

September 8, 2009

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

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

SUMMARY

We have analyzed the case and rebuttal briefs of interested parties in the third administrative review of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam (“Vietnam”). As a result of our analysis, we have made changes to 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 (March 9, 2009) (“Preliminary Results”).

We recommend that you approve the positions described in the “Discussion of the Issues” section of this Issues and Decision Memorandum. Below is the complete list of the issues in this antidumping duty administrative review for which we received comments and rebuttal comments from interested parties:

DISCUSSION OF THE ISSUES

General Issues

Comment 1: Respondent Selection Methodology

Comment 2: Surrogate Country

Comment 3: Treatment of Sales with Negative Margins

Surrogate Values

Comment 4: Wage Rate Calculation

Comment 5: Bangladeshi Inflation Data

Comment 6: Raw Shrimp

A. Surrogate Value Source

B. Period of NACA Data Used

C. Count Size Classifications

Comment 7: Other Surrogate Values

A. By-Products

B. Master Cartons

- C. Inner Boxes
- D. Plastic Trays/Rings
- E. Sticker/Label
- F. Cold Storage

Surrogate Financial Ratios

Comment 8: Use of Gemini Foods Inc.

Comment 9: Treatment of Depreciation Expenses

Comment 10: Treatment of Labor Expenses

Company-Specific Issues

Comment 11: Application of Adverse Facts Available to Minh Phu Group's U.S. Warehousing Expenses

Comment 12: Application of Facts Available to Minh Phu Group's Domestic Warehousing Expenses

Comment 13: Clerical Errors Alleged for Minh Phu Group

A. Treatment of Minh Phu Group's Sample Sales

B. Treatment of Minh Phu Group's Returned Merchandise

C. Minh Phu Group's Import-Specific Assessment

Comment 14: Clerical Errors Alleged for Camimex

Comment 15: Clerical Errors Alleged for Phuong Nam

Comment 16: Treatment of Fish One Revocation Request

Comment 17: Separate-Rate Status of Certain SR Respondents

Comment 18: Treatment of C.P. Vietnam Livestock Co., Ltd.

Comment 19: Treatment of Kim Anh Co., Ltd.

BACKGROUND:

The merchandise covered by the order is certain frozen warmwater shrimp as described in the "Scope of the Order" section of the Preliminary Results. The period of review ("POR") is February 1, 2007, through January 31, 2008. In accordance with section 351.309(c)(ii) of the Department of Commerce's ("the Department") regulations, we invited parties to comment on our Preliminary Results.

On April 10, 2009, the mandatory respondents¹, Fish One², Petitioner³, the Domestic Processors⁴,

¹ The three mandatory respondents are: Minh Phu Group {comprised of Minh Phat Seafood Co., Ltd., Minh Phat Seafood., Minh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.), Minh Phu Seafood Corp., Minh Phu Seafood Corporation, Minh Qui Seafood, Minh Qui Seafood Co., Ltd.} (collectively, Minh Phu Group); Camau Frozen Seafood Processing Import Export Corporation, or Camau Seafood Factory No. 4 ("Camimex"); and Phuong Nam Co. Ltd. ("Phuong Nam").

² Vietnam Fish One Co., Ltd. (Vietnam Fish One) aka Viet Hai Seafoods Company Ltd. ("Vietnam Fish One Co. Ltd.") (collectively, "Fish One").

³ Petitioner is the Ad Hoc Shrimp Trade Action Committee.

⁴ The Domestic Processors are the American Shrimp Processors Association ("ASPA") and the Louisiana Shrimp Association ("LSA").

C.P. Vietnam Livestock Co., Kim Anh Co., Ltd., Contessa Premium Foods, Inc.,⁵ (“Contessa”) and certain separate-rate respondents⁶ (“SR Respondents”) filed case briefs. On April 24, 2009, the mandatory respondents, Fish One, Petitioner, the Domestic Processors, and certain SR Respondents filed rebuttal briefs. On May 11, 2009, Minh Phu Group, Camimex and certain SR Respondents refiled the rebuttal brief to include missing pages inadvertently excluded from the April 24, 2009 rebuttal brief. On June 4, 2009, the Department held a public hearing pursuant to section 351.310(d)(1) of the Department’s regulations. On June 22, 2009, the Department placed on the record of this review information reported by Minh Phu Group in the preceding administrative review. See Memorandum to the File from Irene Gorelik, Analyst, re; Domestic Warehousing Data for Minh Phu Group, dated June 22, 2009 at Attachment I. We invited comments from interested parties regarding this information. No interested parties provided comment regarding this information.

