actual changes in prices not in standard deviations.

The Department does not find that this example supports VASEP's claim. The differences in the consumer price index ("CPI") can be presented as a percent change relative to the CPI level. To provide numbers for VASEP's example, if the CPI changes from 100 to 105 over a given period of time, the measured change is five, which represents a five percent increase in the CPI. This is the same approach as the alternative proposed by VASEP in the first scenario presented above in section C. As discussed above, although the results of five percent here may represent a valid alternative to the approach taken by the Department in the Cohen's d test, it does not in any way invalidate the Department's approach or make it unreasonable. To apply the concept of effect size to VASEP's example, the question to be asked is whether the five point change in the CPI has practicable significance. To examine this question, the Department's approach would be to determine the effect size of this change, which for the Cohen's d test would mean gauging the five point increase in the CPI relative to variances of the data underlying the 100 and 105 levels of the CPI. These levels are not pulled out of thin air or measured directly but are an average of numerous prices in the market which are used to determine the CPI. Accordingly, in the underlying prices which make up each of these CPI levels (i.e., 100 and 105) exhibit a wide range of variations, the perhaps the five point difference is not so significant. However, if there is little variation in the underlying price data, then it is much more likely that the five point

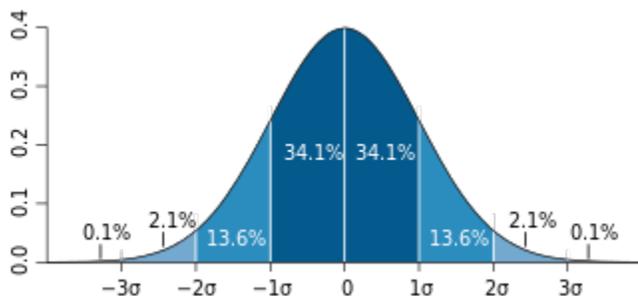
difference is significant. Thus, VASEP’s claim that standard deviations are not relevant to an analysis of changes in the CPI is misplaced.

VASEP also presents a second example which the Department interprets is to support its claim that “economic differences” are different:

Changes in corporate performance are measured in actual increases or decreases in actual performance of companies or industries such as prices, profits, sales volume and other indices of performance.

Again, the Department finds the same flaws in this second example that the Department found in VASEP’s first example. The concept of effect size can be used to evaluate whether the differences in prices, profits, sales volumes or other indices have practical significance. Indeed, as noted above from Xanthan Gum from the PRC: ““{e}ffect size quantifies the size of the difference between two groups, and may therefore be said to be a *true measure of the significance of the difference.*””<sup>63</sup>

The Department finds that VASEP’s next discussion suffers from conflating the statistical inferences of standard deviation within a random sample and the Cohen’s *d* coefficient are a portion of the pooled standard deviation. VASEP begins the first part of this discussion, describing the characteristics of a normal distribution,<sup>64</sup> as visually displayed in the graph below:



Although this is correct, the Department finds that this information has nothing to do with effect size and evaluating whether the differences in prices are significant.

Then, in reference to the Cohen’s *d* test, VASEP then argues that the “problem that arises is that basing effect size on some measure of a standard deviation tells one nothing about the practical of common sense {sic}significance of the differences in the pattern of pricing.”<sup>65</sup> Thus, VASEP appears to be arguing again that it is unreasonable to gauge the significance of the difference in prices based on the Cohen’s *d* measure of effect size. As discussed elsewhere, the Department finds that such arguments are without merit.

<sup>63</sup> See Xanthan Gum from the PRC at Comment 3 (emphasis in the original, internal citations omitted); quoting from Coe, “It’s the Effects Size, Stupid: What effect size is and why it is important,” Paper presented at the Annual Conference of British Educational Research Association (Sept. 2002), <http://www.leeds.ac.uk/educol/documents/00002182.htm>.

<sup>64</sup> See VASEP’s Case Brief at 39.

<sup>65</sup> Id., at 40.

Also in this vein, VASEP uses the percent of non-overlap for different effect size values<sup>66</sup> to argue that thresholds such as 0.8 (i.e., the “large” threshold) or 1.0 are unreasonably low and posits that it “do(es) not see any significant deviation from the normal distribution until at least an effect size of 1.3 or 1.4, and it cannot be said to be a clear pattern until the effect size is at least 1.7.”<sup>67</sup> VASEP’s argument and conclusions are without merit. First, the percent of non-overlap for different effect size values has the underlying assumption that the test and comparison groups represent random samples exhibiting normal distributions. As discussed elsewhere, the Department analysis is based on all reported U.S. sales, not on a sample, and the Department has never assumed that the prices with each group exhibit a normal distribution. Accordingly, the basis for VASEP’s arguments and conclusion are unsupported by the record.

VASEP’s remaining examples appear to conflate measures of differences based on standard deviations and absolute price levels. As discussed above, each may be reasonable to gauge the meaning of differences in prices, however, neither invalidates the reasonableness of the other.

VASEP ends its discussion with “a number of possible conclusions.”<sup>68</sup> First, “if Cohen’s d or another standardized measure is used for determining significant differences, the threshold for “large” should not be some arbitrary construct but be modified to reflect actual industry pricing experience and the deviation from the mean based on that experience.” As discussed elsewhere, the Department’s reliance on the “large” threshold, is not arbitrary, but rather holds real world meaning as described by Dr. Cohen.<sup>69</sup> Furthermore, the application of this threshold is reflective of “actual industry pricing experience” as the value of the pooled standard deviation, the value against which the difference in the prices is gauged, directly reflects the pricing behavior of the respondent selling subject merchandise in the U.S. market. Thus, the Department addresses the concerns which VASEP claims the Department has not followed.

Second, VASEP concludes “if Cohen’s d does not apply a threshold that reflects actual industry pricing patterns, then at a minimum Cohen’s d should be used in combination with the t-test to ensure that the Department is, in fact, making a determination of significance, albeit statistical not practical significance.” The Department disagrees that the use of a t-test to examine statistical significance would even be appropriate. The use of an estimate of statistical significance is not relevant to the Department’s analysis because the data upon which the Department’s analysis is based encompasses the entire population of U.S. prices (i.e., the respondent’s reported U.S. sales). Accordingly, the Department’s analysis is not based on sampled data, includes no “noise” or sampling error, and measures of statistical significance, probability or confidence intervals are irrelevant. Thus, VASEP’s “conclusion” is inapposite.

Lastly, VASEP concludes “that Cohen’s d is not a proper procedure to determine significance in making a determination of the existence of differential pricing.” As discussed elsewhere, the Department disagrees with this general and unsubstantiated statement.

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<sup>66</sup> Id., at 41, Table 3.

<sup>67</sup> Id., at 41.

<sup>68</sup> Id., at 45.

<sup>69</sup> See Cohen at 24-27.

## **F. Whether the Department Should Disaggregate the Results of Cohen's *d* and make Separate Determinations Based on Customer, Region, and Period**

### **VASEP Case Brief:**

- The Department must make a separate determination with respect to purchasers, regions or time periods. The statute permits the use of the alternative A-T method in situations in which it is demonstrated that prices differ significantly “among purchasers, regions, or time periods.” VASEP explains that the use of the word “or” rather than “and” in the statute supports an interpretation that requires three separate and distinct determinations.
- The Department should not aggregate the results of its application of Cohen's *d* test for all three categories into a single amount and then use this amount to determine whether the thresholds the Department has established for application of the A-to-T method are met. The facts on the record demonstrate that the Minh Phu Group and Thuan Phuoc have more than 33% of its sales that pass the Cohen's *d* test by time period and Fimex has more than 33% of its sales that pass the Cohen's *d* test by time period and region. Consequently, the Department's methodology masks the fact that less than 33% of a respondent's sales pass the Cohen's *d* test by region for Minh Phu Group and Thuan Phuoc, and that less than 33% of a respondent's sales pass the Cohen's *d* test by purchaser for each of the examined respondents.<sup>70</sup>

### **Petitioner's Rebuttal Brief:**

- The Department should continue to reject VASEP's arguments on this issue because the Department has previously addressed this argument in Vietnam Shrimp AR8 Final.<sup>71</sup>

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

We disagree with VASEP 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.

VASEP is 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

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<sup>70</sup> See VASEP's Case Brief at 47 and Attachment I.

<sup>71</sup> Petitioner cites to Vietnam Shrimp AR8 Final at Comment 2c.

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. These 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.

Furthermore, VASEP does not explain to what end the Department should consider the results of the Cohen's *d* test individually by purchaser, or by region, or by time period. If the Department finds, as in this review for Fimex, that more than 33% of the sales pass the Cohen's *d* test based on prices differences among regions, should that result in the Department applying the A-to-T method by region? What does it mean to calculate a respondent's weighted-average dumping margin by region (or by purchaser or by time period)? The Department finds that this makes no sense, and certainly the statute provides for no such view for the calculation dumping margins or weighted-average dumping margins.<sup>72</sup>

Alternatively, does VASEP argue that the Department must find that 33% of the sales by a respondent pass the Cohen's *d* test by time period, purchaser, and region? Again, the statute makes no such provision. Even as VASEP notes in its case brief, section 777A(d)(1)(B)(i) of the statute says "among purchasers, regions **or** time periods" (emphasis added). Accordingly, such an interpretation of the meaning of the statute is not reasonable.

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.

### **G. Whether the Department Correctly Includes Both Lower- and Higher-Priced U.S. Sales As Contributing To a Pattern of Prices That Differ Significantly**

#### **VASEP's Case Brief:**

- 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. "Taken to its extreme," according to VASEP, "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>73</sup>
- The Department should adjust the differential pricing methodology and use a one-tail or directional test in determining the potential existence of targeted dumping or differential

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<sup>72</sup> See section 771(35) of the Act.

<sup>73</sup> See VASEP's Case Brief at 51.

pricing and that test should include only those sales that are lower than the average U.S. price.

### **Petitioner’s Rebuttal Brief:**

- VASEP has failed to mention or address the Department’s prior response to these arguments<sup>74</sup> and the Department should again reject these arguments for the final results.

### **Department’s Position:**

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 VASEP’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.

VASEP states that the “hidden dumping is obviously not the result of high-priced sales, but rather the low-priced sales.”<sup>75</sup> VASEP continues “[a]lthough as a matter of mathematics, a positive or negative number could be considered ‘large,’ the mathematics must be grounded in some context of what is being measured. The context here is checking for evidence of possible targeted dumping...”<sup>76</sup> As noted above, the SAA defines “targeted dumping” as a situation where “an exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions.”<sup>77</sup> VASEP either does not understand or chooses to ignore the SAA, that for “targeted” or masked dumping to occur, there must both be lower-priced U.S. sales which may be dumped, and higher-priced U.S. sales which may offset, or mask, other sales which are dumped. Therefore, VASEP’s arguments are clearly bogus.

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>78</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 prices 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

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<sup>74</sup> Petitioner cites to Vietnam Shrimp AR8 Final at Comment 2c.

<sup>75</sup> See VASEP’s Case Brief at 49.

<sup>76</sup> Id., at 50.

<sup>77</sup> See SAA at 843.

<sup>78</sup> See 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) and accompanying Issues and Decision Memorandum at Comment 5.

following a more uniform pricing behavior. Where the evidence indicates that the exporter pricing behavior has created a condition in which dumping may be masked, and 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 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 VASEP'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) actually demonstrates the need to consider that higher-priced sales can pass the Cohen's *d* test. In this example, VASEP continues to erroneously cling to the argument that there must be lower-priced U.S. sales which must be found to be at significantly different prices (*i.e.*, pass the Cohen's *d* test), and which are also below normal value (*i.e.*, dumped) in order to find "targeted dumping." The Department disagrees. VASEP claims that 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, then only the higher-priced sales to the one customer would 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 U.S. sales, then for the A-to-A method 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 (lower-priced) of sales of this product. VASEP's "extreme" example illustrates a specific reason why higher-priced sales must be considered as potentially contributing to a pattern of prices that differ significantly, even if the lower-priced sales are not found to be at prices which differ significantly.

The Department disagrees with VASEP's repeated claim that the Department has failed to explain its interpretation of the statute. As discussed above, the statute sets no requirement on how to identify prices that differ significantly. Accordingly, the Department has followed the guidance of the SAA with respect to "targeted dumping" which is one of the situations which may exist which may cause the A-to-A method to not be appropriate when evaluating the extent of a respondents dumping in the U.S. market. The SAA expressly describes "targeted dumping" as including both lower-priced and higher-priced U.S. sales, and this is the basis for the Department's approach in the Cohen's *d* test. Therefore, the Department's application of the Cohen's *d* test is reasonable and permissible under the statute.

#### **H. Exclusion of U.S. Sales in the Test Group From the U.S. Sales in the Comparison Group as Part of the Cohen's *d* Test**

##### **VASEP's Case Brief:**

- 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 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 VASEP 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.

- VASEP further explains that excluding the test group from the base group results in changing the threshold for what is considered a “normal” price. Using the example above, the base group for determining the mean for one customer is entirely different than the base group for determining the mean for the second customer.

**Petitioner's Rebuttal Brief:**

- VASEP has failed to mention or address the Department's prior response to these arguments<sup>79</sup> and the Department should again reject these arguments for the final results.

**Department's Position:**

The Department disagrees with VASEP'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 VASEP, 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 differs 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. To summarize, if A is different than B, this is logical and reasonable the B is different from A.

To further expose the implications of VASEP argument to include the test-group U.S. sales in the comparison group, consider VASEP's example of testing whether taking an aspirin every day lowers one's chance of having a heart attack. To follow VASEP's suggestion, this study would compare the incidences of heart attacks for the people taking a daily aspirin with the incidences of heart attacks for people who both take and do not take a daily aspirin. That is, the impact on the test group is partially measured based on that same impact on the test group. Such an approach would partially conceal, or mask, the effectiveness of taking a daily aspirin to reduce the incidences of heart attacks. However, to gauge the full effect of taking a daily aspirin, just as to fully gauge whether the average price to a test group differs significantly, this effect must be measured against an independent effect of not taking a daily aspirin. Analogous to the summation above, it is reasonable to state that if taking a daily aspirin significantly reduces the incidences of heart attacks, then the opposite is also true that not taking a daily aspirin will increase the incidences of heart attacks.

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<sup>79</sup> Petitioner cites to Vietnam Shrimp AR8 Final at Comment 2c.

Therefore, the Department finds reasonable its approach to not include the test-group U.S. sales in the comparison group.

### **I. Whether the Department Incorrectly Determines Variance Based on Simple or Weighted Average**

#### **VASEP's Case Brief:**

- 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. VASEP provides formulas 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.

#### **Petitioner's Rebuttal Brief:**

- VASEP has failed to mention or address the Department's prior response to these arguments<sup>80</sup> and the Department should again reject these arguments for the final results.

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

VASEP 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>81</sup> VASEP claims that the correct approach is a weighted-average, based on the volume of sales, 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>82</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 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.

VASEP provides an example that it claims demonstrates that the Department is "over weighing" the test group.<sup>83</sup> VASEP's example attempts to demonstrate that the simple average approach leads to distorted results.<sup>84</sup> This example, however, actually provides further support for the Department's use of a simple average. If, in VASEP'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

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<sup>80</sup> Petitioner cites to Vietnam Shrimp AR8 Final at Comment 2c.

<sup>81</sup> See VASEP Case Brief, at 59-61.

<sup>82</sup> Id.

<sup>83</sup> Id.

<sup>84</sup> Id.

this administrative review. Therefore, we disagree with VASEP'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, VASEP presented a suggested alternative methodology for the Department to employ. VASEP'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.

#### **J. Whether the Department has the Information Necessary to Make and Average-to-Transaction Comparison**

##### **VASEP's Case Brief:**

- The Department's application of A-T methodology is unlawful because the Department has not sought or collected FOPs or SVs to determine NV on a monthly or quarterly basis. As a result, the Department does not have an appropriate basis for determining margins of dumping based on a comparison of average NVs and individual transaction prices.
- Section 777A(d)(2) of the Act and the SAA require a temporal relationship between the individual transactions being compared and weighted average NV to which those transactions are compared.

##### **Petitioner's Rebuttal Brief:**

- The Department should reject VASEP's arguments because respondents bear the burden of creating and adequate record.<sup>85</sup> If respondents were concerned that additional information would be relevant to the Department's analysis, it is incumbent upon these parties to submit such evidence for the record of this proceeding and they have not done so.

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

As explained above, in the NME context, the statute and the Department's A-T methodology do not require that NVs be determined on a monthly or quarterly basis, or that such comparisons be made to export prices.<sup>86</sup> Further, as Petitioner notes, it is incumbent upon respondent of "creating an adequate record to assist Commerce's determinations."<sup>87</sup> Had VASEP considered the issue of calculating monthly or quarterly NVs to be an important factor for the mandatory

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<sup>85</sup> Petitioner cites "The Court has acknowledged that 'respondents have the burden of creating an adequate record to assist Commerce's determinations.'" NSK Ltd. v. United States, 20 CIT 361, 369, 919 F. Supp. 442, 449 (1996) (quoting Nachi-Fujikoshi Corp. v. United States, 19 CIT. 914, 920, 890 F. Supp. 1106, 1111 (1995), in turn citing Tiajin Machinery Import & Export Corp. v. United States, 16 CIT 931, 936, 806 F. Supp. 1008, 1015 (1992)). "The Court rejects plaintiffs' contentions out of hand. As defendant-intervenors point out, if plaintiffs' argument were to prevail the result would be to undermine the administrative process and shift the burden of creating an adequate record from respondents to Commerce." Chisung Indus. Co., Ltd. v. United States, 13 C.I.T. 103, 106, 705 F. Supp. 598, 601 (1989).

<sup>86</sup> See Comment C above; see also, 19 CFR 351.414.

<sup>87</sup> See NSK Ltd. v. United States, 20 CIT 361, 369, 919 F. Supp. 442, 449 (1996) (quoting Nachi-Fujikoshi Corp. v. United States, 19 CIT. 914, 920, 890 F. Supp. 1106, 1111 (1995), in turn citing Tiajin Machinery Import & Export Corp. v. United States, 16 CIT 931, 936, 806 F. Supp. 1008, 1015 (1992)).

respondents, then VASEP had to the opportunity to do so multiple times during the course of the review, including adding the information to its lengthy VASEP Stat Submission, for the Department's consideration. However, here, we will continue to apply the either the A-to-A method or the A-to-T method where the weighted-average normal value is based on period-wide factors of production and surrogate values consistent with section 773(c) of the Act.