General Issues

Comment 1: Respondent Selection Methodology

Petitioner argues that the Department erred in selecting respondents for individual review based on data obtained from U.S. Customs and Border Protection (“CBP”), which, Petitioner contends is flawed. Petitioner argues that the CBP data is flawed because it is only as reliable and accurate as the information reported by U.S. importers on CBP entry forms, that may be incomplete or improperly completed or inconsistent, which results in errors reflected in the CBP data used by the Department. Petitioner states that despite its comments urging the Department to issue quantity and value questionnaires to all companies upon which the review was initiated, the Department still selected respondents employing the CBP data. Petitioner further argues that the Department’s use of CBP data to select respondents deviated from Department practice with no explanation. Petitioner also adds that the Department has been inconsistent in its respondent selection methodology because in a recent segment of the certain wooden bedroom furniture from the People’s Republic of China (“PRC”) proceeding, the Department issued quantity and value questionnaires to select respondents. Petitioner insists that the Department issue quantity and value questionnaires to respondents in the instant proceeding and release CBP data for POR entries

⁵ Contessa is a U.S. importer.

⁶ These certain SR Respondents are entities upon which we initiated a review, submitted separate rate certifications or applications, have been cooperative, but were not selected for individual examination. They are: Bac Lieu Fisheries Company Limited; Bac Lieu Fisheries Company Limited (“Bac Lieu”); Cadovimex Seafood Import–Export and Processing Joint Stock Company (“CADOVIMEX”); Cadovimex Seafood Import–Export and Processing Joint–Stock Company (“Cadovimex–Vietnam”); Cai Doi Vam Seafood Import–Export Company (Cadovimex); Can Tho Agricultural and Animal Product Import Export Company (“CATACO”); Can Tho Agricultural and Animal Products Import Export Company (“CATACO”); Can Tho Agricultural Products; Cantho Imp & Exp Seafood Join, a.k.a. Caseamex; Thuan Phuoc Seafoods and Trading Corporation; Thuan Phuoc Seafoods and Trading Corporation (and its affiliates); Frozen Fty; Frozen Seafoods Factory No. 32; Frozen Seafoods Fty; Grobest & I–Mei Industrial (Vietnam) Co., Ltd.; Grobest & I–Mei Industry Vietnam; Minh Hai Export Frozen Seafood Processing Joint Stock Company; Minh Hai Export Frozen Seafood Processing Joint Stock Company (“Minh Hai Jostoco”); Minh Hai Export Frozen Seafood Processing Joint–Stock Company (“Minh Hai Jostoco”); Sao Ta Foods Joint Stock Company (“Fimex VN”); Sao Ta Foods Joint Stock Company (“FIMEX”); Soc Trang Aquatic Products and General Import Export Company (“Stapimex”); Soc Trang Aquatic Products and General Import–Export Company (“STAPIMEX”); UTXI Aquatic Products Processing Company; UTXI Aquatic Products Processing Company; the complete listing of cooperative, non-reviewed companies that were granted separate rate status are listed in the final results Federal Register notice.

of shrimp, both subject and not subject to the order.

In rebuttal, Minh Phu Group and Camimex argue that the Department provided sufficient time for interested parties to comment on the intended respondent selection methodology for this administrative review. Further, Minh Phu Group and Camimex did not object to the Department's use of CBP data to select respondents, which, they argue, was reasonable and consistent with past practice.

Additionally, contrary to Petitioner's assertion, Contessa argues that the Department sufficiently explained its respondent selection methodology in the Memorandum to James Doyle, Director, Office 9, Import Administration from Paul Walker, Senior Analyst, Office 9, re; Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Selection of Respondents for Individual Review, dated June 9, 2008 ("Respondent Selection Memo").

Department's Position:

The Department disagrees with Petitioner with respect to our respondent selection methodology employed in this proceeding. Section 777A(c)(2)(B) of the Tariff Act of 1930, as amended ("Act") states that, if it is not practicable to individually examine each exporter and producer, the Department may limit examination of exporters or producers to those accounting for the largest volume of subject merchandise exported during the POR. Therefore, based on our resources and pursuant to section 777A(c)(2)(B) of the Act, we selected three exporters for individual review. See Respondent Selection Memo. The Department notes that our practice in selecting respondents in administrative reviews has been to examine CBP data of subject entries and select respondents accounting for the largest volume of exports of subject merchandise, as directed in section 777A(c)(2)(B) of the Act.⁷

With respect to Petitioner's argument that the Department has recently issued quantity and value questionnaires in the fourth administrative review of certain wooden bedroom furniture from the PRC, we note that, in that case, we were not able to rely on CBP data to examine the volume of subject entries because the units used to measure import quantities were not consistent for the U.S. Harmonized Tariff Schedule ("USHTS") categories identified in the scope of that order. Because CBP data for volume of exports of subject merchandise was not available, the Department looked to other means for gathering volume data for the purposes of respondent selection, in accordance with section 777A(c)(2)(B) of the Act.

Conversely, here, the volume of subject entries within the CBP data was reported with consistent units of measure. Moreover, our intended respondent selection methodology was clearly stated in the Notice of Initiation of Administrative Reviews of the Antidumping Duty Orders on Frozen Warmwater Shrimp from the Socialist Republic of Vietnam and the People's Republic of China, 73 FR 18739 (April 7, 2008) ("Initiation Notice"), whereupon, the Department also invited

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

interested parties to comment on the respondent selection methodology. The Department fully considered and addressed interested parties' comments in the Respondent Selection Memo and the Preliminary Results. And, upon consideration of interested parties' case briefs and rebuttal briefs, we continue to find that our respondent selection methodology is reliable and appropriate. We also disagree with Petitioner's argument that the CBP data is an unreliable proxy for determining exporters' and producers' export volume of subject merchandise. We note that CBP data represents reliable data on entries of subject merchandise and are readily available to the Department. See Certain Frozen Warmwater Shrimp From India: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 33409 (July 13, 2009) ("India Shrimp Final 2009") and accompanying Issues and Decision Memorandum at Comment 2. Furthermore, the data are compiled from actual entries of merchandise subject to the order based on information required by and provided to the U.S. government authority responsible for permitting goods to enter the United States. The entries compiled within the database used by the Department to select respondents are the same entries upon which the antidumping duties determined by this review will be assessed. Additionally, Petitioner cites to a proprietary verification report for a separate case in arguing the alleged flaws within the CBP data. We note that this verification report is proprietary and not available on the record of this review.

Further, we disagree with Petitioner's request for the Department to issue quantity and value questionnaires to the respondents at this stage of the proceeding. As explained above, our normal practice is to use CBP volume data in selecting respondents in administrative reviews. See, e.g., Respondent Selection Memo and CLPP 2009. We have deviated from this practice only when we have determined based on substantial record evidence that the CBP data are unreliable or unusable. See, e.g., Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews and Partial Rescission of Review, 74 FR 6372, 6373 (February 9, 2009) unchanged in Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374, August 17, 2009. No such evidence is present in this review. Moreover, given that quantity and value data may not be as or more reliable than CBP data, is subject to the parties' willingness to respond, and is a costly and time-consuming data collection process, particularly when there are many review requests, we find CBP data to be a reasonable and preferable basis for respondent selection. Because we selected respondents using CBP data and conducted full reviews of those respondents, Petitioner's request that quantity and value questionnaires be issued at this stage of the proceeding is impracticable. See India Shrimp Final 2009 at Comment 2. Therefore, for the final results of this review, we will not issue quantity and value questionnaires to any exporters or producers subject to the instant proceeding and continue to find that our selection of respondents for this review was properly based on CBP data.

Comment 2: Surrogate Country

Petitioner argues that India, not Bangladesh, is the most appropriate surrogate country for this administrative review. First, Petitioner states that India is at a comparable level of economic development to Vietnam based on the per capita gross national income ("GNI"). Petitioner makes particular note that India's per capita GNI of \$820 is closer to Vietnam's per capita GNI of \$690 than that of Bangladesh's per capita GNI of \$480. Second, Petitioner notes that the

Department has stated that India is a significant producer of identical merchandise to the merchandise under review. Third, Petitioner contends that the publicly available information with which to value factors of production submitted on January 30, 2009, and March 27, 2009, provides Indian surrogate value information on the record. Fourth, Petitioner notes that the Department has, in the past, relied on Indian data for purposes of valuing factors of production in non-market economy proceedings.