## **Comment 2: Treatment of Frozen Shrimp Purchases**

### **VASEP Case Brief:**

- There is no basis for applying a different SV for purchased fresh shrimp and purchased frozen shrimp.
- The Department has not requested or required that frozen shrimp purchases, either imported or domestic, be separated out from raw shrimp purchases for purposes of determining NV in any prior segment of this proceeding.
- Respondents agree with the Department's decisions on this subject in the original investigation and eight subsequent administrative reviews, as the separation of frozen shrimp from fresh shrimp is immaterial to the Department's margin calculation.
- None of the respondents separately track the actual consumption in their production records of shrimp per unique finished product separately for purchased frozen shrimp, self-produced (including tolled) frozen shrimp, and fresh shrimp; thus, while the mandatory respondents can determine the quantity of purchased frozen shrimp withdrawn from inventory, even after this manual and laborious work is undertaken there is no record of which finished products actually receive these materials or in what count sizes.
- Because the only cost incurred for turning HOSO<sup>88</sup> into HLSO is labor, energy, and bulk packaging (*i.e.*, the same processes reported for Thuan Phuoc's tollers), the total cost difference between the current fresh shrimp SV and any frozen HLSO purchased by respondents is only one percent. Also, as demonstrated by Thuan Phuoc's reporting of its three tollers' processing factors, the difference in the processing costs for de-heading among processors is negligible.
- Thuan Phuoc's tolling operations data demonstrate that any value added from fresh HOSO to frozen HLSO is miniscule, which makes questionable the utility of reporting purchased frozen HLSO separately from self-produced frozen HLSO. Not only will doing so not yield different results in the margin calculation, but the added burden of extracting these data manually, then artificially allocating consumption of these data across all products (irrespective of whether they actually received purchased frozen shrimp because that data is not present in the company's records), actually yields a less accurate result rather than a more accurate result.
- Any additional selling, general and administrative ("SG&A"), overhead, or profit attributable to purchased shrimp are all accounted for fully by applying the financial ratios to the constructed HLSO price in the calculation of NV.
- The Department's use of a SV for frozen shrimp is imprecise because the SV is a basket-category that is neither size nor species-specific. This basket category can include semi-finished HLSO that is consumed by the respondents, as well as finished goods comparable to the merchandise sold by the respondents in the United States. In contrast, the SV applied to

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<sup>88</sup> Head-on, Shell-on ("HOSO"); Head-less, Shell-on ("HLSO").

fresh shrimp is size and species-specific. Thus, these SV should not be used as they necessarily lead to a less accurate result than using size-specific fresh shrimp SV to value the mandatory respondent's consumption of commingled fresh and reprocessed frozen shrimp.

**Petitioner's Rebuttal Brief:**

- The Department appropriately differentiated between frozen shrimp and fresh shrimp used in the production process.
- The record establishes that frozen shrimp is utilized in the production of subject merchandise. Throughout the administrative reviews of the antidumping duty orders on certain frozen warmwater shrimp, the Department has appropriately distinguished between FOPs for shrimp inputs in various forms.
- VASEP had the opportunity to submit alternative SVs to be used for frozen shrimp purchased by the mandatory respondents. They did not do so and as such the Department should continue to use the SV for frozen shrimp for the mandatory respondents' purchased frozen shrimp.

**Department's Position:**

The Department disagrees with VASEP that there is no basis for applying a different SV for purchased fresh shrimp and purchased frozen shrimp. VASEP made several arguments why the Department should consider frozen shrimp purchased as being identical to shrimp that are delivered fresh from local farms. We addressed each argument below.

First, we disagree with VASEP's argument that reporting methodologies accepted in past segments necessitates acceptance of those same methodologies in future segments. We have stated, in numerous cases, that "it is the Department's practice to treat each segment of an antidumping proceeding as independent proceedings with separate records which lead to independent determinations."<sup>89</sup> The administrative record (and arguments) may differ from one administrative segment to another administrative segment.

In Vietnam Shrimp AR6, for example, the issue of frozen shrimp purchases as an input was raised only after the record had closed which did not afford the Department sufficient time to gather additional information from the respondents prior to the final results.<sup>90</sup> In contrast, here, the administrative record on the issue of frozen shrimp purchasers has been sufficiently developed for the agency to make a determination and reflects substantial purchases of frozen shrimp that were used an input in production. In Vietnam Shrimp AR8 Final, the issue of frozen processed shrimp input versus fresh shrimp input was not raised by any parties. Here, for the first time in any segment of this proceeding, we have had an opportunity to develop administrative record, issuing multiple supplemental questionnaires with emphasis on the

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<sup>89</sup> See 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) and accompanying Issues and Decision Memorandum at Comment 1. See also Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 74 FR 47551 (September 16, 2009) and accompanying Issues and Decision Memorandum at Comment 8.

<sup>90</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") and accompanying Issues and Decision Memorandum at Comment 5B.

purchases of frozen shrimp, while at the same time granting FOP reporting exclusions to the respondents.

All three mandatory respondents have reported purchases and subsequent withdrawals from inventory of frozen shrimp. They are all able to do so separately from fresh shrimp input, and, thus, are able to distinguish fresh shrimp from frozen shrimp prior to commingling.<sup>91</sup> As an initial matter, it is the Department's practice to account for all materials used in the production of subject merchandise.<sup>92</sup> Fresh unprocessed shrimp is a different input from frozen processed shrimp, which we consider to be an intermediate, processed input. Accordingly, these inputs must be reported separately and valued appropriately, which in this instance means applying a different SV to each.

VASEP argues it had to manually isolate frozen shrimp from total shrimp consumption in reporting FOPs, which is burdensome and does not yield greater accuracy as a result. As an initial matter, the Department granted FOP reporting exclusions to the mandatory respondents, thus lessening their overall workload in building the record.<sup>93</sup> Further, the record does not demonstrate that it was burdensome<sup>94</sup> for the respondents to report frozen shrimp separately from fresh shrimp because all three mandatory respondents timely reported a revised allocation methodology<sup>95</sup>, as we requested in a supplemental questionnaire.<sup>96</sup> Moreover, despite arguments earlier in the review that their timeline for building the record was significantly delayed by employing the sampling methodology to select respondents<sup>97</sup>, all three mandatory respondents timely provided the requested data.

VASEP argues that the total cost difference between the current fresh shrimp SV and any frozen HLSO purchased by respondents is only one percent. Minh Phu Group, for example, has also stated on the record that its "experience demonstrates that there is no real cost differential between MPG's actual experienced cost for purchased frozen shrimp versus purchased fresh shrimp."<sup>98</sup> However, Minh Phu Group has not substantiated this assertion with record evidence.

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<sup>91</sup> See, e.g., Minh Phu Group's Second Supplemental Section D Questionnaire response, dated February 12, 2015; Fimex VN's "Request for Exclusion from Reporting Frozen Shrimp FOPs", dated December 11, 2014; Fimex VN's Second Supplemental Section D Farming Response, dated February 11, 2015; Thuan Phuoc's Third Supplemental Section D Questionnaire Response, dated February 13, 2015.

<sup>92</sup> See, e.g., Xanthan Gum From the PRC at Comment 8, where we stated that "Our policy, consistent with section 773(c)(1)(B) of the Act, is to value the FOPs that a respondent uses to produce the subject merchandise. Accordingly, our standard NME questionnaire asks respondents to report the FOPs used in the various stages of production." See also 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) and accompanying Issues and Decision Memorandum at Comment 16.

<sup>93</sup> See Preliminary Decision Memo at 23-24. The Department also granted numerous extensions to response deadlines during the proceeding to accommodate the respondents' need for time to gather the data.

<sup>94</sup> See, e.g., Fujian Lianfu Forestry Co., Ltd. v. United States, 638 F. Supp. 2d 1325, 1341 (CIT 2009), where the Court noted that the respondent's ability to eventually provide requested data did not demonstrate a burden.

<sup>95</sup> See, e.g., Minh Phu Group's Second Supplemental Section D Questionnaire response, dated February 12, 2015; Fimex VN's "Request for Exclusion from Reporting Frozen Shrimp FOPs", dated December 11, 2014; Fimex VN's Second Supplemental Section D Farming Response, dated February 11, 2015; Thuan Phuoc's Third Supplemental Section D Questionnaire Response, dated February 13, 2015.

<sup>96</sup> See the Department's Supplemental Section D Questionnaire, dated January 27, 2015, at 3.

<sup>97</sup> See Letter from VASEP, re: Comments on Continued Delay in Review, dated September 18, 2014.

<sup>98</sup> See Minh Phu Group's Second Supplemental Section D Questionnaire response, dated February 12, 2015, at 12.

We have evaluated VASEP's claim that the cost difference between fresh shrimp and frozen processed shrimp is only one percent. However, VASEP's claim is based on information for a Vietnamese toller, denominated in Vietnamese currency. Because Vietnam is a NME, and we do not use the purchase prices (or cost) of purchased frozen shrimp consistent with our practice,<sup>99</sup> the tollers' relative cost between frozen and fresh shrimp are distortive and cannot be relied upon. Moreover, the respondents have stated on the record that frozen processed shrimp contains added value that is not present in fresh shrimp.<sup>100</sup> The issue before the Department is whether the agency should ignore this added value (and cost differences) between fresh unprocessed shrimp input and frozen processed shrimp input.

We note that "fresh shrimp" in this context denotes that the shrimp was recently harvested and delivered to the plant for processing, while frozen processed shrimp had already undergone a significant transformation in processing shrimp: de-heading (approximately one-third of the fresh shrimp is the head).<sup>101</sup> In contrast to unprocessed fresh shrimp input, frozen processed shrimp input contains cost, such as labor, electricity, and water, as incurred by suppliers and built-in to the selling price, that is not incurred for fresh shrimp. Thus, frozen shrimp cannot be considered fresh, as respondents might prefer. It is unreasonable for respondents to expect that the Department should systematically consider a distinct input as identical to another input, despite the transformation caused by de-heading and other processing.

VASEP argues that separating fresh from frozen shrimp input will not yield different results in the margin calculation. However, we disagree with VASEP that differentiating frozen shrimp from fresh shrimp will not necessarily yield different results in the margin calculation. First, VASEP has not demonstrated how disregarding the distinction between two different inputs is more accurate than accounting for those differences. The purpose of valuing frozen shrimp using a different SV from fresh shrimp is because they are different raw materials and maintained separately in physical form prior to production as well as in the books and records.<sup>102</sup>

As noted above, respondents have recognized that a cost difference exists between the frozen processed shrimp input and the fresh unprocessed shrimp input. Yet respondents have not offered any reasonable alternative solution to account for this cost difference in valuing these two different shrimp inputs. Rather, respondents argue that the Department should continue to consider that frozen processed shrimp and fresh unprocessed shrimp ought to be valued identically. However, the Department must account for this difference to avoid systematic undervaluation of the cost of manufacture ("COM"). The added value of the frozen, already processed shrimp must be accounted for because doing otherwise necessarily and systematically

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<sup>99</sup> See Preliminary Decision Memo at 25. Section 773(c)(1) of the Act of the statute directs the Department to rely on SVs, rather than cost incurred in the NME.

<sup>100</sup> See, e.g., Minh Phu Group's Second Supplemental Section D Questionnaire response, dated February 12, 2015; Fimex VN's "Request for Exclusion from Reporting Frozen Shrimp FOPs", dated December 11, 2014; Fimex VN's Second Supplemental Section D Farming Response, dated February 11, 2015; Thuan Phuoc's Third Supplemental Section D Questionnaire Response, dated February 13, 2015.

<sup>101</sup> See, e.g., Minh Phu Group's Section D Questionnaire Response, dated November 24, 2014, at 19.

<sup>102</sup> See, e.g., Minh Phu Group's Second Supplemental Section D Questionnaire response, dated February 12, 2015; Fimex VN's "Request for Exclusion from Reporting Frozen Shrimp FOPs", dated December 11, 2014; Fimex VN's Second Supplemental Section D Farming Response, dated February 11, 2015; Thuan Phuoc's Third Supplemental Section D Questionnaire Response, dated February 13, 2015.

undervalues that FOP, because a percentage<sup>103</sup> of their input data will be missing certain factors used, along with the associated SG&A, overhead, and profit for, that input. Thus, other than applying a different SV, there is no replicable and appropriate adjustment available on the record to treat frozen processed shrimp differently from fresh shrimp input.

VASEP argues that any additional SG&A, overhead, or profit attributable to purchased shrimp are all accounted for fully by applying the financial ratios to the constructed HLSO price in the calculation of NV. We disagree. The calculated surrogate financial ratios attribute surrogate SG&A, overhead, and profit to the finished good that the respondent produces, rather than the input material that it purchases. Using a SV for frozen, processed shrimp ensures that the Department uses an accurate value of the input. If a respondent purchases the processed, de-headed, frozen shrimp, it does not have to incur costs of such processing of the input when it produces the finished product. Accordingly, its SG&A, overhead and profit would not reflect for such costs. Using the unadjusted value of unprocessed fresh shrimp in place of the value of processed frozen shrimp input, which the respondent purchased and used in production, would understate the value of the input, and, thus, distort the margin calculation.

VASEP argues that the mandatory respondents do not track consumption of frozen shrimp because frozen shrimp is commingled with fresh shrimp after thawing. First, the Department is hereby placing respondents on notice, that for future segments, frozen shrimp and fresh shrimp consumption should be tracked separately, for FOP reporting purposes. The Department does not dispute the fact that frozen shrimp may be commingled with fresh shrimp after thawing. The important fact that respondents have reported on the record is that they track frozen shrimp withdrawals from inventory. We determine this withdrawal from material inventory record-keeping to be a close approximation to actual consumption, such that the Department is able to value two different inputs separately for purposes of this administrative review. Indeed, the Department noted in a prior case that inventory records have been used to report consumption.<sup>104</sup> However, for the future segments of this proceeding, we expect that respondent will track frozen and fresh shrimp inputs separately for FOP reporting purposes.

VASEP also argues that the Indian GTA data used to value frozen shrimp is a basket-category with no count-size distinctions. While we acknowledge that count-sizes are an important consideration and the SV applied to the frozen shrimp input is not on a count-size basis, it is the best information available on the record to value frozen shrimp. However, fresh unprocessed shrimp is a different input from frozen processed shrimp. Conversely, in applying the count size-specific fresh shrimp SVs to the frozen shrimp input, we would certainly be undervaluing the frozen processed shrimp because the NACA<sup>105</sup> SVs do not contain the built-in added value of the single largest transformation of a whole fresh shrimp: de-heading. Thus, while the frozen

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<sup>103</sup> Respondents have reported the business proprietary percentage of their frozen shrimp purchases. See, e.g., Minh Phu Group's Section D Questionnaire Response dated November 24, 2014, at 6; Fimex's Section D Questionnaire Response dated November 24, 2014, at 3-4; Thuan Phuoc's Section D Questionnaire Response dated January 5, 2015, at Exhibit 15.

<sup>104</sup> See Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission. In Part, of Antidumping Duty Administrative Review, 72 FR 58642 (October 16, 2007) and accompanying Issues and Decision Memorandum at Comment 6 ("using its inventory records, Max Fortune could have reported ink and dye consumption...").

<sup>105</sup> Network of Aquaculture Centres in Asia Pacific ("NACA").

shrimp SV is not on a count-size basis, it is still preferable to undervaluing the frozen shrimp input by using an incomparable SV of a different input (fresh shrimp). Accordingly, we find it is reasonable to treat the frozen shrimp input differently from fresh shrimp input, using a different SV. Petitioner notes that the Department has in the past distinguished between species and count sizes of fresh shrimp for SV purposes and should give equal distinction between fresh and frozen shrimp input for SV purposes here. However, for the first time in this proceeding, the Department has data on the record requiring us to contemplate the issue of shrimp inputs differentiated by more than just count size and species. The issue of purchased, already processed frozen shrimp used as an intermediate input by the respondents is a stratum of respondents' data which we have never fully analyzed or addressed until this administrative review. As such, we find that distinguishing between fresh shrimp and frozen shrimp inputs is reasonable. This determination should not be construed as discarding the importance of count sizes when valuing a particular input. In this case, however, respondent use two different inputs (*i.e.*, fresh unprocessed shrimp and frozen processed shrimp), which we now require to be reported separately.

In accordance with our practice, when selecting SVs, the Department considered, among other factors, the quality, specificity, and contemporaneity of the data.<sup>106</sup> In analyzing the specificity of the shrimp SV applied, we find that applying a fresh shrimp SV to frozen shrimp is not as specific or accurate as applying a frozen shrimp SV to frozen shrimp because the frozen shrimp accounts for incurred costs that fresh shrimp does not. While VASEP argues that the SV for frozen shrimp applied in the Preliminary Results is not accurate because it is not count-size specific, we note that VASEP had an opportunity to rebut the SVs applied in the Preliminary Results and place other SV data for frozen shrimp on the record, particularly as we issued questionnaires on this specific subject to respondents. For example, VASEP could have provided other, preferably count-size specific, SV sources for frozen shrimp. However, VASEP only rebutted the SV we used for shrimp scrap byproduct.<sup>107</sup> Moreover, the frozen shrimp SV, as an import purchase price, despite not being count-size specific, necessarily includes the cost associated with frozen shrimp input (labor, electricity, water), whereas, the fresh shrimp SV from NACA does not. Thus, because fresh shrimp and frozen shrimp are different inputs, and the only frozen shrimp SV on the record is the one applied in the Preliminary Results, we will continue to apply that SV in the final results because it is the best information available on the record with which to value frozen shrimp withdrawn for consumption during the POR.

We recognize that when evaluating which SV is most appropriate in any segment of this order, we generally, look to the availability of count-size specificity. In Vietnam Shrimp AR8 Final, for example, the Department attributed great weight in count-size specificity, as compared to species of shrimp.<sup>108</sup> However, in Vietnam Shrimp AR8 Final, the Department only addressed the comparison of count-sizes and species specificity with respect to a single input, fresh, unprocessed shrimp. The Department considered POR-specific and record-specific quantitative

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<sup>106</sup> See, e.g., Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008), and accompanying Issues and Decision Memorandum at Comment 9.

<sup>107</sup> See VASEP's "Rebuttal Comments Regarding the Department's Surrogate Value Data," dated March 10, 2015.

<sup>108</sup> See Vietnam Shrimp AR8 Final at Comments 1 and 3.

data that was specific to fresh unprocessed shrimp.<sup>109</sup> Here, the Department is faced with addressing an additional layer of input specificity, *i.e.*, whether the input is fresh unprocessed shrimp, or frozen processed shrimp. There is no information on the record to conclude that count-size outweighs the distinction between fresh and frozen shrimp inputs. We have weighed the issue of less specificity regarding count-size with the certain systematic undervaluation of a portion of the largest component of the NV. We conclude that it is more important to capture the costs associated with the conversion of fresh to frozen shrimp than to value frozen shrimp as if it were count-size specific fresh shrimp. Based on our analysis of the record information, in this administrative review, we decline to treat frozen shrimp purchases as fresh shrimp.