Additionally, Petitioner argues that selecting Bangladesh as the surrogate country solely on the presumption that the raw shrimp surrogate value data within a study conducted by the Network of Aquaculture Centers in Asia-Pacific (“NACA”) are more reliable than the Indian raw shrimp surrogate values and represent a broad market average of prices, while the Indian data do not, was incorrect. Petitioner further argues that if surrogate value data for raw shrimp is the driving force of surrogate country selection, then India should be selected as the surrogate country because the Indian surrogate values for shrimp are on the record without requiring the Department to extrapolate additional values for count sizes not specified in the NACA study.

The Domestic Processors also argue that the Department should select India as the surrogate country in this review. The Domestic Processors argue that, although the Department may interpret the statute at its discretion in selecting surrogate factor values, the discretion is not unlimited, citing to Rhodia Inc. v. United States, 25 CIT 1278, 1286, 185 F.Supp.2d 1343, 1351 (CIT 2001). The Domestic Processors contend that the Department’s preferences for certain surrogate value methodologies provided in the regulations do not supersede the requirements under the antidumping law, which is to calculate the most accurate dumping margins.⁸ The Domestic Processors also argue that the Department may select a surrogate country based on relative production volume of comparable merchandise rather than relative economic comparability of the countries to determine margins as accurately as possible.⁹

The Domestic Processors maintain that India should be selected as the surrogate country because: 1) India produces significant quantities of comparable and identical merchandise while Bangladesh does not, 2) India is economically comparable to Vietnam, and 3) the record contains reliable public information regarding Indian factor values.

In rebuttal, Contessa states that the Department should continue to designate Bangladesh as the surrogate country and reject Petitioner’s and The Processors’ arguments to select India as the surrogate country. Contessa argues that, despite Petitioner’s assertion to the contrary, the rankings of the GNI of each country within the pool of potential surrogate countries is irrelevant to the surrogate country selection process, which relies on the best quality of surrogate value data available. Contessa further argues that the Department properly identified countries economically comparable to Vietnam that are significant producers of comparable merchandise and looked to the available data to determine the appropriate surrogate country. Contessa notes that the Department conducted that exercise by comparing the data submitted by Petitioner and the NACA data provided by respondents. Contessa argues that the Department selected Bangladesh

⁸ Citing to Luoyang Bearing Factory v. United States, 26 CIT 1156, 1165 n.8, 240 F. Supp. 2d 1268, 1279 n.8 (2002).

⁹ Citing to Crawfish Processors Alliance v. United States, 28 CIT 646, 653-654, 343 F. Supp. 2d 1242, 1251 (2004) and 477 F.3d 1375 (Fed.Cir. 2007).

as the surrogate country because the NACA data satisfied the Department's surrogate value criteria whereas, the Indian surrogate value data did not. Contessa claims that the Indian source for the raw shrimp surrogate value, besides not being representative of broad-market average, is publicly ranged data from one Indian processor and competitor, who may over-inflate the ranged pricing data in case it may be used as a surrogate value source. Contessa further argues that the incomplete and unsuitable Indian surrogate financial statements on the record further disqualified the selection of India as a surrogate country. Contessa urges the Department to continue to use Bangladesh as the surrogate country in the final results of this review because the Bangladeshi sources on the record with which to value shrimp, overhead, selling, general and administrative expenses, and profit are superior to those of Indian sources on the record.

Minh Phu Group and Camimex oppose Petitioner's and the Processors' arguments to use India as the surrogate country. Minh Phu Group and Camimex argue that, contrary to Petitioner's and The Processors' claims: 1) India is not more similar to Vietnam than Bangladesh with respect to type of shrimp produced and the methods used to produce shrimp, 2) the Indian raw shrimp surrogate value data is publicly ranged, thus not accurate, 3) the NACA data is reliable and has been used in the two preceding segments of this proceeding, 4) the surrogate financial statements from Bangladesh remain the best information available on the record, and 5) a surrogate country determination cannot be reversed for the sake of relative contemporaneity of factors that represent a small percentage of the normal value, such as packing.

Department's Position:

We disagree with Petitioner and the Domestic Processors with respect to the primary surrogate country selected for this administrative review. In the Preliminary Results, we stated that information on the record shows that Bangladesh is an appropriate surrogate country because Bangladesh is at a similar level of economic development pursuant to section 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has reliable, publicly available data representing a broad-market average for surrogate valuation purposes.