Thus, for the final results, we continue to use a SV for frozen shrimp that best represents the input, which is frozen, processed shrimp. Furthermore, we are using respondents' revised frozen and fresh shrimp allocations submitted just prior to the Preliminary Results.<sup>110</sup>

### **Comment 3: Treatment of Ocean Freight Expenses**

#### **VASEP Case Brief:**

- In the Preliminary Results, the Department applied a SV to ocean freight costs incurred by Fimex VN and Thuan Phuoc. However, for the final results, the Department should instead use the U.S. dollar ("USD") incurred costs that these respondents reported.
- Fimex VN and Thuan Phuoc used market economy carriers, which had local representative offices in Vietnam. As a result, the freight invoices were quoted in USD but paid to the local representative office in Vietnamese Dong using the daily exchange rate upon invoicing.
- Therefore, the Department should value ocean freight using the quoted U.S. dollar costs because these costs were negotiated in U.S. dollar and only paid in Vietnamese Dong because the representative office is located in Vietnam.
- Alternatively, if the Department does not accept the USD cost of ocean freight quoted to Fimex VN and Thuan Phuoc, it should still find these rates the best available information on the record and apply them as the SV because they are contemporaneous, more specific, publicly available, market economy freight rates.

#### **Petitioner's Rebuttal Brief:**

- VASEP's objects to the calculation of ocean freight expenses for Fimex VN and Thuan Phuoc, because the ocean freight services "are negotiated and determined fully in U.S. dollars, but paid to a local representative office in Vietnam,"<sup>111</sup> are immaterial to the eligibility criteria under 19 CFR 351.408(c)(1).

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<sup>109</sup> Id.

<sup>110</sup> For a detailed discussion of the final results calculations using the revised reporting methodology, see the respondents' individual final results analysis memoranda.

<sup>111</sup> See Petitioner's Rebuttal Brief, dated June 15, 2015, citing to VASEP's Case Brief dated June 8, 2015, at 7-9.

- 19 CFR 351.408(c)(1) states that “where a factor is produced in one or more market economy countries, purchased from one or more market economy suppliers and paid for in market economy currency . . .” However, VASEP asserts, without support, that invoices issued and paid in Vietnamese Dong should be treated as a market economy purchase because they were “negotiated in U.S. dollars.”<sup>112</sup>
- Because “negotiations” on their own are immaterial to the regulatory requirements of 19 CFR 351.408(c)(1), the Department should not alter its identification of ocean freight expense for Fimex VN and Thuan Phuoc for the final results.

### **Department’s Position:**

In the Preliminary Results, the Department applied a SV to Fimex VN and Thuan Phuoc’s ocean freight. We stated that because the two respondents could not demonstrate that they paid for the ME input in a ME currency, we were applying a SV.<sup>113</sup>

Section 351.408(c)(1) of the Department’s regulations provide that “where a factor is produced in one or more market economy countries, purchased from one or more market economy suppliers and paid for in market economy currency, the Secretary normally will use the price(s) paid to the market economy supplier(s) if substantially all of the total volume of the factor is purchased from the market economy supplier(s).”<sup>114</sup> Moreover, the CIT has affirmed that both criteria must be satisfied in order to apply a ME price, “under the regulation, merely establishing that the factor was purchased from a market economy supplier is not enough; rather, the amount paid to the supplier must be documented.”<sup>115</sup>

As VASEP acknowledges, the freight invoices were paid in Vietnamese Dong, which is not a ME currency. Fimex VN and Thuan Phuoc could not demonstrate that they paid for the ME input with a ME currency, therefore, in the final results we will continue to apply a SV to ocean freight. Accordingly, one of the prerequisites under 19 CFR 351.408(c)(1), that factor is “paid for in market economy currency” has not been satisfied here.

With regard to VASEP’s argument that the Department should find these ocean freight rates quoted in U.S. Dollars as the most specific information on the record and therefore, apply them as SVs, we disagree. At the Preliminary Results, we relied on POR-specific quarterly rates from Vietnam to both east coast and west coast ports in the United States, obtained from Descartes. Generally, the Department does not use price quotes if other suitable publicly available data is on the record because: (1) price quotes do not represent actual prices or broad ranges of data and (2) we do not know the conditions under which they are solicited and whether or not they are self-selected from a broader range of quotes.<sup>116</sup> In this instance, because we have a viable, alternative source, we will continue to apply the ocean freight rate obtained from Descartes as a

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<sup>112</sup> Id., at page 16, citing to VASEP’s Case Brief dated June 8, 2015, at 8.

<sup>113</sup> See company specific final analysis memoranda.

<sup>114</sup> See 19 CFR 351.408(c)(1).

<sup>115</sup> See Yantai Oriental Juice Co., v. United States, 26 CIT 605, 617 (2002).

<sup>116</sup> See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Sixth Antidumping Duty Administrative Review and Sixth New Shipper Review, 76 FR 15941 (March 22, 2011) and the accompanying Issues and Decision Memorandum at 9.

SV in the final results.

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

##### **VASEP Case Brief:**

- The Department incorrectly utilized a Bangladeshi inflator to inflate USD denominated SVs in its Preliminary Results.
- In using the 2011, 2010, and 2007 UN Comtrade data from Bangladesh to value the mandatory respondents' FOPs, the Department failed to take into account its past practice with respect to the use of USD 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.
- There is a significant body of precedent in Department proceedings that document that this is incorrect, and the Department should have instead used the following inflators for UN Comtrade data: 1.037 (2011 data), 1.070 (2010 data), and 1.125 (2007 data), placed on the record on January 5, 2015.<sup>117</sup> The use of U.S. inflation rates when an SV is denominated in USD is a well-established practice followed by the Department<sup>118</sup> and should be modified for the final results using the inflators placed on the record by VASEP.

##### **Petitioner's Rebuttal Brief:**

- The Department explicitly rejected these same arguments in the preceding administrative review with express reference to the administrative proceedings cited by VASEP in its case brief.
- Despite the Department's reference to Seamless Pipe from Romania<sup>119</sup> in the preceding administrative review, VASEP declined to address the Department's articulated reasoning in that review. Rather, VASEP simply ignores it, continuing to argue that their case citations are consistent with the "long-standing policy" of the agency.
- A review of the Department's practice indicates that, contrary to the claim presented by VASEP, the Department's long-standing policy is to inflate USD denominated SV based on the country in which the expense is incurred – rather than the currency in which it is reported. This practice has been consistently followed in prior reviews regarding this antidumping duty

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<sup>117</sup> See VASEP's "Surrogate Value Rebuttal Comments," dated January 5, 2015.

<sup>118</sup> See VASEP's Case Brief at 10, 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"); 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"); 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.

<sup>119</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.

order as well as several other proceedings regarding other products.<sup>120</sup>

- The argument submitted by VASEP fails to acknowledge, or address, the Department’s pervasive practice. Accordingly, the Department should continue to adjust USD denominated SVs based on the country in which the expense was incurred, not the currency in which it was reported.

### **Department’s Position:**

The Department disagrees with VASEP regarding 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 primary source of Bangladeshi surrogate value data.”<sup>121</sup> In the Preliminary Results, we applied a Bangladeshi inflator to UN Comtrade import statistics reported in Bangladeshi Taka (but expressed in USD on UN Comtrade’s website).<sup>122</sup> VASEP argues that because the data are expressed in USD, the Department should apply a USD inflator to the data. However, this is not our practice as discussed in Seamless Pipe from Romania. Our practice is to apply the inflator of the same country for which we obtain the import statistics. For example, in Glycine from the PRC, the Department applied the “Consumer Price Index rate for Indonesia,”<sup>123</sup> to Indonesian import statistics from the Global Trade Atlas (“GTA”), despite the fact that the import statistics are reported in USD.<sup>124</sup> Consequently, contrary to VASEP’s argument, consistent with our current practice, which supersedes the cases to which VASEP cited, there is no basis to apply a USD inflator index to import statistics reported by Bangladesh to UN Comtrade, especially since the data is reported in Bangladeshi Taka. Because Bangladesh is the reporting country regarding its trade flow, any assumptions

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<sup>120</sup> See Petitioner’s Rebuttal Brief dated June 15, 2015, at pages 12-1, citing to: Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results of Administrative Review, 77 FR 13547, 13554 (March 7, 2012); Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam : Preliminary Results, Partial Rescission, and Request for Revocation, In Part, of the Fifth Administrative Review, 76 FR 12054, 12062 (March 7, 2011); Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results, Partial Rescission, and Request for Revocation, In Part, of the Fourth Administrative Review, 75 FR 12206, 12214 (March 15, 2010); Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results, Preliminary Partial Rescission and Request for Revocation, In Part, of the Third Administrative Review, 74 FR 10009, 10016-17 (March 9, 2009); Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results, Preliminary Partial Rescission and Final Partial Rescission of the Second Administrative Review, 73 FR 12127, 12134 (March 6, 2008); Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of the First Administrative Review and New Shipper Review, 72 FR 10689, 10696-97 (March 9, 2007).

<sup>121</sup> See Prelim SV Memo, at page 2.

<sup>122</sup> Id. Because the record did not contain evidence of the Bangladeshi reported currency in the Preliminary Results, we issued a memorandum containing evidence of such. See “Memorandum to the File, from Irene Gorelik, Analyst, Office V, re; Placing Information on the Record Regarding UN Comtrade Import Statistics Explanatory Notes,” dated August 3, 2015 (“UN Comtrade Explanatory Notes”). The UN Comtrade Explanatory Notes show that Bangladesh, as the reporting country for import data, has been reporting trade activity in Bangladeshi Taka.

<sup>123</sup> See Glycine From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review, 77 FR 21738, 21742 (April 11, 2012) unchanged in Glycine from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 77 FR 64100 (October 18, 2012) (“Glycine 2012”) and accompanying Issues and Decision Memorandum at Comment 8.

<sup>124</sup> See Glycine 2012, at Comment 8, where “we found that the GTA obtains its Indonesian data from Statistics Indonesia, an Indonesian government organization, and that the data is reported to the GTA in U.S. dollars.”

that that economic activity occurs anywhere but Bangladesh in currency other than Bangladeshi Taka is not supported by the record or by our practice.<sup>125</sup> Moreover, contrary to VASEP's speculation<sup>126</sup> that the Department intends to convert USD to Bangladeshi Taka, and back to USD for the final results, we have avoided any unwarranted currency conversions to prevent data distortions.<sup>127</sup> Accordingly, we are making no changes from the Preliminary Results.

## Surrogate Value Issues

### **Comment 5: Ice Surrogate Value**

#### **VASEP Case Brief:**

- The Department's use of Harmonized Tariff Schedule ("HTS") number 2201.90 to value ice is distortive. HTS 2201.90, representing "Ice & snow," is not specific to the input and does not adequately represent the type of ice used in frozen shrimp production because it specifically includes snow. Instead, the Department should apply an ice SV using the Apex financial statements that VASEP placed on the record because it is more specific to the input.

No other interested parties commented on this issue.

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

The Department disagrees with VASEP regarding the SV used for ice in the Preliminary Results. In its SV submission, VASEP provided only the following information regarding the proffered ice SV: "In Exhibit SV-4, we provide a calculation of the ice SV using the Apex Foods Limited ("Apex") income statement."<sup>128</sup> VASEP provided no other information on the record with respect to the type of ice used by the respondents as compared to the ice in Apex's financial statements. Moreover, VASEP has not demonstrated how the ice SV from UN Comtrade is not specific to the ice used by the respondents simply because the HS category also includes snow. VASEP's suggested ice SV is from a financial statement.<sup>129</sup> The Department's practice when considering what constitutes the best available information, is whether the SV data are contemporaneous, publicly available, tax and duty exclusive, representative of a broad market average, and specific to the inputs in question.<sup>130</sup> While Apex's financial statements include quantity of ice consumed,<sup>131</sup> the financial statements of one producer of shrimp is not considered a broad market average of prices. Moreover, Apex's financial statements do not indicate whether its ice consumption is from purchased ice or self-produced ice.<sup>132</sup> However, the

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<sup>125</sup> See Seamless Pipe from Romania at Comment 7, "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>126</sup> See VASEP's Comments dated August 6, 2015 at 2.

<sup>127</sup> See Glycine 2012, at Comment 8

<sup>128</sup> See VASEP's Surrogate Value Comments, dated December 15, 2014, at page 6 and Exhibit SV-4.

<sup>129</sup> Id.

<sup>130</sup> See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China, 71 FR 53079 (September 8, 2006) and accompanying Issues and Decision Memorandum at Comment 3.

<sup>131</sup> See VASEP's Surrogate Value Comments, dated December 15, 2014, at page 6 and Exhibit SV-4.

<sup>132</sup> Id.

Department only assigned an ice SV for respondents' consumption of purchased ice because self-produced ice is accounted for with reported water and electricity consumption. Thus, the ambiguity of Apex's ice consumption in the financial statements renders the source less preferable than the UN Comtrade data which reflects the price of finished ice. Consistent with our practice, because the Department obtained SV data for ice covering a broad-market average, it was preferable to using a value within a single financial statement.<sup>133</sup> Furthermore, in a prior segment of this proceeding, we made a similar determination, wherein we declined to use the raw shrimp SV of an Indian respondent in the companion antidumping duty proceeding of certain frozen warmwater shrimp from India "because one company does not represent a broad-market average."<sup>134</sup> The Federal Circuit affirmed the Department's practice and preference to use broad-market average SVs over those of one company, stating that "Commerce has explained that it 'prefers, whenever possible, to use countrywide data, and only resorts to company-specific (or regional) information when countrywide data are not available.'...In accordance with its policy, Commerce chose the NACA Survey data over the Apex data, which is specific to one company."<sup>135</sup> Thus, our selection of an ice SV from a broad market average is consistent with our practice, as affirmed by the courts. Moreover, the ice SV selected is publicly available, tax and duty exclusive, and indisputably includes ice. Further, the CIT has stated that the Department "has considerable discretion in deciding how it will treat a particular production input or cost when identifying factors of production."<sup>136</sup> Thus, we are not making any changes for the final results regarding the SV for ice.

#### **Comment 6: Carbon Surrogate Value**

##### **VASEP Case Brief:**

- The Department did not adequately justify its selection of HTS number 4402.00: "wood charcoal (including shell or nut charcoal" in the Preliminary Results to value the carbon FOP reported by Thuan Phuoc.
- Thuan Phuoc was the only mandatory respondent that reported carbon as a FOP. As a result, Thuan Phuoc, which the Department verified, believes that HTS 1213: "cereal straw and husks, unprepared" is a more specific and contemporaneous import statistic.

No other interested parties commented on this issue.

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<sup>133</sup> See, e.g., Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review, 71 FR 40477 (July 17, 2006) and accompanying Issues and Decision Memorandum where we stated that "because the WTA data... represents a broad market average, we consider this information to be preferable to the financial statement information Raoping Yucun suggests we use in valuing mushroom spawn. Consequently, we have not used the financial statement information to value mushroom spawn...").

<sup>134</sup> See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 74 FR 47191 (September 15, 2009) and accompanying Issues and Decision Memorandum at Comment 2, where we stated that "the only Indian raw shrimp surrogate value data on the record is the ranged data of one company, a respondent in the second administrative review of certain frozen shrimp from India..." and "...it represents the ranged data of only one company."

<sup>135</sup> See Ad Hoc Shrimp Trade Action Committee v. United States, 618 F.3d 1316, 1322 (2010).

<sup>136</sup> See Jinan Yipin Corporation, et al v. United States, 526 F.Supp. 2d 1347, 1373 (CIT 2007) ("Jinan Yipin").

## Department's Position:

The Department disagrees with VASEP that we should value Thuan Phuoc's carbon input using HTS 1213: "cereal straw and husks, unprepared." As noted above, when selecting SVs the Department's practice when considering what constitutes the best available information, is whether the SV data are contemporaneous, publicly available, tax- and duty- exclusive, representative of a broad market average, and specific to the inputs in question.<sup>137</sup> Because the sole issue here is which HTS category the Department should use, the Department will select the HTS category that most closely resembles the respondent's input. While VASEP is correct that we verified Thuan Phuoc's carbon consumption, we note that Thuan Phuoc's carbon input is a charcoal like material that is used as a heat source and does not resemble unprepared cereal straw and rice husks.<sup>138</sup> The description of HTS 4402.00, "Wood charcoal (including shell or nut charcoal), whether or not agglomerated," a value for charcoal, more closely fits the description of the carbon input used by Thuan Phuoc than the cereal straw or husks HTS category proposed by VASEP. Accordingly, because Thuan Phuoc used carbon, rather than unprepared cereal straw or husks in its production process, we will continue to use HTS 4402.00, "Wood charcoal (including shell or nut charcoal), whether or not agglomerated," to value Thuan Phuoc's carbon input because HTS 4402.00 represents the best available information to value the carbon input.

## Comment 7: Byproduct Surrogate Value

### VASEP Case Brief:

- The Department used Indian import statistics to value by products because it was unable to locate any SV for Bangladesh within UN Comtrade. In its SV rebuttal comments, VASEP provided 2011 UN Comtrade data from Bangladesh indicating the SV is 13.96 USD/kilogram ("kg").<sup>139</sup>
- The Department should follow its preference to value factors in a single surrogate country and use the byproduct SV of 13.96 USD/kg, as it promotes accuracy by accounting for extraneous variables.

No other interested parties commented on this issue.

## Department's Position:

The Department disagrees with VASEP regarding the appropriate SV for byproduct scrap. Although the Department's preference is to select publicly available SVs from a single surrogate country<sup>140</sup>, the UN Comtrade byproduct SV of \$13.96/kg<sup>141</sup> is greater than the value of the

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<sup>137</sup> See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China, 71 FR 53079 (September 8, 2006) and accompanying Issues and Decision Memorandum at Comment 3.

<sup>138</sup> See Thuan Phuoc's Supplemental Section D Response, dated January 5, 2015, at 22 and Exhibit SD-22

<sup>139</sup> See VASEP's "Rebuttal Comments Regarding the Department's Surrogate Value Data," dated March 10, 2015.

<sup>140</sup> See, e.g., Clearon Corp. v. United States, No. 08-00364, 2013 WL 646390, at \*6 (CIT 2013) ("deriving the surrogate data from one surrogate country limits the amount of distortion introduced into {Commerce's} calculations") ("Clearon").

<sup>141</sup> See VASEP's "Rebuttal Comments Regarding the Department's Surrogate Value Data," dated March 10, 2015, at Exhibit 1.

shrimp input.<sup>142</sup> Consistent with our practice, we find it unreasonable to assign a higher value to a waste product, such as heads and shells, than to its input product, a whole shrimp. The Department has a long-standing practice of rejecting or capping the byproduct SV in instances where the byproduct SV exceeds the SV of the product from which it was derived.<sup>143</sup> Indeed, recent case precedent supports the practice of rejecting and/or capping a scrap SV when it is of a higher price than the SV for the input which created the scrap byproduct in question.<sup>144</sup> Thus, we have made no changes for the final results with respect to the byproduct SV and will continue to apply the byproduct SV used in the Preliminary Results.

### **Comment 8: Brokerage and Handling Surrogate Value**

#### **VASEP Case Brief:**

- The Department calculated brokerage and handling by using data found in the Doing Business 2014 report for Bangladesh, which covers June 2, 2012 to June 1, 2013. However, VASEP placed the Doing Business 2015 report for Bangladesh on the record, covering June 2, 2013 to June 1, 2014. Thus, the Department should rely on the Doing Business 2015 report for Bangladesh, as it overlaps with eight months of the POR, whereas the Doing Business 2014 report for Bangladesh overlaps with only four months of the POR.

No other interested parties commented on this issue.

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

The Department agrees with VASEP regarding the appropriate Doing Business report with which to value brokerage and handling. When possible, the Department generally selects SVs that are publicly available, product-specific, reflect a broad market average, and are contemporaneous with the POR.<sup>145</sup> In the Preliminary Results, we valued brokerage and handling using the 2014 Doing Business—Bangladesh report, with information valid through

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<sup>142</sup> See, e.g., Minh Phu Group SAS Output, “Variables Converted to US Dollars.”

<sup>143</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) and accompanying Issues and Decision Memorandum at Comment 12.

<sup>144</sup> See, e.g., Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 80 FR 20197 (April 15, 2015) and accompanying Issues and Decision Memorandum at Comment 20; Monosodium Glutamate From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and the Final Affirmative Determination of Critical Circumstances, 79 FR 58326 (September 29, 2014) at Comment 11 (“A by-product by definition is less valuable than the input from which it is derived. Where there is no evidence that the by-product is a value-added by-product, assigning a by-product a value that is higher than the value of the input from which it is derived is unreasonable. In this investigation, the quantity of the by-product reported exceeds the quantity of the primary input consumed in the production of that by-product. Thus the extended value of the by-product exceeds the extended value of the primary input. Therefore, in the instant investigation, the Department finds it appropriate and reasonable to cap the specific by-product quantity at the specific FOP input amount.”); Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 64318 (Tuesday, October 18, 2011) at Comment 24; Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results and Partial Rescission of the Seventh Antidumping Duty Administrative Review, 77 FR 15039 (March 14, 2012) at Comment II.B.3, where the Department capped broken fillet by-products at the value for whole live fish because broken fillets were not a value-added byproduct.

<sup>145</sup> See Qingdao Sea-Line Trading Co., Ltd. v. U.S., 766 F.3d 1378, 1386 (Fed. Cir. 2014).

June 2013.<sup>146</sup> We note that VASEP placed the 2015 Doing Business--Bangladesh report on the record, with information valid through June 2014.<sup>147</sup> As a general matter, the Department considers a source to be contemporaneous regardless of the number of months of overlap with the POR.<sup>148</sup> However, because the 2015 Doing Business report covers a wider range of the POR, and also contains updated movement pricing data, we have revised the itemized brokerage and handling expense calculation for the final results. Further, the report contains movement pricing data for two cities: Chittagong and Dhaka.<sup>149</sup> Therefore, to cover a broader range of data, we have averaged the data for both cities and applied that average to brokerage and handling expenses reported by the respondents.<sup>150</sup>

## **Comment 9: Labor Surrogate Value**

### **Petitioner's Case Brief:**

- In three separate filings with the Department in this proceeding, Domestic Producers have demonstrated that information taken from Bangladesh with regard to valuing the labor FOPs are aberrational and, as such, cannot be relied upon.<sup>151</sup>
- The Department relied upon wage rates reported for the Bangladesh shrimp industry to value the labor factor of production in the Preliminary Results. However, the record of this review demonstrates that: (a) those values are aberrational because of rampant and widespread abuse of worker rights in Bangladesh; (b) labor conditions in Bangladesh's shrimp industry are not informative of labor conditions in Vietnam's shrimp industry; and (c) wage rates from Bangladesh's shrimp industry are less reliable than those reported by the International Labour Organization ("ILO") for other market countries that are at similar levels of economic development as Vietnam.
- Reliable, non-aberrational wage rate data, available from the ILO, is on the record and should be used to value the labor.
- The Department's analysis in the Preliminary Results focused on whether evidence regarding labor abuses undermined the selection of Bangladesh as a potential surrogate country and not the actual issue raised by Domestic Producers: whether it is appropriate to value the labor FOP based on wage rates from the shrimp industry in Bangladesh.
- The wage rate used in the Preliminary Results does not represent the best available information on the record.

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<sup>146</sup> See "Memorandum to Catherine Bertrand, Program Manager, Office V, from Irene Gorelik, Senior International Trade Analyst, Office V, re: "Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results," dated March 2, 2015, ("Prelim SV Memo") at Exhibit 10.

<sup>147</sup> See VASEP's Surrogate Value Comments, dated December 15, 2014, at Exhibit SV-6.

<sup>148</sup> See, e.g., 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) and accompanying Issues and Decision Memorandum at Comment 2.

<sup>149</sup> See VASEP's Surrogate Value Comments, dated December 15, 2014, at Exhibit SV-6, page 81 of the report.

<sup>150</sup> See "Memorandum to Catherine Bertrand, Program Manager, Office V, from Irene Gorelik, Senior International Trade Analyst, Office V, re: "Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Surrogate Values for the Final Results," dated concurrently with this memorandum ("Final SV Memo").

<sup>151</sup> See Petitioner's Case Brief dated June 8, 2015, at pages 1-2, citing to its "Comments on Surrogate Values," dated December 15, 2014); "Factual Information to Value FOPs," dated February 18, 2015; and "Pre-Preliminary Comments," February 19, 2015).

- Where an interested party presents the agency with a demonstration that a value is aberrational, the Department is obligated to provide an explanation as to why – if it chooses to continue to rely on the value – the information chosen is accurate.
- On this record, Domestic Producers have claimed that wage rates derived from the shrimp industry in Bangladesh are aberrational. Domestic Producers have supported that claim with substantial evidence demonstrating the aberrational nature of these data. Accordingly, Domestic Producers have submitted a “colorable” claim that the surrogate chosen by the Department in the Preliminary Results is aberrational. Domestic Producers have further submitted non-aberrational wage rate information that could be used to value the labor FOP.<sup>152</sup> Accordingly, the Department must examine the wage rate data from Bangladesh to determine its reliability. Should the Department rely upon these data, the agency must explain why the information chosen is reliable and non-distortive.
- Reports published by the U.S. government, non-profit organizations, and media reach the same conclusion: the Bangladesh shrimp industry is marred by disturbing labor abuses at every level of the supply chain.

#### **VASEP Rebuttal Brief:**

- Petitioner disregards the Department’s independent finding in this review that the Bangladeshi labor wage rate to be the best available information on the record. The Department explicitly found that the Bangladeshi data are publicly available, represent a broad market average, specific to the shrimp processing industry, and collected from an official Bangladeshi government source.
- The CIT’s prior decision is relevant to this administrative review. In an appeal of the sixth administrative review, the CIT upheld the Department’s decision to rely on the Bangladeshi wage data.
- Petitioner overlooks the fact that the Department addressed these exact arguments – in some detail – in the eighth administrative review Issues and Decision Memorandum, which was published on September 19, 2014. Indeed, Petitioner’s submissions related to wage rate data in the instant ninth review are nearly identical to its submission in the eighth review and the Department already responded to Petitioner’s submissions in that review.
- In the Preliminary Results of this review, the Department specifically relied on its reasoning in Vietnam Shrimp AR8, noting “{w}e have also addressed this argument in the final results of the immediately preceding administrative review . . . .”<sup>153</sup> Petitioner’s claim that the Department has not considered record evidence is misleading because the Department specifically addressed such evidence in the eighth administrative review and specifically relied on that same analysis in this ninth review.
- Regardless of Petitioner’s request for relief, the Department should continue to use Bangladeshi labor values as it did in the Preliminary Results because: Bangladeshi values are more contemporaneous than other record evidence.<sup>154</sup> Petitioner provided older data from India (covering April 2004 – March 2005), Guyana (covering 2007), the Philippines (covering 2008), or Nicaragua (covering 2006).
- The Department’s practice to select data that is the most contemporaneous with the POR

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<sup>152</sup> See Petitioner’s Case Brief dated June 8, 2015, at 8, citing to its “Factual Information to Value FOPs,” dated February 2, 2015, refiled February 15, 2015.

<sup>153</sup> See VASEP’s Rebuttal Brief dated June 15, 2015, at page 4, citing to Vietnam Shrimp AR8.

<sup>154</sup> Id., at 6, citing to Prelim SV Memo.

should be maintained because it serves the statute's goal of promoting accuracy in dumping margins by avoiding inaccuracies associated with the use of an inflator over a long span of time. Thus, Bangladeshi labor data is preferable because it is the most contemporaneous.

- Bangladeshi labor values are representative of the labor values in Vietnam. Petitioner provides no support for its statement that “the differences between the treatment of labor in all parts of Bangladesh’s shrimp industry and the treatment of labor in Vietnam’s shrimp industry appear to be growing with each passing year.”<sup>155</sup>
- Bangladeshi data is reliable. Petitioner’s arguments center on one report, wherein the BBS admitted to some shortcomings in their ability to collect data generally. However, there is no evidence on the record that these shortcomings materially affected collection of data specifically in the shrimp processing sector.<sup>156</sup>
- Petitioner fails to show that these issues plague the data relied upon in the Preliminary Results. The report cited to by AHSTAC was published in 2009, while the data relied upon by the Department derive from a BBS report published in June 2011.<sup>157</sup>
- Because BBS engaged in many data collection reforms in 2009 (as mentioned in the report provided by Petitioner), the June 2011 data relied upon by the Department benefitted from those reforms and were, therefore presumably even more accurate than prior years. This undermines rather than bolsters AHSTAC’s claim that new facts improve its argument.
- Bangladeshi data is preferable because it is from the primary surrogate country and is non-aberrational.
- When considering allegations that the Bangladeshi wage rate values were aberrational, the CIT has upheld the Department’s wage rate methodology of selecting the wage rate from the primary surrogate country.<sup>158</sup>
- Petitioner’s record evidence fails to show that Bangladeshi wage rate data is aberrational. Petitioner continues to rely on the same articles and reports without addressing the Department’s position in Vietnam Shrimp AR8 or Vietnamese Respondents’ analysis in the instant review.
- Although Petitioner’s documentation of the labor conditions in Bangladesh are unfortunate, this does not prove that the rates paid to Bangladeshi workers are aberrational.
- Petitioner’s arguments, which relate to the United States’ Generalized System of Preferences (“GSP”), are inappropriate for dictating how the Department should administer the antidumping statute.<sup>159</sup> Similarly the Bangladesh Action Plan 2013 referenced in Petitioner’s Case Brief simply shows that the U.S. and Bangladesh recognize the need for improvements, but not that the wage rate is aberrational as compared to other shrimp-producing economies.
- Petitioner relies on documents from the Government of Bangladesh, the ILO, industry analysts, NGOs, and journalists. However, almost all of these documents are the very same documents that Petitioner submitted in the prior review which the Department considered before rejecting Petitioner’s argument regarding the labor SV.<sup>160</sup>
- Although Petitioner attempts to criticize the Department for placing the Bangladeshi labor data on the record “on its own volition,” Petitioner is well-aware that the Department has the

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<sup>155</sup> Id., at 6, citing to Petitioner’s Case Brief dated June 8, 2015.

<sup>156</sup> Id., at 7, citing to Petitioner’s Case Brief dated June 8, 2015.

<sup>157</sup> Id., at 8.

<sup>158</sup> Id., at 10, citing to Camau II.

<sup>159</sup> Id., at 10-11.

<sup>160</sup> Id., at 12.

discretion to place documents on the record. The Department's regulations allow Petitioner an opportunity to comment on any new information submitted on the record by the Department pursuant to 19 CFR 351.301.

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

The Department disagrees with Petitioner'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>161</sup> The Department further acknowledged that ordinarily, 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, because Bangladesh does not report labor data to the ILO, we are unable to use ILO data for this surrogate country.<sup>162</sup> Consequently, consistent with our practice of using industry-specific labor rates from the primary surrogate country to value labor, we have used labor wage rate data for the shrimp industry for Bangladesh, published by the Bangladesh Bureau of Statistics ("BBS"), as in prior reviews.<sup>163</sup> The Department has addressed each of Petitioner's arguments in turn, below.

#### *A. The Department's Preliminary Determination*

In the Preliminary Results, the Department selected Bangladesh as the surrogate country and proceeded to use Bangladeshi SVs for the vast majority of FOPs, pursuant to our practice. We also stated that "the Department's practice when selecting the best available information for valuing FOPs 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>164</sup> We further stated that:

In Labor Methodologies, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, 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").

In this review, the Department has selected Bangladesh as the surrogate country, which does not report labor data to the ILO. Thus, we are unable to use ILO's Chapter 6A data or wage data reported under ILO's Chapter 5B. Consequently, to value labor, the Department is using labor wage rate data for the shrimp industry for Bangladesh, published by the Bangladesh Bureau of Statistics. See Exhibit 9.<sup>165</sup>

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<sup>161</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>162</sup> See Vietnam Shrimp AR6, and accompanying Issues and Decision Memorandum at Comment 2C.

<sup>163</sup> See Prelim SV Memo at Exhibit 6.

<sup>164</sup> See Preliminary Decision Memo at 21.

<sup>165</sup> See Prelim SV Memo at 6, citing to Labor Methodologies.

In the Preliminary Results, we declined to use Petitioner’s preferred labor data<sup>166</sup> from other various countries, one of which was not on the surrogate country list, because, pursuant to our practice, as stated in Labor Methodologies, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country, which, in this case is Bangladesh.<sup>167</sup> Aside from the BBS wage data being from Bangladesh, the surrogate country we selected, the BBS wage data, from 2010, is also more contemporaneous than the wage data proffered by Petitioner, which ranges from 2004 through 2008.<sup>168</sup> Thus, after reviewing wage rate data on the record, the Department placed the BBS wage data on the record at the Preliminary Results.<sup>169</sup>

### *B. Legal Requirements And Agency Practice*

Citing to Xinjamei Furniture, Petitioner argues that “pursuant to 19 U.S.C. § 1677b(c)(1), the information used by the Department to value the factors of production must be the “best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority.” Accordingly, “{w}hen determining prices for the factors of production, Commerce must decide what evidence constitutes the best available information to determine their value.”<sup>170</sup>

Section 773(c)(1) of the Act instructs the Department to value the FOPs with the best available information from a market economy country, or countries, that the Department considers appropriate. When considering what constitutes the best available information, the Department considers several criteria, including whether the SV data are contemporaneous, publicly available, tax and duty exclusive, representative of a broad market average, and specific to the inputs in question.<sup>171</sup> The Department’s preference is to satisfy the breadth of the aforementioned selection criteria.<sup>172</sup> Moreover, it is the Department’s practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing FOPs.<sup>173</sup> The Department must weigh the available information with

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<sup>166</sup> See Petitioner’s “Factual Information to Value FOPs,” dated February 18, 2015, at Exhibit 8.

<sup>167</sup> See Labor Methodologies, 76 FR at 36093; and Clearon Corp. v. United States, No. 08-00364, 2013 WL 646390 (CIT 2013) (“Clearon”) at \*6 (“{T}he court must treat seriously {the Department’s} preference for the use of a single surrogate country.”); (“deriving the surrogate data from one surrogate country limits the amount of distortion introduced into {Commerce’s} calculations”).

<sup>168</sup> See Petitioner’s “Factual Information to Value FOPs,” dated February 18, 2015, at Exhibit 8.

<sup>169</sup> See Preliminary Decision Memo and Prelim SV Memo.

<sup>170</sup> See Xinjamei Furniture, 35 Int’l Trade Rep. (BNA) 1136, 2013 Ct. Intl. Trade LEXIS 34, \*14.

<sup>171</sup> See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People’s Republic of China, 71 FR 53079 (September 8, 2006) and accompanying Issues and Decision Memorandum at Comment 3.

<sup>172</sup> See, e.g., Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 76 FR 51940, 51943 (August 19, 2011) and accompanying Issues and Decision Memorandum at Comment 2.

<sup>173</sup> See Certain Preserved Mushrooms from the People’s Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review, 71 FR 40477 (July 17, 2006) (“Mushrooms”) and accompanying Issues and Decision Memorandum at Comment 1; see also Freshwater Crawfish Tail Meat from the People’s Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review, 67 FR 19546 (April 22, 2002) (“Crawfish”) and accompanying Issues and Decision Memorandum at Comment 2.

respect to each input value and make a product-specific and case-specific decision as to what constitutes the best available SV for each input.<sup>174</sup>

With respect to labor, specifically, the Department abandoned its previous regression-based analysis of wage rates. This regression-based methodology was employed to avoid “extreme variances in labor wage rates that exist across market economies, and instead, accounts for the global relationship between GNI and wages.”<sup>175</sup> The Department’s current methodology and practice prefers wage rates solely based on data from the primary surrogate country.<sup>176</sup> As noted in Labor Methodologies, the Department explained that industry-specific wage data from the primary surrogate country was the best available information because it is consistent with how the Department values all other FOPs, and it results in the use of a uniform basis for FOP valuation - the use of data from a primary surrogate country.<sup>177</sup> Here, we have selected Bangladesh as the primary surrogate country and applied a wage rate obtained from the BBS, a Bangladeshi Government agency.

The Department’s use of the BBS wage data is consistent with our strong preference to use SVs from the primary surrogate country.<sup>178</sup> We determined that despite the absence of ILO data in Bangladesh, a shrimp industry-specific labor SV from Bangladesh was preferable to selecting ILO data from other countries that were less contemporaneous than the BBS data. As a prefatory matter, in discussing our policy and practice regarding the valuation of labor, the Department does not address social conditions in any potential surrogate country as a criterion in the selection of a labor SV. To do so would introduce socio-economic factors into the selection of reported labor wage data that the Department is not equipped, or required by law, to measure and analyze. In sum, we find that our selection of the BBS data to value labor is in accordance with section 773(c)(1) of the Act because it constituted the best available information from the primary surrogate country that we selected: Bangladesh.

### *C. Whether the Bangladeshi Wage Rate is Aberrational*

While the CIT has not addressed the information on this record, as Petitioner argues, the CIT has addressed Petitioner’s allegations that the BBS data is aberrational. In Vietnam Shrimp AR8, we stated that:

The CIT has specifically rejected AHSTAC’s arguments regarding the alleged aberrational wage rate used in Vietnam Shrimp AR6. 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

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<sup>174</sup> See, e.g., Mushrooms at Comment 1.

<sup>175</sup> See, e.g., First Administrative Review of Certain Polyester Staple Fiber From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 75 FR 1336 (January 11, 2010) and accompanying Issues and Decision Memorandum at Comment 1B.

<sup>176</sup> See Dorbest Ltd. v. United States, 604 F.3d 1363 (Fed. Cir. 2010).

<sup>177</sup> See Labor Methodologies.

<sup>178</sup> See 19 CFR 351.408(c)(2); Clearon Corp. v. United States, No. 08-00364, 2013 WL 646390 (CIT 2013) (“Clearon”) at \*6 (“{T}he court must treat seriously {the Department’s} preference for the use of a single surrogate country.”); Globe Metallurgical v. United States, 32 CIT 1070, 1076 (2008); see also Peer Bearing Company-Changshan, v. United States

record... On this record, the Bangladeshi data are not aberrational, it is merely the lowest price in a range of prices.”<sup>179</sup>

Thus, to the extent that Petitioner argues that the BBS labor value is aberrational because it is the lowest among potential labor values, the argument has been previously addressed and rejected by the Department and the CIT. When determining whether data is aberrational, the Department has found that the existence of higher or lower prices alone does not necessarily indicate that the price data is distorted or misrepresentative, and thus is not a sufficient basis upon which to exclude a particular SV.<sup>180</sup> This is a CIT-affirmed practice, as cited above.<sup>181</sup> The record must contain specific quantitative evidence showing the value is aberrational. Petitioner has not provided such evidence.

Petitioner makes an additional argument that the information it placed on the record of this review regarding labor abuses in Bangladesh renders the BBS wage rate aberrational. As an initial matter, Petitioner appears to have abandoned its argument that BBS data are aberrational because the wage rates are low:

wage rate data reported by BBS are aberrational not because these wage rates are low. Wage rate data reported by BBS are aberrational because these wage rates are determined by conditions unique to the operations of Bangladesh’s shrimp industry that result in artificially depressed and suppressed labor costs that are exceptional amongst major shrimp producers at similar levels of economic development.<sup>182</sup>

Even so, our practice dictates that the existence of higher prices (in this case, wages) alone does not necessarily indicate that the price data is distorted or misrepresentative, and thus is not a sufficient basis upon which to exclude a particular SV.<sup>183</sup> Our practice in analyzing whether a given value is aberrational or distortive, is to compare the prices for an input from all countries found to be at a level of economic development comparable to the NME whose products are under review from the POR and prior years.<sup>184</sup>

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<sup>179</sup> See Vietnam Shrimp AR8 at Comment 6, citing to Camau Frozen Seafood Processing Import Export Corporation v. United States, 929 F. Supp. 2d 1352, 1356 (CIT 2013) (“Camau II”); Vietnam Shrimp AR6 at Comment 2C.

<sup>180</sup> See, e.g., 1,1,1,2-Tetrafluroethane From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 79 FR 62597 (October 20, 2014) and accompanying Issues and Decision Memorandum at Comment 10; 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) (“Vietnam Shrimp AR5”) and accompanying Issues and Decisions Memorandum at Comment 12.

<sup>181</sup> See Camau II, 929 F. Supp. 2d at 1356.

<sup>182</sup> See Petitioner’s Case Brief, dated June 8, 2015, at page 26.

<sup>183</sup> See, e.g., 1,1,1,2-Tetrafluroethane From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 79 FR 62597 (October 20, 2014) and accompanying Issues and Decision Memorandum at Comment 10; 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) (“Vietnam Shrimp AR5”) and accompanying Issues and Decisions Memorandum at Comment 12.

<sup>184</sup> See, e.g., Multilayered Wood Flooring From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Results of New Shipper Review; 2012-2013, 80 FR 41476 (July 15, 2015) and accompanying Issues and Decision Memorandum at Comment 9D.

Petitioner also submitted one set of suggested wage rates from India (from 2004-2005), Guyana (not on the Surrogate Country List, from 2007), Philippines (from 2008) and Nicaragua (from 2006),<sup>185</sup> suggesting that the wage data from any of these countries is preferable (and more reliable) than the BBS data. Petitioner did not provide any evidence that the significantly less contemporaneous wage rates from these countries, one of which was not on the Surrogate Country List, are more reliable than the Bangladeshi BBS data. For instance, Petitioner has not placed any information on the record regarding the working conditions of these countries (India, Guyana, Philippines, or Nicaragua) as it did with Bangladesh. Even so, in a recent proceeding, we stated that:

while there is a strong global relationship between wage rates and GNI, significant variation exists among the wage rates of comparable market economies. There are many socio-economic, political and institutional factors, such as labor laws and policies unrelated to the size or strength of an economy, that cause significant variances in wage levels between countries. For these reasons, and because labor is not traded internationally as other commodities are, the variability in labor rates that exists among otherwise economically comparable countries is a characteristic unique to the labor input.<sup>186</sup>

Here, the Department does not find that wage data from other countries are necessarily appropriate benchmarks with which to compare the Bangladeshi BBS wage data as there are other variables that affect the labor rates across countries. Further, no other interested parties have placed any information on the record demonstrating that the Bangladeshi BBS wage data is aberrational, inappropriate, unreasonable, or not specific to the shrimp industry. Despite placing wage data from other countries on the record, Petitioner has not argued that the Bangladeshi wage rate from BBS is aberrational compared to the other wage data from those countries. While Petitioner submitted a plethora of press releases, independent studies, and various news articles regarding allegedly deplorable work conditions in Bangladesh, Petitioner has not explained how the Department's practice and policy regarding SV selection is inextricably tied with remediation of sociopolitical conditions and issues, which are not under the Department's purview. The fact that labor practices may decrease wage rates does not make the rates "aberrational." Rather, it makes them reflective of the practices in that country. Whether or not those practices rise to a certain socio-political standard preferred in economically developed nations does not mean that they do not reflect the economic and commercial reality of the country in question; that is, the country selected as the most comparable surrogate to the NME country.

#### *D. Petitioner's Documentation Regarding Working Conditions in Bangladesh*

Petitioner argues that the submissions it placed on the record shows evidence of "the abhorrent labor abuses that characterize the Bangladesh shrimp industry and render wage rates within that

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<sup>185</sup> See Petitioner's "Factual Information to Value FOPs," dated February 18, 2015, at Exhibit 8.

<sup>186</sup> See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part, 77 FR 63791 (October 17, 2012) and accompanying Issues and Decision Memorandum at Comment 5.

industry aberrational. This view is not only supported by objective non-governmental organization (“NGO”) observers and independent journalists, but also by the United States government itself.”<sup>187</sup>

Petitioner suggests that the Department find the BBS data aberrational and unreliable because news articles, NGO observers, and the U.S. Trade Representative (“USTR”) have opined on labor issues in Bangladesh. However, Petitioner has not demonstrated how these labor issues affect the Department’s directive under section 773(c)(1) of the Act. Petitioner submitted a USTR press release indicating that “‘further progress’ was required ‘before reinstatement of Bangladesh’s trade benefits under the Generalized System of Preferences (GSP) can be considered.’”<sup>188</sup> In other words, Petitioner notes that GSP was suspended for Bangladesh because of social issues involving labor unionizations. Petitioner then concluded that, as a result of GSP suspension, “the U.S. government has maintained its view that labor conditions in Bangladesh – including in the shrimp processing sector – are aberrational and warrant different treatment from similarly situated countries entitled to benefits under the GSP program.”<sup>189</sup> Thus, Petitioner contends that the BBS data is unreliable because Bangladesh was no longer benefitting from the GSP program. This argument is not logically sound, as BBS labor data are unrelated to whether a country can participate in a preferential treatment tariff program for its exports. It is not the Department’s practice, nor is it appropriate for an antidumping investigation to consider a country’s internal political issues or U.S. diplomatic relations when examining whether the price of the merchandise under investigation is being sold at or above normal value. In any case, Petitioner’s argument that the USTR’s suspension of GSP for Bangladesh distorts the BBS wage rate is unsubstantiated because the suspension of the Bangladeshi GSP is directly related to the Bangladeshi garment industry, not aquaculture;<sup>190</sup> the BBS wage rate is specific to the shrimp industry.<sup>191</sup>

Petitioner also submitted various other articles and reports from sources such as the AFL-CIO<sup>192</sup>, an International Labor Organization (“ILO”) report,<sup>193</sup> and the U.S. Department of Labor.<sup>194</sup> The AFL-CIO and ILO reports both discuss the suspension of the GSP program for Bangladesh. Petitioner contends that these documents provide “further additional important context regarding the aberrational nature of the labor market in the shrimp industry sector of Bangladesh and the reliability of the wage data reported for that sector.”<sup>195</sup> Petitioner notes that the U.S. Department of Labor report indicates that Bangladesh uses child labor. Petitioner also argues that various non-governmental organizations (“NGOs”) and journalists have chronicled the labor conditions in Bangladesh. Additionally, Petitioner submitted a CNN report<sup>196</sup>, independent studies<sup>197</sup>, news

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<sup>187</sup> See Petitioner’s Case Brief dated June 8, 2015, at page 9.

<sup>188</sup> See Petitioner’s SV Comments dated February 18, 2015, at page 2 and Exhibit 1.

<sup>189</sup> *Id.*, at 3.

<sup>190</sup> *Id.*, at Exhibits 1-2, 4.

<sup>191</sup> See Prelim SV Memo at Exhibit 8.

<sup>192</sup> *Id.*, at 3-4 and Exhibits 2-3.

<sup>193</sup> *Id.*, at 5 and Exhibit 5.

<sup>194</sup> See Petitioner’s SV Submission dated December 15, 2014, at 5 and Exhibit 3, 7, 12

<sup>195</sup> See Petitioner’s SV Comments dated February 18, 2015, at 5.

<sup>196</sup> See Petitioner’s SV Submission dated December 15, 2014, at 2 and Exhibit 1.

<sup>197</sup> *Id.*, at 3-4 and Exhibits 2, 4.

articles<sup>198</sup>, think tank reports,<sup>199</sup> and various testimonies<sup>200</sup> as evidence that labor abuses in Bangladesh render the BBS data unreliable.

Once again, the Petitioner is confusing the question of labor conditions with the question of data accuracy. For antidumping duty purposes, the Department's practice is to define comparable surrogates based on the GNI of the surrogate country and the comparability of the merchandise produced in that country. As noted above, the Department considers several factors including whether the SV is publicly available, contemporaneous with the POR, represents a broad market average, is tax- and duty-exclusive, and is specific to the input. 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>201</sup> The SV selection criteria do not discuss reliability of a SV based on whether or not the surrogate country is a beneficiary of the GSP program or is otherwise subject to scrutiny for alleged abusive labor practices. Again, the Department's mandate with respect to antidumping duty/countervailing duty laws does not include remediation of socio-political or socio-economic issues. Petitioner's reports, studies and articles that focus on the Bangladeshi aquaculture industry, do not provide evidence that the wage rates are causally distortive or not commensurate with Bangladesh's GNI.

The USTR and the U.S. Department of Labor are U.S. government agencies that operate independently from the Department with their own mandates and authority. In Hangers from the PRC, interested parties argued that a (non-labor) SV was unreliable, citing to a USTR report as evidence of the alleged unreliability.<sup>202</sup> However, we determined that "USTR reports do not make Thai import data unreliable or inferior to Philippine data, and we declined to conclude that all Thai import data should be rejected due to the reports." In other words, reports (or press releases) from other U.S. government agencies do not consequentially mandate a change in Department practice and application of section 773(c)(1) of the Act.

While Petitioner argues that the BBS wage rate is distortive and unreliable due to national and industry-specific labor abuses, Petitioner provided no specific quantitative evidence that these socio-political issues in Bangladesh had a distortive impact on the BBS data on the record. The Department addressed a similar argument in Steel Threaded Rod 2014, where an interested party argued that "Thai import data are unreliable in their entirety due to political upheaval..."<sup>203</sup> The Department found that the interested party "provided no specific record evidence showing how this event had any specific distortive impact on the Thai import data in general."<sup>204</sup> Here, Petitioner's arguments are speculative and attempt to create a causal link between socio-political

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<sup>198</sup> Id., at Exhibit 5, 8, 9.

<sup>199</sup> Id., at Exhibit 15.

<sup>200</sup> Id., at Exhibit 11.

<sup>201</sup> See, e.g., Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 70163 (November 25, 2014) and accompanying Issues and Decision Memorandum at Comment 4.

<sup>202</sup> See, e.g., Steel Wire Garment Hangers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2012-2013, 80 FR 13332 (March 13, 2015) ("Hangers from the PRC") and accompanying Issues and Decision Memorandum at Comment 2; Xanthan Gum From the PRC at Comment 1.

<sup>203</sup> See Certain Steel Threaded Rod From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 71743 (December 3, 2014) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>204</sup> Id.

issues and the BBS wage data. Petitioner also draws a false correlation between U.S. Government action regarding Bangladeshi socio-political issues and the Department's statutory requirements in selecting SVs.<sup>205</sup> Further, several of the reports Petitioner placed on the record distinctly state that the opinions of the report(s) do not necessarily reflect the views or policies of the U.S. Department of Labor,<sup>206</sup> U.S. Agency for International Development,<sup>207</sup> etc.

After considering all of the information that Petitioner placed on the record, in the Preliminary Results, we stated that “because the NACA study was conducted by a non-governmental organization, the United Nations’ Food and Agriculture Organization (“FAO”), Petitioners’ allegations regarding ‘methodological and practical limitations and deficiencies in the collection and reporting of data in Bangladesh by the Bangladeshi government’ are unfounded based on the information on the record.”<sup>208</sup> Moreover, notwithstanding the many documents that Petitioner placed on the record, Petitioner omitted any reference to the 2011 study performed by NACA<sup>209</sup>, which the Department has relied upon for the vast majority of this AD Order, as a source of Bangladeshi whole shrimp SVs. As the record shows, NACA is an independent study of the shrimp industry conducted for Vietnam, Indonesia, and Bangladesh by the FAO—a NGO. The NACA study does not address or even reference any labor irregularities or abuses within the Bangladeshi portion of the study. Moreover, the Bangladeshi audited financial statements on the record demonstrate wages paid to employees as well as pension contributions, according to the Bangladesh Labor Act of 2006.<sup>210</sup>

Neither the statute, regulations, nor our stated policy in Labor Methodologies contemplate the “working conditions” of any potential ME surrogate country. We have determined that the BBS wage data from Bangladesh, the surrogate country we selected, satisfy the SV selection criteria because those data are publicly available and specific to the shrimp industry. Moreover, the 2010 BBS data is far more contemporaneous than the data provided by Petitioner (ranging from 2004 through 2008) as well as specific to the shrimp industry. Also, in other proceedings, the Department chose non-ILO data from the primary surrogate country, because it represented the best available information on the record.<sup>211</sup> Thus, we find that the BBS data remains the best information available on record of this review to value labor.

#### *E. The Record Demonstrates That BBS Data Are Less Reliable Than ILO Data*

Petitioner argues that the Department “has not explained why the mere fact that there is some wage rate data available from the primary surrogate country selected (Bangladesh) excuses the agency from having to determine whether these data are reliable and nondistortive, particularly

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<sup>205</sup> A large majority of the labor abuse allegations are derived from independent studies that, while funded by various U.S. Government agencies, also stipulate that “Points of view or opinions in this report do not necessarily reflect the views or policies of the United States Department of Labor, nor does the mention of trade names, commercial products, or organizations imply endorsement by the United States Government.” See, e.g., Petitioner SV Comments dated December 15, 2014, at Exhibit 2, page 1.

<sup>206</sup> See, e.g., Petitioner SV Comments dated December 15, 2014, at Exhibit 2, page 1; Exhibit 7, page 2.

<sup>207</sup> Id., at Exhibit 4, page 35.

<sup>208</sup> See Preliminary Decision Memorandum at page 16.

<sup>209</sup> See VASEP’s SV Comments, dated December 15, 2014, at Exhibit SV-2.

<sup>210</sup> Id., at SV-8.

<sup>211</sup> See, e.g., Hangers from the PRC and Xanthan Gum.

in light of other data available to value the labor FOP.”<sup>212</sup> Petitioner also argues that record in this review demonstrates that BBS data are less reliable than ILO data – data that are on the record of this proceeding for other countries that are significant producers of shrimp.<sup>213</sup>

We disagree with Petitioner’s argument that the Department used BBS wage data as a labor SV “without considering whether these data were aberrational and, furthermore, did so without considering whether these data were reliable.”<sup>214</sup> As stated above, without historical wage data on the record for the countries at the same level of economic development as Bangladesh, the Department is unable to determine whether that alternative pricing data is aberrational, as defined by our practice. While Petitioner provided a report from a seminar discussing the BBS’s data collection methodology<sup>215</sup>, it appears that this report is from 2009 and includes measures for improvement of data collection under a Statistics Act for implementation in 2009. This attestation by a BBS official acknowledges drawbacks in statistics collection methodologies in Bangladesh. However, the report also shows that the BBS official provided for specific improvements in statistical data collection to be implemented in 2009. We note that the BBS data we used in the Preliminary Results is from 2010.<sup>216</sup> Petitioner has not demonstrated that the BBS statistical data collection improvements were not implemented by 2010. In fact, Petitioner’s only basis for its reliability arguments rests with the socio-political condition of Bangladesh, rather than the alleged pre-2009 statistical unreliability of the BBS data. In reviewing this BBS report, we note that “BBS compiles and disseminates data on Gross National Income (GNI), Savings and Investment. All these information are used by the planners, policy makers, researchers, academicians, development partners, and NGOs for preparing appropriate policy measures in the relevant areas.”<sup>217</sup> Thus, it is clear from the record that BBS collects information regarding the Bangladeshi GNI. Further, because the Department obtains Bangladesh’s GNI from the World Bank, a source we use to select the surrogate country, we find that the ultimate source of this data, the BBS, is reliable. Moreover, this BBS report does not specifically address the Bangladeshi wage statistics, and whether or not the pre-2010 data collection challenges impacted the wage statistics. Thus, there is no actual quantitative evidence on the record that the Bangladeshi wage rate is unreliable or distortive.

Finally, Petitioner argues that Bangladeshi wage rate should not be used because of rampant child and forced labor practices, suggesting instead that we rely on ILO wage data from India, Philippines, Guyana or Nicaragua. However, the source upon which Petitioner relies to disqualify Bangladesh due to child and forced labor also lists India, Philippines, and Nicaragua (the countries that Petitioner put forward for consideration) as countries using child and forced labor.<sup>218</sup> Thus, Petitioner’s assertion that our labor SV selection must be based on whether a country uses child and/or forced labor, would also disqualify India, Philippines and Nicaragua. However, as noted above, the Department does not make SV determinations based on any

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<sup>212</sup> See Petitioner’s Case Brief dated June 8, 2015, at page 30.

<sup>213</sup> Id.

<sup>214</sup> Id.

<sup>215</sup> See Petitioners SV Comments dated December 15, 2014, at 14 and Exhibit 14.

<sup>216</sup> See Prelim SV Memo at Exhibit 9.

<sup>217</sup> See Petitioners SV Comments dated December 15, 2014, and Exhibit 14, page 3.

<sup>218</sup> See, e.g., Petitioner’s SV Comments dated December 15, 2014, at Exhibit 3, pages 19, 21, 23. While Petitioner also includes wage rate from Guyana for the Department’s consideration, we note that Guyana was not on the Surrogate Country List for this review period, thus not considered as a potential surrogate country.

criteria other than specificity, contemporaneity, whether the value is a broad market average, publicly available, or tax/duty exclusive. The Department has no authority, under the antidumping duty statute, to make socio-political determinations, or analyze socio-political factors and their potential impact on the valuation of factors of production.

The Department acknowledges that “no source of surrogate value data is perfect.”<sup>219</sup> However, as noted above, Labor Methodologies does not preclude the Department from using other non-ILO wage rate data.<sup>220</sup> As we stated above, the other wage rates that Petitioner submitted are not as contemporaneous as the BBS data, which is specific to the shrimp industry. Further, pursuant to 19 CFR 351.408(c)(2) and our CIT-affirmed practice, the Department normally will value all factors in a single surrogate country.<sup>221</sup> Thus, we continue to find that the BBS data is the best available information on the record to value labor.

### **Company-Specific Issues**

#### **Comment 10: Corrections from Verification of Fimex VN**

##### **VASEP Case Brief:**

- The Department rejected three corrections stating they were not minor in nature.
- This was incorrect because this represents a change in the Department’s past practice, citing Maui Pineapples,<sup>222</sup> where the Department accepted new information not previously on the record as a minor correction at verification. Furthermore, the data for three corrections were on the record, but due to calculation errors certain items were incorrectly overstated or understated.
- The FOP percentage change is meaningless, the Department instead should look at the resulting impact on the margin, which in this instance is immaterial.
- To correct this, for Carfosel<sup>223</sup> and water, the Department should instead use the values summarized in the verification report of the rejected minor corrections presented at the start of verification. For packing, the Department should increase all packing materials by the percentage increase identified for carton box in the verification report, as it is the only information on the record.

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<sup>219</sup> See, e.g., Final Results of New Shipper Review: Certain Preserved Mushrooms From the People’s Republic of China, 66 FR 45006 (August 27, 2001) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>220</sup> See Labor Methodologies, 76 FR at 36093.

<sup>221</sup> See, e.g., Clearon, 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.

<sup>222</sup> See Maui Pineapple Co. v. United States, 27 C.I.T. 580, 594-95 (2003) (“Maui Pineapples”).

<sup>223</sup> Carfosel is a brand of shrimp preservative.

### **Petitioner's Rebuttal Brief:**

- The Department was correct to reject Fimex VN's three corrections.
- Citing to Kitchen Racks from the PRC,<sup>224</sup> the Department's practice is to reject minor corrections that are not minor in nature.

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

The Department will correct Fimex VN's errors for Carfosel and water based on the corrected quantities presented at verification. Based on the magnitude of the errors, we do not consider them minor. However, because the information was otherwise on the record and it has been found to be reliable, we consider it appropriate to use the corrected data for Carfosel and water. With respect to Fimex VN's packing corrections, although Fimex VN classifies its packing error affecting all of its packing factors as minor, we disagree. A change of that magnitude<sup>225</sup> affecting 16 factors - carton, cardboard, paper box, PE bag, PA bag, foam tray, plastic tray, box decal, bag decal, carton decal, bag rider, strap, carton tape, plastic cup, and skewer, or nearly one-third<sup>226</sup> of all of Fimex VN's factors of production, does not constitute a minor correction. Nevertheless, we recognize that Fimex VN erred in its original calculation and in order to correct it, as adverse fact available, the Department will increase all of Fimex VN's packing FOPs using the only available information on the record.<sup>227</sup>

Although VASEP argues that all three of these corrections were previously on the record, this is accurate only with respect to Carfosel. For Carfosel, Fimex VN reported the correct consumption quantity; however, in calculating the consumption ratio in the database, the numerator of another chemical was incorrectly used. For water, the submission VASEP cites to is incomplete as it is lacking crucial information identifying main meters from sub-meters.<sup>228</sup> However, the information presented at verification provided clarification of water consumption, and thus, the basis for our correction of water consumption.<sup>229</sup> Similarly, for packing the submission VASEP cites to is incomplete because it is lacking crucial information matching the supplier codes.<sup>230</sup>

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that, if necessary information is not available on the record, or an interested party withholds information requested by the Department; fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section

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<sup>224</sup> See Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 36656 (July 24, 2009) ("Kitchen Racks from the PRC") and accompanying Issues and Decision Memorandum at 4.

<sup>225</sup> See Memorandum to the File, through Catherine Bertrand, Program Manager, from Alexis Polovina and Robert Palmer, regarding Verification of the Sales and Factors Responses of Sao Ta Foods Joint Stock Company ("Fimex VN") in the Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, dated May 19, 2015, ("Fimex VN Verification Report"), at 2, for a BPI discussion of the actual percentage increase.

<sup>226</sup> See Fimex VN Second Supplemental Section D Farming Response, dated February 11, 2015, at Exhibit SD4-1, for the ratio of packing factors to non-packing factors.

<sup>227</sup> See Fimex VN Verification Report, at 2, for a BPI discussion of the actual percentage increase.

<sup>228</sup> See Fimex VN's Second Supplemental C&D Questionnaire Response, at Exhibit SCD-2, dated January 5, 2015.

<sup>229</sup> See Fimex VN Verification Report, at 2.

<sup>230</sup> See Fimex VN's Section D Questionnaire Response, at Exhibit D-19, dated November 24, 2014.

782 of the Act; significantly impedes a proceeding; or provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(c)(1) of the Act states that the Department shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation and suggests an alternative form in which the party is able to provide the information. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (“TPEA”), which made numerous amendments to the AD and CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.<sup>231</sup> The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this review.<sup>232</sup>

Section 776(b) of the Act provides that, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available.<sup>233</sup> In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.<sup>234</sup> In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (“SAA”) explains that the Department may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>235</sup> Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the

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<sup>231</sup> See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015) (“TPEA”). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793 (August 6, 2015) (Applicability Notice).

<sup>232</sup> Id., 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

<sup>233</sup> See also 19 CFR 351.308(a); see also Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India, 70 FR 54023, 54025-26 (September 13, 2005); see also Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil, 67 FR 55792, 55794-96 (August 30, 2002).

<sup>234</sup> See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

<sup>235</sup> See H.R. Doc. 103-316, Vol. 1 (1994) at 870; see also Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review, 72 FR 69663, 69664 (December 10, 2007).

Department may make an adverse inference.<sup>236</sup> It is the Department's practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.<sup>237</sup>

For the final results we find that application of facts otherwise available, pursuant to subsections 776(a)(1) and 776(a)(2)(A),(B) and (C) of the Act, is warranted with respect to Fimex VN's packing factors. Specifically, the Department finds that necessary information was not available on the record. VASEP suggests Fimex VN's packing error is minor and therefore, as facts available, the Department should increase Fimex VN's packing factors by the increase calculated in the verification report for one of Fimex VN's packing factor, as it is the only other information on the record. We find that an increase of that magnitude, affecting 16 factors, is not minor. Additionally, we find that the use of an adverse inference in applying the facts otherwise available, pursuant to section 776(b) of the Act, is warranted, because Fimex VN failed to cooperate by not acting to the best of its ability. While the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.<sup>238</sup> Fimex VN failed to report crucial information identifying the supplier replacement codes for every packing input, one-third of its total inputs, which the Department finds amounts to carelessness and inadequate record keeping. The Department requires better recordkeeping so as to avoid errors such as these. Therefore, as adverse facts available, we will increase Fimex VN's packing factors by the increase calculated in the verification report for Fimex VN's corrected quantity of carton box, the only information on the record.<sup>239</sup>

### **Comment 11: Separate Rate Status for Cofidec and Seaprodex Danang**

#### **VASEP Case Brief:**

- In the Sampling Memoranda and in the Preliminary Results, the Department denied separate rate status to Coastal Fisheries Development Corporation ("Cofidec") and Danang Seaproducts Import-Export Corporation ("Seaprodex Danang").
- This decision was incorrect because it violated the Administrative Procedures Act ("APA") and both companies were eligible for separate rates.
- APA requires that an agency provide notice of a proposed rulemaking in the Federal Register, provide parties the opportunity to comment, and issue a final rule with an explanation of its decision.

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<sup>236</sup> See, e.g., Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) ("Nippon"); see also Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan, 65 FR 42985 (July 12, 2000); Preamble, 62 FR at 27340.

<sup>237</sup> See, e.g., Steel Threaded Rod From Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances, 78 FR 79670 (December 31, 2013), and accompanying Issues and Decision Memorandum at page 4, unchanged in Steel Threaded Rod From Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, 79 FR 14476 (March 14, 2014).

<sup>238</sup> See Nippon, 337 F.3d 1373, 1382 (Fed. Cir. 2003).

<sup>239</sup> See Fimex VN Verification Report at 2. See also "Memorandum to the File, Through Catherine Bertrand, Program Manager, From Alexis Polovina, Analyst, Re: Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Analysis for the Final Results for Sao Ta Foods Joint Stock Company," dated concurrently with this memorandum, at page 2.

- The Department failed to follow the APA’s notice and comment requirements in developing its rule regarding its de facto test for whether a separate rate applicant is autonomous from the government. These two companies have been granted separate rates in all previous segments of this review and the material facts surrounding their relationships with the Vietnamese Government have not changed.
- The Department has not explained how it found these two companies independent from the Vietnamese Government in multiple prior reviews, but in this review, under the same set of facts, found they were not independent from the Government.
- The Department’s decision to deny these companies separate rates had nothing to do with its traditional de facto test, but rather applied a new rule based on the percentage of Government ownership. This new rule was announced in Wire Rod from the PRC,<sup>240</sup> without going through the APA’s formal rule making process.
- The CIT has found that government ownership is not dispositive of government control.
- Application of this new rule is inconsistent with court precedent and does not allow companies to conduct business within a predictable set of rules.
- In *United States – Anti-Dumping Measures on Certain Shrimp from Viet Nam (DS429)* a WTO panel has determined that the Department’s practice of applying a country-wide rate based on AFA rather than assigning an all-others rate to the Vietnamese-wide entity is in violation of Antidumping Agreement.

**Petitioner’s Rebuttal Brief:**

- The Department should continue to deny separate rate status to Cofidec and Seaprodex Danang in the Final Results.
- Citing Pencils from the PRC,<sup>241</sup> the Department has provided a detailed explanation of its continuing practice with respect to the separate rate analysis, specifically, following the CIT’s reasoning in ATM.<sup>242</sup>
- In contrast to VASEP’s argument, the Department has not adopted a simplistic majority ownership rule. Instead it has articulated a reasonable conclusion regarding majority ownership, which a respondent may be overcome by demonstrating an absence of de facto government control.
- In this review neither Cofidec nor Seaprodex have attempted to demonstrate the absence of de facto government control, and as such are ineligible for separate rates.

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<sup>240</sup> See Carbon and Certain Alloy Steel Wire Rod From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part 79 FR 53169 (September 8, 2014) (“Wire Rod from the PRC”) and accompanying Issues and Decision Memorandum at 5-9.

<sup>241</sup> See Certain Case Pencils From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013 80 FR 26897 (May 11, 2015) (“Pencils from the PRC”) and accompanying Issues and Decision Memorandum at 1.

<sup>242</sup> See Advanced Technology & Materials Co., Ltd v. United States, 885 F. Supp. 2d 1343, 1349 (CIT 2012) (“Advanced Technology”).

## Department's Position:

We continue to find that neither Cofidec nor Seaprodex Danang have demonstrated that they meet the criteria for separate rates. In the Sampling Memos, we explained that both companies did not demonstrate an absence of governmental control,<sup>243</sup> and we continued to find this at the Preliminary Results.<sup>244</sup>

As we stated in the Preliminary Results,<sup>245</sup> in proceedings involving nonmarket economy (“NME”) countries, the Department begins with a rebuttable presumption that all companies within Vietnam are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (de jure) and in fact (de facto), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in Sparklers,<sup>246</sup> as further developed in Silicon Carbide.<sup>247</sup> In accordance with this separate rates test, the Department assigns separate rates to respondents in NME proceedings if respondents demonstrate the absence of both de jure and de facto government control over their export activities.<sup>248</sup>

The Department continues to evaluate its practice with regard to the separate rates analysis in light of the Diamond Sawblades from the PRC antidumping duty proceeding, and the

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<sup>243</sup> See “Memorandum to James C. Doyle, Office Director, through Alexis Polovina, Analyst, regarding Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Respondent Selection Methodology and Sampling Pool for Selection of Respondents,” dated September 2, 2014 (“First Sampling Memo”) at 10; See “Memorandum to James C. Doyle, Office Director, through Alexis Polovina, Analyst, regarding Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Respondent Selection Methodology and Sampling Pool for Selection of Respondents,” dated September 29, 2014 (“Second Sampling Memo”) at 6-7 for a business proprietary discussion of the issue.

<sup>244</sup> See Preliminary Results, at 6-7.

<sup>245</sup> Id.

<sup>246</sup> See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China, 56 FR 20588 (May 6, 1991) (“Sparklers”).

<sup>247</sup> See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China, 59 FR 22585, 22586-89 (May 2, 1994) (“Silicon Carbide”).

<sup>248</sup> See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China, 72 FR 52355, 52356 (September 13, 2007); Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review, 66 FR 1303, 1306 (January 8, 2001), unchanged in Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review, 66 FR 27063 (May 16, 2001); Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China, 64 FR 71104 (December 20, 1999).

Department's determinations therein.<sup>249</sup> In particular, we note that in litigation involving the diamond sawblades proceeding, the U.S. Court of International Trade found the Department's existing separate rates analysis deficient in the specific circumstances of that case, in which a government-controlled entity had significant ownership in the respondent exporter.<sup>250</sup> Following the Court's reasoning, in recent proceedings, we have concluded that where a government entity holds a majority ownership share, either directly or indirectly, in the respondent exporter, the majority ownership holding in and of itself means that the government exercises, or has the potential to exercise, control over the company's operations generally.<sup>251</sup> This may include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with normal business practices, we would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profitability of the company. Cofidex and Seaprodex Danang have not demonstrated an absence of de facto government control.<sup>252</sup>

We disagree with VASEP that denying separate rates to Cofidex and Seaprodex Danang violates the APA's notice and comment requirement. As an initial matter, the respondents, as well as all other parties in this review, have been provided with the same due process as in any other review before the agency (e.g., submission of factual information, submission of comments during the sampling phase, rebuttal comments during the sampling phase, opportunity for a hearing, submission of written argument in case briefs, and submission of rebuttal argument in rebuttal briefs, etc.). Our decision with respect to separate rates is not subject to the APA's notice-and-rulemaking procedures, because those procedures do not apply to "interpretative rules, general

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<sup>249</sup> See Final Results of Redetermination Pursuant to Remand Order for Diamond Sawblades and Parts Thereof from the People's Republic of China (May 6, 2013) in Advanced Technology & Materials Co., Ltd. v. United States, 885 F. Supp. 2d 1343 (CIT 2012), sustained Advanced Technology & Materials Co., Ltd v. United States, 938 F. Supp. 2d 1342 (CIT 2013), *aff'd* Case No. 2014-1154 (Fed. Cir. 2014). This remand redetermination is on the Enforcement and Compliance website at <http://enforcement.trade.gov/remands/12-147.pdf>. ("DSB Remand"). See also Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 77098 (December 20, 2013) and accompanying Preliminary Decision Memo at 7, unchanged in Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 35723 (June 24, 2014) and accompanying Issues and Decision Memorandum at Comment I.

<sup>250</sup> See, e.g., Advanced Technology, 885 F. Supp. 2d at 1349. ("The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it."); *id.* at 1351 ("Further substantial evidence of record does not support the inference that SASAC's {State-owned Assets Supervision and Administration Commission} 'management' of its 'state-owned assets' is restricted to the kind of passive-investor de jure 'separation' that Commerce concludes.") (footnotes omitted); *id.* at 1355 ("The point here is that 'governmental control' in the context of the separate rate test appears to be a fuzzy concept, at least to this court, since a 'degree' of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to 'day-to-day decisions of export operations,' including terms, financing, and inputs into finished product for export."); *id.* at 1357 ("AT&M itself identifies its 'controlling shareholder' as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control over nomination.") (footnotes omitted).

<sup>251</sup> See Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part, 79 FR 53169 (September 8, 2014) and accompanying Preliminary Decision Memorandum at 5-9.

<sup>252</sup> See First Sampling Memo at 10; and Second Sampling Memo at 6-7 for a business proprietary discussion of the issue.

statements of policy or procedure, or practice.”<sup>253</sup> The “APA does not apply to antidumping administrative proceedings” because of the investigatory and not adjudicatory nature of the proceedings.<sup>254</sup>

VASEP’s argument that both of these companies have received separate rates in prior reviews is irrelevant. As explained in VN Fish 2011-2012,<sup>255</sup> “it is the Department’s practice to treat each segment of an antidumping proceeding as independent proceedings with separate records which lead to independent determinations.” Thus, we evaluated Cofidec’s and Seaprodex Danang’s separate rate eligibility in this review based on the facts on the record of this review and in accordance with court rulings.

We also disagree with VASEP’s argument regarding the Department’s alleged practice resulting from *United States – Anti-Dumping Measures on Certain Shrimp from Viet Nam (DS429)*. The CAFC has held that WTO reports are without effect under U.S. law “unless and until such a report has been adopted pursuant to the specified statutory scheme” established in the Uruguay Round Agreements Act (URAA).<sup>256</sup> Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.<sup>257</sup> As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department’s discretion in applying the statute.<sup>258</sup> We note the Department has issued no new determination and the United States has adopted no change to its methodology pursuant to the URAA’s statutory procedure.

For the reasons explained above, the Department will continue to deny Cofidec and Seaprodex Danang separate rates in the Final Results.

## **Comment 12: Separate Rate Status for Camimex Seafood Company Limited<sup>259</sup>**

### **VASEP Case Brief:**

- Although the company did not have an export, it had a sale to the United States, which it made through its affiliate Camimex.
- If the Department’s language “sale, export, or entry” – which is used both in its decision quoted above and in its Application – was meant to say that a company must have its own export, then it should not have used the listed terms as distinct events “sale, export, or entry”.
- Because the Separate Rate Application as currently written gives the impression that

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<sup>253</sup> See Coated Free Sheet Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 72 FR 60645 (October 25, 2007) and accompanying Issues and Decision Memorandum at Comment 2 (citing 5 U.S.C 553(b)(3)(A)).

<sup>254</sup> See GSA, S.R.L. v. United States, 77 F. Supp. 2d 1349, 1359 (CIT 1999) (citing SAA at 892) (“Antidumping and countervailing proceedings ... are investigatory in nature.”).

<sup>255</sup> See 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) (“VN Fish 2011-2012”) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>256</sup> See Corus Staal BV v. U.S. Dep’t of Commerce, 395 F.3d 1343, 1347-1349 (CAFC 2005), cert. denied 126 S. Ct. 1023 (2006); accord Corus Staal BV v. United States, 502 F.3d 1370, 1375 (CAFC 2007).

<sup>257</sup> See, e.g., 19 U.S.C. §3533, 3538.

<sup>258</sup> See, e.g., 19 U.S.C. §3538 (implementation of WTO reports is discretionary).

<sup>259</sup> Camimex Seafood Company Limited is also known as Camimex Corp.

companies that make a sale, which they know is destined for the United States, may be granted separate rate status, Camimex Corp. should be granted separate rate status in this review.

- To avoid these issues in the future, we urge the Department to consider adopting a policy by which a company that is clearly a subsidiary of another company – or would otherwise meet the Department’s collapsing criteria – can be granted separate rate status regardless of whether they have made a sale to the United States. If such a rule were adopted, Camimex Corp. would clearly be granted separate rate status given that it is 100% owned by Camimex.
- The Department should not require otherwise collapsed entities to make their own entries in order to receive separate rate status. This would be inconsistent with the rules typically applied to collapsed entities. The Department’s limitation of the collapsing analysis to only mandatory respondents places non-mandatory respondents at a disadvantage that cannot be justified.

#### **Petitioner’s Rebuttal Brief:**

- In the immediately prior proceeding of this antidumping duty order, the Department articulated an understanding of Policy Bulletin 5.1<sup>260</sup> that made separate rate status contingent upon the export of subject merchandise to the United States during the relevant period.
- Because Camimex Corp. did not export subject merchandise to the United States during the POR, it is not eligible for a separate rate. Accordingly, the Department should reject VASEP’s argument that Camimex Corp. is eligible for, and should receive, a separate rate in the final results.

#### **Department’s Position:**

The Department disagrees with VASEP regarding Camimex Corp.’s separate rate eligibility. In the Department’s First Sampling Memo, we stated that Camimex Corp. did not demonstrate that it had its own sale or export during the POR and CBP data demonstrates no entries for this company.<sup>261</sup> In the Second Sampling Memo, we also addressed VASEP’s arguments presented for our final sampling determination vis a vis the separate rate eligibility of certain companies. In the Second Sampling Memo, we stated that:

Camimex Corp. does not have any entries in the CBP data. We requested Camimex Corp. demonstrate evidence of a POR sale or entry. Camimex Corp. could only demonstrate that it made a sale to its affiliate, Camimex. The affiliate then exported the subject merchandise to the United States. As the affiliate filed a timely Separate Rate Certification and demonstrated evidence of a sale or export, we find Camimex, is entitled to the separate rate, but not Camimex Corp., because Camimex Corp., did not provide evidence of a sale, export, or entry by Camimex Corp. to the United States during the period.<sup>262</sup>

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<sup>260</sup> See Petitioner’s Rebuttal Brief dated June 15, 2015, at page 6, citing to: 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>.

<sup>261</sup> See First Sampling Memo.

<sup>262</sup> See Second Sampling Memo.

Camimex Corp. filed an application for a separate rate, certifying that: 1) it is an affiliate of a company that has already obtained separate rate status<sup>263</sup> and 2) it produced and sold product that its claimed affiliate then shipped to the United States.<sup>264</sup> Thus, on the record, Camimex Corp., a producer of shrimp, certified that it sold shrimp to an affiliated company in Vietnam, which then exported the product to the United States. As an initial matter, “in determining whether companies should receive separate rates, the Department focuses its attention on the exporter rather than the manufacturer.”<sup>265</sup> On its face, VASEP’s arguments here for Camimex Corp.’s separate rate eligibility are refuted by the guidance and instructions in the Department’s Separate Rate Application (“SRA”) and in our policy provided in Policy Bulletin 5.1. The Department’s SRA states that:

To be considered for separate-rate treatment, the applicant must have a relevant U.S. sale of subject merchandise to an *unaffiliated purchaser*, and, for an administrative review, the applicant *also must have a suspended entry of subject merchandise* into the United States during POR. The sale to an unaffiliated purchaser generally must be during the period of investigation or review, or, in a review, a sale related to a suspended POR entry.<sup>266</sup>

Camimex Corp., the applicant, certified that it produced shrimp which it sold to an affiliated Vietnamese company only. Thus, Camimex Corp. is a producer with no sales to an unaffiliated customer in the United States during the POR, with no reviewable entries of its own sales to the United States. This disqualifies it from obtaining a separate rate consistent with the SRA and Policy Bulletin 5.1. The Department does not grant separate rate status to producers with no exports or sales to the United States in administrative reviews.<sup>267</sup>

Furthermore, our SRA clearly states in the instructions that “each applicant seeking separate rate status must submit a separate and complete individual application *regardless of any common ownership or affiliation* between firms and regardless of foreign ownership. Each firm must apply for a separate rate by submitting an individual application.”<sup>268</sup> In its separate rate application, Camimex Corp. provided the U.S. sales documentation of its claimed affiliate rather

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<sup>263</sup> See Camimex Corp’s Separate Rate Application dated June 2, 2014, at cover letter and page 8.

<sup>264</sup> *Id.*, at page 10.

<sup>265</sup> See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People’s Republic of China, 60 FR 56045 (November 6, 1995); see also the Department’s Separate Rate Application, available at: <http://enforcement.trade.gov/nme/sep-rate-files/app-20150323/srv-sr-app-20150416.pdf>

<sup>266</sup> See the Department’s Separate Rate Application, available at: <http://enforcement.trade.gov/nme/sep-rate-files/app-20150323/srv-sr-app-20150416.pdf> (this application and the link were provided to the public in the Initiation Notice of this administrative review (emphasis added). See Initiation of Antidumping Duty Administrative Reviews and Request for Revocation in Part, 79 FR 18262 (April 1, 2014).

<sup>267</sup> See, e.g., Aluminum Extrusions From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014, 80 FR 32347, 32351 (June 8, 2015) at footnote 25, where we stated that “Although the Department initiated a review for both Taishan City Kam Kiu Aluminium Extrusion Co., Ltd. and Kam Kiu Aluminium Products Sdn Bhd, it is apparent from the company’s separate-rate application that Kam Kiu Aluminium Products Sdn Bhd is the exporter and Taishan City Kam Kiu Aluminium Extrusion Co., Ltd. is a producer only; thus, Kam Kiu Aluminium Products Sdn Bhd is the appropriate party to grant the separate rate status.

<sup>268</sup> See the Department’s Separate Rate Application, available at: <http://enforcement.trade.gov/nme/sep-rate-files/app-20150323/srv-sr-app-20150416.pdf>, at pages 3-4.

than any U.S. sales documentation of its own. While Camimex Corp. argues that it is affiliated with this other company that does have separate rate status, the instructions in the SRA very clearly directs the applicant to provide U.S. sales documentation for itself not its claimed affiliates. With respect to VASEP's request that the Department alter its policy regarding whether companies not individually examined should be subject to affiliation or collapsing determinations, we find it is not appropriate to make changes to separate rate eligibility policies in the context of this review, especially where the circumstances of separate rate eligibility are clearly defined by Policy Bulletin 5.1 and the SRA vis-a-vis the information provided by Camimex Corp. Simply put, Camimex Corp. is not an exporter, made no POR sales to unaffiliated U.S. customers, and can claim no reviewable entries under its own name.

Finally, the Department addressed a similar issue in Vietnam Shrimp AR7, where we denied a separate rate to a company that “did not ship its product directly to the United States in POR7, but shipped to {a claimed affiliate}, which in turn shipped to the United States.”<sup>269</sup> As we stated in Vietnam Shrimp AR7, and equally applicable here, Policy Bulletin 5.1 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>270</sup> Because Camimex Corp. only made a sale to its claimed affiliated in Vietnam, and not to the United States, it is not eligible for a separate rate, as we indicated in the First Sampling Memo, Second Sampling Memo, and in the Preliminary Results. Thus, based on the above, we continue to deny Camimex Corp. separate rate status for this POR, as it is a producer with no sales or exports to unaffiliated U.S. customers and has no reviewable POR entries under its own name.

### **Comment 13: Separate Rate Status for Additional Trade Names**

#### **A. Minh Phu Group**

##### **VASEP Case Brief:**

- The Department did not grant separate rate status to trade name “Minh Phu Hau Giang Seafood Corp.” in the Preliminary Results. However, this trade name is the abbreviated name of “Minh Phu Hau Giang Seafood Joint Stock Company” on the business registration certificate (“BRC”) No. 642032000014 dated November 18, 2013 provided at Exhibit 1 of Minh Phu Hau Giang’s May 30, 2014 Separate Rate Certification.
- This abbreviation was also used for the company’s prior registration No. 642021000003 as amended on July 25, 2011 and September 20, 2013, both of which also covered the POR. “Minh Phu Hau Giang Seafood Corp.” was included as an abbreviated name in this company’s first BRC as a joint stock company because Vietnam uses “joint stock company” in the same way as “Corporation” or “Incorporated” are used in other countries, such as in the United States – that is, to reflect a corporate structure referring to those companies that are incorporated by shares, distinct from limited liability companies (*i.e.*, those using Ltd. or LLC).
- The use of “Minh Phu Hau Giang Seafood Corp.” is a clear reference to “Minh Phu Hau Giang Seafood Joint Stock Company”, not only referenced by the company’s BRC. The Department should grant separate rate status to this trade name.

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<sup>269</sup> See Vietnam Shrimp AR7 at Comment 11.

<sup>270</sup> See Policy Bulletin 5.1 at page 6.

No other interested parties commented on this issue.

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

The Department disagrees with Minh Phu Group regarding the inclusion of “Minh Phu Hau Giang Seafood Corp.” for separate rate status. In the sixth administrative review of certain frozen warmwater shrimp from Vietnam, the Department collapsed the Minh Phu Group with an affiliated producer, Minh Phu Hau Giang Seafood Co., Ltd.<sup>271</sup> However, as noted in the Preliminary Results, in the current review, the Minh Phu Group provided a Separate Rate certification (“SRC”) wherein it reported that Minh Phu Hau Giang Seafood Co., Ltd., which was collapsed within the Minh Phu Group in AR6, was, as of November 18, 2013, renamed “Minh Phu Hau Giang Seafood Joint Stock Company.”

As an initial matter, Minh Phu Group filed a SRC, despite the instruction on page 2 of the Department's SRC stating that:

{C}ompanies who had changes to corporate structure, ownership, *or to the official company name* may not file a Separate Rate Certification but must instead file a Separate Rate Application. Please note that, as explained in the bullet point below and in Question 7, changes to trade names are allowed. Only changes to the official company name (*i.e.*, the name appearing on the business license and other registration documents) require the filing of a Separate Rate Application.<sup>272</sup>

Nevertheless, because we selected Minh Phu Group as a mandatory respondent, we re-examined Minh Phu Group's single entity status *de novo* and the reported name change and corporate structure to determine whether the facts that allowed Minh Phu Hau Giang Seafood Co., Ltd. to be collapsed with Minh Phu Group also exist for the company renamed as “Minh Phu Hau Giang Seafood Joint Stock Company.”<sup>273</sup>

As noted above, in the Collapsing Memo, we re-evaluated the Minh Phu Group's single entity status because one of the companies previously collapsed within the single entity experienced a corporate structure and name change during the POR.<sup>274</sup> We determined that Minh Phu Hau Giang Seafood Joint Stock Company supersedes all other names as a result of the change in corporate structure. We also stated that “based on the information reported to the Department regarding Minh Phu Hau Giang Seafood Co., Ltd.'s name change to Minh Phu Hau Giang Seafood Joint Stock Company, we have, accordingly, adjusted the name with respect to any instructions transmitted to United States Customs and Border Protection, at the conclusion of this

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<sup>271</sup> See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results of Administrative Review, 77 FR 13547, 13549 (March 7, 2012) unchanged in final results of Vietnam Shrimp AR6.

<sup>272</sup> See the Department's Separate Rate Certification, available at: <http://enforcement.trade.gov/nme/sep-rate-files/cert-20150323/srv-sr-cert-20150416.pdf>, at page 2 (emphasis added).

<sup>273</sup> See Memorandum to Catherine Bertrand, Program Manager, Office V, from Irene Gorelik, Senior Analyst, re; “Collapsing Determination for the Minh Phu Seafood Corporation and its Affiliates with Minh Phu Hau Giang Seafood Joint Stock Company,” dated March 2, 2015 (“Collapsing Memo”).

<sup>274</sup> See Collapsing Memo.

proceeding.”<sup>275</sup> The record shows that Minh Phu Hau Giang Seafood Co., Ltd amended its BRC during the POR with a new name: Minh Phu Hau Giang Seafood Joint Stock Company.<sup>276</sup> Both the SRC and the SRA require companies seeking separate rate status for additional trade names to show evidence that the trade name was used commercially during the POR.<sup>277</sup>

While Minh Phu Hau Giang Seafood Joint Stock Company’s amended BRC also includes the abbreviation, “Minh Phu Hau Giang Seafood Corp.,” the company must also show evidence that this additional trade name (or abbreviation), beyond the official company name, was used commercially during the POR in order to be included as a trade name for U.S. Customs and Border Protection (“CBP”) cash deposit purposes. However, we note that there is no commercial documentation on the record showing that the requested trade name “Minh Phu Hau Giang Seafood Corp.” was used for sales of subject merchandise during the POR.<sup>278</sup> As shown in the Department’s SRC and SRA’s, a trade name identified solely on a BRC is not sufficient for gaining separate rate status for trade names—a company must also show evidence that the trade name was used during the POR. Thus, we find it is inappropriate to grant separate rate status to an abbreviation of a company name with no evidence that this abbreviation was commercially used during the POR.

## **B. Thuan Phuoc**

### **VASEP Case Brief:**

- The abbreviated names “Thuan Phuoc Seafood and Trading Company” and “Frozen Seafoods Factory” were not included in the rate box in the Preliminary Results. These two names were requested in Thuan Phuoc’s May 30, 2014 Separate Rate Certification.
- These variations of the company name are slight variations of the names granted separate rate status. “Thuan Phuoc Seafood and Trading Company” and “Frozen Seafoods Factory” are clear references to Thuan Phuoc Seafoods and Trading Corporation. Furthermore, “corporation” is translated incorrectly to “company.” The separate rate company should not be denied separate rate status because an importer made a typographical and translation error.
- The Department should grant separate rate status to the abbreviated names, “Thuan Phuoc Seafood and Trading Company” and “Frozen Seafoods Factory.”

No other interested parties commented on this issue.

### **Department’s Position:**

The Department disagrees with Thuan Phuoc regarding requested trade names to which we did

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<sup>275</sup> Id., at 4.

<sup>276</sup> See Minh Phu Group’s Separate Rate Certification dated May 28, 2013, at Attachment D, page 7.

<sup>277</sup> See, e.g., the Department’s Separate Rate Certification, available at: <http://enforcement.trade.gov/nme/sep-rate-files/cert-20150323/srv-sr-cert-20150416.pdf>; the Department’s Separate Rate Application, available at: <http://enforcement.trade.gov/nme/sep-rate-files/app-20150323/srv-sr-app-20150416.pdf>, at page 10 where we state “Please also provide evidence that these names were used during the POR/POI.”

<sup>278</sup> See, e.g., Minh Phu Group’s Separate Rate Certification dated May 28, 2013, at Attachment D; Minh Phu Group’s Supplemental Separate Rate Certification Response, dated July 3, 2015, at Attachment D; Minh Phu Group’s Section A Questionnaire Response dated October 31, 2014, where commercial documentation such as commercial invoices, bills of lading, etc. would have been submitted.

not grant separate rate status in the Preliminary Results. In the Preliminary Results, we found that “Thuan Phuoc Seafood and Trading Company” and “Frozen Seafoods Factory” were variations of names that were not eligible for separate rate status, the reasons for which are business proprietary information.<sup>279</sup> In our Trade Name Memo, we stated that “if a company’s trade name or dba is not included in the business registration and on commercial documents showing use of this name for trade purposes, we are not granting separate rate status to that name, even if it had been granted separate rate status in an administrative review prior to the eighth administrative review.”<sup>280</sup> Furthermore, the Department also conducted verification of this company and found that the above name variations were not listed on the company’s BRC or appeared on any commercial documentation. Thus, our preliminary determination to deny separate rate status to these two name variations stands.

We also disagree with Thuan Phuoc’s argument that importer data entry error qualifies as reasons for granting separate rate status to these two requested name variations. It is not the Department’s responsibility to ensure that importers properly enter exporter names when completing CBP entry documentation. The Federal Register notices are searchable public documents such that any public person may immediately know what names are granted separate rate status. Furthermore, importers and customs brokers have access to the ACE system used by CBP and can readily identify which companies and trade names obtained separate rate status for the relevant POR. It is also not the Department’s responsibility to correct importers’ entry errors, whether typographical or translation. The Department is not required to grant separate rate status to trade names that are not eligible for it (i.e., without evidence of use in commercial documentation and inclusion in the BRC). Simply requesting separate rate status for a trade name in a separate rate certification, without the required evidence that: 1) the name is on a valid BRC and 2) appears on commercial documentation during the POR, is insufficient for eligibility for separate rate status. Thus, we continue to decline to grant separate rate status to the two name variations for which Thuan Phuoc has requested separate rate status.

### **C. Bac Lieu Fisheries Joint Stock Company**

#### **VASEP Case Brief:**

- In the Preliminary Results, the Department did not grant separate rate status to the abbreviated name “Bac Lieu Fisheries.” “Bac Lieu Fisheries” was requested in Bac Lieu Fisheries Joint Stock Company’s May 30, 2014 Separate Rate Certification.
- The separate rate company should not be denied separate rate status simply because an importer used the wrong short-hand name.
- The Department should grant separate rate status to the abbreviated name “Bac Lieu Fisheries,” at least for purposes of assessment.

No other interested parties commented on this issue.

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<sup>279</sup> See “Memorandum to the File, through Catherine Bertrand, Program Manager, Office V, from Irene Gorelik, Analyst, Office V, re: Names Not Granted Separate Rate Status at the Preliminary Results,” dated March 2, 2015 (“Trade Name Memo”).

<sup>280</sup> Id., at page 3, footnote 14.

## **Department's Position:**

The Department disagrees with Bac Lieu Fisheries Joint Stock Company regarding what trade names qualify for separate rate status. In the Preliminary Results, we stated that “Bac Lieu Fisheries” was a variation of a name that was not eligible for separate rate status, the reasons for which are business proprietary information.<sup>281</sup> In our Trade Name Memo, we stated that “if a company’s trade name or dba is not included in the business registration and on commercial documents showing use of this name for trade purposes, we are not granting separate rate status to that name, even if it had been granted separate rate status in an administrative review prior to the eighth administrative review.”<sup>282</sup>

We also disagree with Bac Lieu Fisheries Joint Stock Company’s argument that importer data entry error qualifies as reasons for granting separate rate status to these two requested name variation. It is not the Department’s responsibility to ensure that importers properly enter exporter names when completing CBP entry documentation. The Federal Register notices are searchable public documents such that any public person may immediately know what names are granted separate rate status. Furthermore, importers and customs brokers have access to the ACE system used by CBP and can readily identify which companies and trade names obtained separate rate status for the relevant POR. It is also not the Department’s responsibility to correct importers’ entry errors, whether typographical or translation. The Department is not required to grant separate rate status to trade names that are not eligible for it (i.e., without evidence of use in commercial documentation and inclusion in the BRC). Simply requesting separate rate status for a trade name in a separate rate certification, without the required evidence that: 1) the name is on a valid BRC and 2) appears on commercial documentation during the POR, is insufficient for eligibility for separate rate status. Thus, we continue to decline to grant separate rate status to the name variation for which Bac Lieu Fisheries Joint Stock Company has requested separate rate status.

### **D. Cadovimex Seafood Import-Export and Processing Joint Stock Company**

#### **VASEP Case Brief:**

- In the Preliminary Results, the Department did not grant separate rate status to abbreviated names “Cadovimex Seafood,” “Cadovimex Seafood Imp-Exp & Proc. Joint Stock Co.,” and “Cadovimex-II Seafood IM-EX & Processing Joint Stock Company.”
- These three names were requested in Cadovimex’s May 30, 2014 Separate Rate Certification and are shorthand versions of the names granted separate rate status.
- “Cadovimex Seafood Imp-Exp. & Proc. Joint Stock Co.,” is obviously an inadvertent misspelling and shorthand version of the official company name, “Cadovimex Seafood Import-Export and Processing Joint Stock Company.” This company should not be denied separate rate status for the shipments that arrived under this name due to the error of an importer.
- The Department should grant separate rate status to the abbreviated names, “Cadovimex Seafood,” “Cadovimex Seafood Imp-Exp & Proc. Joint Stock Co.,” and “Cadovimex-II

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<sup>281</sup> See Trade Name Memo.

<sup>282</sup> Id., at page 3, footnote 14.

Seafood IM-EX & Processing Joint Stock Company.”

No other interested parties commented on this issue.

### **Department’s Position:**

The Department disagrees with Cadovimex Seafood Import-Export and Processing Joint Stock Company regarding what trade names qualify for separate rate status. In the Preliminary Results, we stated that “Cadovimex Seafood,” “Cadovimex Seafood Imp-Exp & Proc. Joint Stock Co.,” and “Cadovimex-II Seafood IM-EX & Processing Joint Stock Company” were variations of a name ineligible for separate rate status, the reasons for which are business proprietary information.<sup>283</sup> In our Trade Name Memo, we stated that “if a company’s trade name or dba is not included in the business registration and on commercial documents showing use of this name for trade purposes, we are not granting separate rate status to that name, even if it had been granted separate rate status in an administrative review prior to the eighth administrative review.”<sup>284</sup>

We also disagree with Cadovimex Seafood Import-Export and Processing Joint Stock Company’s argument that importer data entry error qualifies as reasons for granting separate rate status to these two requested name variation. It is not the Department’s responsibility to ensure that importers properly enter exporter names when completing CBP entry documentation. The Federal Register notices are searchable public documents such that any public person may immediately know what names are granted separate rate status. Furthermore, importers and customs brokers have access to the ACE system used by CBP and can readily identify which companies and trade names obtained separate rate status for the relevant POR. It is also not the Department’s responsibility to correct importers’ entry errors, whether typographical or translation. The Department is not required to grant separate rate status to trade names that are not eligible for it (i.e., without evidence of use in commercial documentation and inclusion in the BRC). Simply requesting separate rate status for a trade name in a separate rate certification, without the required evidence that: 1) the name is on a valid BRC and 2) appears on commercial documentation during the POR, is insufficient for eligibility for separate rate status. Thus, we continue to decline to grant separate rate status to the name variations for which Cadovimex Seafood Import-Export and Processing Joint Stock Company has requested separate rate status.

### **E. Can Tho Import Export Fishery Limited Company**

#### **VASEP Case Brief:**

- In the Preliminary Results, the Department did not grant separate rate status to abbreviated name “Cantho Import Export Fishery Lim.”
- “Cantho Import Export Fishery Lim” was requested in Can Tho Import Export Fishery Limited Company’s May 30, 2014 Separate Rate Certification. This variation of the company name is a shorthand version of the name and is a clear reference to the same company. The separate rate company should not be denied separate rate status simply because an importer made a typographical error.

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<sup>283</sup> See Trade Name Memo.

<sup>284</sup> Id., at page 3, footnote 14.

- As such, the Department should not specifically deny separate rate status to the abbreviated name “Cantho Import Export Fishery Lim.”

No other interested parties commented on this issue.

### **Department’s Position:**

The Department disagrees with Can Tho Import Export Fishery Limited Company regarding what trade names qualify for separate rate status. In the Preliminary Results, we stated that “Cantho Import Export Fishery Lim” was a name variation ineligible for separate rate status, the reasons for which are business proprietary information.<sup>285</sup> In our Trade Name Memo, we stated that “if a company’s trade name or dba is not included in the business registration and on commercial documents showing use of this name for trade purposes, we are not granting separate rate status to that name, even if it had been granted separate rate status in an administrative review prior to the eighth administrative review.”<sup>286</sup>

We also disagree with Can Tho Import Export Fishery Limited Company’s argument that importer data entry error qualifies as reasons for granting separate rate status to this requested name variation. It is not the Department’s responsibility to ensure that importers properly enter exporter names when completing CBP entry documentation. The Federal Register notices are searchable public documents such that any public person may immediately know what names are granted separate rate status. Furthermore, importers and customs brokers have access to the ACE system used by CBP and can readily identify which companies and trade names obtained separate rate status for the relevant POR. It is also not the Department’s responsibility to correct importers’ entry errors, whether typographical or translation. The Department is not required to grant separate rate status to trade names that are not eligible for it (*i.e.*, without evidence of use in commercial documentation and inclusion in the BRC). Simply requesting separate rate status for a trade name in a separate rate certification, without the required evidence that: 1) the name is on a valid BRC and 2) appears on commercial documentation during the POR, is insufficient for eligibility for separate rate status. Thus, we continue to decline to grant separate rate status to the name variation for which Can Tho Import Export Fishery Limited Company has requested separate rate status.

### **F. Minh Hai Export Frozen Seafood Processing Joint Stock Company**

#### **VASEP Case Brief:**

- In the Preliminary Results, the Department did not grant separate rate status to the abbreviated names “Minh-Hai Export Frozen Seafood Processing Joint-Stock Company,” and “Minh Hai Seaproducts Import Export Corp.”
- These two names were requested in Minh Hai Export Frozen Seafood Processing Joint Stock Company’s May 30, 2014 Separate Rate Certification. These variations of the company name are clearly shorthand versions of the names that were granted separate rate status.
- The separate rate company should not be denied separate rate status simply because an

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<sup>285</sup> See Trade Name Memo.

<sup>286</sup> *Id.*, at page 3, footnote 14.

importer made a typographical error.

- The Department should grant separate rate status to the abbreviated names, “Minh-Hai Export Frozen Seafood Processing Joint-Stock Company,” and “Minh Hai Seaproducts Import Export Corp.”

No other interested parties commented on this issue.

### **Department’s Position:**

The Department disagrees with Minh Hai Export Frozen Seafood Processing Joint Stock Company regarding what trade names qualify for separate rate status. In the Preliminary Results, we stated that “Minh-Hai Export Frozen Seafood Processing Joint-Stock Company,” and “Minh Hai Seaproducts Import Export Corp.” were name variations ineligible for separate rate status, the reasons for which are business proprietary information.<sup>287</sup> In our Trade Name Memo, we stated that “if a company’s trade name or dba is not included in the business registration and on commercial documents showing use of this name for trade purposes, we are not granting separate rate status to that name, even if it had been granted separate rate status in an administrative review prior to the eighth administrative review.”<sup>288</sup>

We also disagree with Minh Hai Export Frozen Seafood Processing Joint Stock Company’s argument that importer data entry error qualifies as reasons for granting separate rate status to this requested name variation. It is not the Department’s responsibility to ensure that importers properly enter exporter names when completing CBP entry documentation. The Federal Register notices are searchable public documents such that any public person may immediately know what names are granted separate rate status. Furthermore, importers and customs brokers have access to the ACE system used by CBP and can readily identify which companies and trade names obtained separate rate status for the relevant POR. It is also not the Department’s responsibility to correct importers’ entry errors, whether typographical or translation. The Department is not required to grant separate rate status to trade names that are not eligible for it (*i.e.*, without evidence of use in commercial documentation and inclusion in the BRC). Simply requesting separate rate status for a trade name in a separate rate certification, without the required evidence that: 1) the name is on a valid BRC and 2) appears on commercial documentation during the POR, is insufficient for eligibility for separate rate status. Thus, we continue to decline to grant separate rate status to the name variations for which Minh Hai Export Frozen Seafood Processing Joint Stock Company has requested separate rate status.

### **G. Nha Trang Fisheries Joint Stock Company**

#### **VASEP Case Brief:**

- In the Preliminary Results, the Department did not grant separate rate status to the abbreviated names “Nha Trang Fisheries Co.” and “Nhatrang Fisheries Joint Stock.”
- These two names were requested in Nha Trang Fisheries Joint Stock Company’s May 30, 2014 Separate Rate Certification. These variations of the company name are shorthand versions of the names granted separate rate status.

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<sup>287</sup> See Trade Name Memo.

<sup>288</sup> Id., at page 3, footnote 14.

- The separate rate company should not be denied separate rate status simply because an importer made a typographical error by omitting parts of the complete names.
- The Department should grant separate rate status to the abbreviated names, “Nha Trang Fisheries Co.” and “Nhatrang Fisheries Joint Stock.”

No other interested parties commented on this issue.

### **Department’s Position:**

The Department disagrees with Nha Trang Fisheries Joint Stock Company regarding what trade names qualify for separate rate status. In the Preliminary Results, we stated that ““Nha Trang Fisheries Co.” and “Nhatrang Fisheries Joint Stock” were name variations ineligible for separate rate status, the reasons for which are business proprietary information.<sup>289</sup> In our Trade Name Memo, we stated that “if a company’s trade name or dba is not included in the business registration and on commercial documents showing use of this name for trade purposes, we are not granting separate rate status to that name, even if it had been granted separate rate status in an administrative review prior to the eighth administrative review.”<sup>290</sup>

We also disagree with Nha Trang Fisheries Joint Stock Company’s argument that importer data entry error qualifies as reasons for granting separate rate status to this requested name variation. It is not the Department’s responsibility to ensure that importers properly enter exporter names when completing CBP entry documentation. The Federal Register notices are searchable public documents such that any public person may immediately know what names are granted separate rate status. Furthermore, importers and customs brokers have access to the ACE system used by CBP and can readily identify which companies and trade names obtained separate rate status for the relevant POR. It is also not the Department’s responsibility to correct importers’ entry errors, whether typographical or translation. The Department is not required to grant separate rate status to trade names that are not eligible for it (i.e., without evidence of use in commercial documentation and inclusion in the BRC). Simply requesting separate rate status for a trade name in a separate rate certification, without the required evidence that: 1) the name is on a valid BRC and 2) appears on commercial documentation during the POR, is insufficient for eligibility for separate rate status. Thus, we continue to decline to grant separate rate status to the name variations for which Nha Trang Fisheries Joint Stock Company has requested separate rate status.

### **H. Tan Phong Phu Seafoods Co., Ltd.**

#### **VASEP Case Brief:**

- In the Preliminary Results, the Department granted separate rate status for Tan Phong Phu Seafoods Co., Ltd. However, the abbreviated name “TPP Co., Ltd.” was not included.
- This name was requested in Tan Phong Phu Seafoods Co., Ltd’s June 2, 2014 Separate Rate Application. “TPP Co., Ltd.” is the official abbreviated name and can be found on the company’s BRC included within the separate rate certification.

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<sup>289</sup> See Trade Name Memo.

<sup>290</sup> Id., at page 3, footnote 14.

- The Department should grant separate rate status to the abbreviated name “TPP Co., Ltd.”

No other interested parties commented on this issue.

### **Department’s Position:**

The Department disagrees with Tan Phong Phu Seafood Co., Ltd.’s argument regarding the denial of separate rate status to “TPP Co., Ltd.” As an initial matter, the Department did not address Tan Phong Phu Seafood Co., Ltd.’s abbreviated name in the Trade Name Memo<sup>291</sup> because Tan Phong Phu Seafood Co., Ltd. did not request separate rate status for this name. Furthermore, Section II, question “2” of the Department’s Separate Rate Application asks “Is the applicant identified by any other names, as a legal matter in the home market, in third countries, or in the United States (*i.e.*, does the company use trade names)?”<sup>292</sup> Tan Phong Phu Seafood Co., Ltd. replied “NO” by checking the “NO” box directly below question 2.<sup>293</sup>

The record shows that Tan Phong Phu Seafood Co., Ltd. 1) did not specifically request separate rate status for the abbreviation of its full name, 2) did not provide commercial documents showing evidence that the abbreviation was used in a commercial capacity, and 3) responded “NO” when asked if it is identified by any other names in the home market or third country. Thus, the Department did not grant separate rate status to an abbreviation of Tan Phong Phu Seafood Co., Ltd.’s name.

The Department does not automatically grant separate rate status to “abbreviations” of names unless the conditions for granting such are met. In this case, based on Tan Phong Phu Seafood Co., Ltd.’s own response to Section II, question 2 of its Separate Rate Application, record evidence shows that the Department has no basis or reason to grant separate rate status to “TPP Co., Ltd.” in the final results.

## **I. UTXI Aquatic Products Processing Corporation**

### **VASEP Case Brief:**

- In the Preliminary Results, the Department did not grant separate rate status for the abbreviated names “UT XI Aquatic Products Processin,” “UTXI Aquatic,” “Hoang Phuong Seafood Co.,” and “UT XI Aquatic Product Processing Co.”
- These four names were requested in UTXI’s May 30, 2014 Separate Rate Certification. These variations of the company name are slight inadvertent misspellings and spacing variations of versions of the names granted separate rate status.
- The separate rate company should not be denied separate rate status simply because an importer made a typographical error by including additional spacing in the company names; as we have previously mentioned throughout the administrative reviews of this order, translators often use different spacing for Vietnamese words (*i.e.*, “Vietnam” versus “Viet Nam”).

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<sup>291</sup> See Trade Name Memo.

<sup>292</sup> See, *e.g.*, Tan Phong Phu Seafood Co., Ltd.’s Separate Rate Application dated June 2, 2014, at Section II, question 2.

<sup>293</sup> *Id.*

- The use of “UT XI Aquatic Products Processin,” “UTXI Aquatic,” “Hoang Phuong Seafood Co.,” and “UT XI Aquatic Product Processing Co.,” is a clear reference to the same company.
- The Department should grant separate rate status to the abbreviated names, “UT XI Aquatic Products Processin,” “UTXI Aquatic,” “Hoang Phuong Seafood Co.,” and “UT XI Aquatic Product Processing Co.”

No other interested parties commented on this issue.

### **Department’s Position:**

The Department disagrees with UTXI Aquatic Products Processing Corporation regarding what trade names qualify for separate rate status. In the Preliminary Results, we stated that “UT XI Aquatic Products Processin,” “UTXI Aquatic,” “Hoang Phuong Seafood Co.,” and “UT XI Aquatic Product Processing Co.” were name variations ineligible for separate rate status, the reasons for which are business proprietary information.<sup>294</sup> In our Trade Name Memo, we stated that “if a company’s trade name or dba is not included in the business registration and on commercial documents showing use of this name for trade purposes, we are not granting separate rate status to that name, even if it had been granted separate rate status in an administrative review prior to the eighth administrative review.”<sup>295</sup>

We also disagree with UTXI Aquatic Products Processing Corporation’s argument that importer data entry error qualifies as reasons for granting separate rate status to this requested name variation. It is not the Department’s responsibility to ensure that importers properly enter exporter names when completing CBP entry documentation. The Federal Register notices are searchable public documents such that any public person may immediately know what names are granted separate rate status. Furthermore, importers and customs brokers have access to the ACE system used by CBP and can readily identify which companies and trade names obtained separate rate status for the relevant POR. It is also not the Department’s responsibility to correct importers’ entry errors, whether typographical or translation. The Department is not required to grant separate rate status to trade names that are not eligible for it (i.e., without evidence of use in commercial documentation and inclusion in the BRC). Simply requesting separate rate status for a trade name in a separate rate certification, without the required evidence that: 1) the name is on a valid BRC and 2) appears on commercial documentation during the POR, is insufficient for eligibility for separate rate status. Thus, we continue to decline to grant separate rate status to the name variations for which UTXI Aquatic Products Processing Corporation has requested separate rate status.

### **J. Vietnam Clean Seafood Corporation**

#### **VASEP Case Brief:**

- In the Preliminary Results, the Department did not grant separate rate status to abbreviated name “Viet Nam Clean Seafood Corporation.” This name was requested in Vina Cleanfood’s May 30, 2014 Separate Rate Certification.

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<sup>294</sup> See Trade Name Memo.

<sup>295</sup> Id., at page 3, footnote 14.

- This variation of the company name is a slight variation (due to different spacing when translating the country name) of the names granted separate rate status. “Viet Nam Clean Seafood Corporation” is a clear reference to Vietnam Clean Seafood Corporation, which was granted separate rate status.
- The Department should grant separate rate status to the abbreviated name, “Viet Nam Clean Seafood Corporation.”

No other interested parties commented on this issue.

### **Department’s Position:**

The Department disagrees with Vietnam Clean Seafood Corporation regarding what trade names qualify for separate rate status. In the Preliminary Results, we stated that “Viet Nam Clean Seafood Corporation” was a name variation ineligible for separate rate status, the reasons for which are business proprietary information.<sup>296</sup> In our Trade Name Memo, we stated that “if a company’s trade name or dba is not included in the business registration and on commercial documents showing use of this name for trade purposes, we are not granting separate rate status to that name, even if it had been granted separate rate status in an administrative review prior to the eighth administrative review.”<sup>297</sup>

As noted above for all the other separate rate companies arguing for trade name status, importer data entry error do not qualify as reasons for granting separate rate status to this requested name variation. It is not the Department’s responsibility to ensure that importers properly enter exporter names when completing CBP entry documentation. The Federal Register notices are searchable public documents such that any public person may immediately know what names are granted separate rate status. Furthermore, importers and customs brokers have access to the ACE system used by CBP and can readily identify which companies and trade names obtained separate rate status for the relevant POR. It is also not the Department’s responsibility to correct importers’ entry errors, whether typographical or translation. The Department is not required to grant separate rate status to trade names that are not eligible for it (i.e., without evidence of use in commercial documentation and inclusion in the BRC). Simply requesting separate rate status for a trade name in a separate rate certification, without the required evidence that: 1) the name is on a valid BRC and 2) appears on commercial documentation during the POR, is insufficient for eligibility for separate rate status. Thus, we continue to decline to grant separate rate status to the name variation for which Vietnam Clean Seafood Corporation has requested separate rate status.

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<sup>296</sup> See Trade Name Memo.

<sup>297</sup> Id., at page 3, footnote 14.

**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 \_\_\_\_\_

*Paul Piquado*  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

8 SEPTEMBER 2015  
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”)