Despite Petitioner's and the Domestic Processors' assertion to the contrary, our surrogate country selection process in the Preliminary Results followed the Department's well-established practice described in the Department's Policy Bulletin 4.1, dated March 1, 2004. See U.S. Department of Commerce, Import Administration Policy Bulletin 4.1 at 2 (March 1, 2004) ("Policy Bulletin 4.1").¹⁰ Specifically, our preliminary decision to use Bangladesh as the surrogate country was based on the following: (1) Bangladesh is at a comparable level of economic development to Vietnam, 2) Bangladesh is a significant producer of comparable merchandise, and 3) the Bangladeshi data satisfy the Department's selection criteria more completely than that of India, such as publicly available sources, representing a broad-market average, and contemporaneity with the POR.

As stated in the Preliminary Results, pursuant to our practice, we received a list of potential

¹⁰ The Policy Bulletin is available at <http://ia.ita.doc.gov/policy/bull04-1.html>.

surrogate countries from the Office of Policy (“OP”).¹¹ The OP determined that Bangladesh, Pakistan, India, Sri Lanka, and Indonesia were all at a comparable level of economic development to Vietnam. Section 773(c)(4) of the Act does not require that we select the country that is most economically comparable. Because these countries may offer varying levels of usable surrogate value data, and because the statute does not require the Department to select the most comparable country, we do not rank the five selected countries. See Policy Bulletin 4.1; see also Surrogate Country List; see also Dorbest Ltd. et al. v. United States, 462 F. Supp. 2d 1262, 1275 (CIT 2006) (“Dorbest I”) (citing Tehnoimportexport, 767 F. Supp at 1175). Accordingly, our policy of considering the listed countries as equal in terms of economic comparability is reasonable and consistent with the statute. Thus, we found that Bangladesh, Pakistan, India, Sri Lanka, and Indonesia are all at an economic level of development equally comparable to that of Vietnam.¹²

Second, in the Preliminary Results, we relied on 2005 data published in the FishStat Database (“FishStat”) of the Food and Agricultural Organization (“FAO”) of the United Nations to, first, identify which countries on the Surrogate Country List were producers of comparable merchandise and, then, determine which of those countries produced significant quantities of comparable merchandise.¹³ From the FishStat data we determined that Indonesia, India and Bangladesh were significant producers of comparable merchandise compared with Sri Lanka and Pakistan. Consequently, we discontinued consideration of Sri Lanka and Pakistan as appropriate surrogate country choices. Thus, the remaining countries from the Surrogate Country List, Indonesia, India, and Bangladesh, were subject to further consideration as appropriate surrogate country choices.

Domestic Processors have argued that, according to the FishStat Data Memo, Bangladesh does not produce black tiger shrimp, while India and Vietnam only produce black tiger shrimp. We find that this argument is unsupported by record evidence. The NACA study, as conducted by the

¹¹ See the Department’s letter to all interested parties, dated September 11, 2008, with attached Memorandum from Carole Showers, Acting Director, Office of Policy, to Catherine Bertrand, Program Manager, AD/CVD Enforcement, Office 9: Administrative Review of Certain Warmwater Shrimp from Vietnam: Request for a List of Surrogate Countries, dated July 29, 2008 (“Surrogate Country List”) from the OP.

¹² See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 73 FR 52273 (September 9, 2008) and accompanying Issues and Decision Memorandum at Comment 1 (“Vietnam Shrimp AR2”); Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review, 72 FR 52052 (September 12, 2007) (“Vietnam Shrimp AR1 Final”) unchanged from Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results of the First Administrative Review and New Shipper Review, 72 FR 10689, 10695 (March 9, 2007) (“Vietnam Shrimp AR1 Prelim”); Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam, 69 FR 71005 (December 8, 2004) (“Vietnam Shrimp LTFV”) unchanged from Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam, 69 FR 42672, 42678 (July 16, 2004).

¹³ As stated in the Preliminary Results, we note that the 2005 FishStat data was the most recent data available from FishStat’s website at that time. See Preliminary Results at 10014; see also Memorandum to the File from Irene Gorelik, Analyst, re; Third Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: FishStat Data for Surrogate Country Selection, dated March 2, 2009 (“FishStat Data Memo”).

FAO, discusses in great detail the types of shrimp produced in Bangladesh, Vietnam, and Indonesia. Specifically, the NACA study states that “priority was given to collecting data on *Penaeus monodon* (black tiger or ‘tiger’ shrimp), as this was the major traded species in all three countries.”¹⁴ The NACA study continues to specify that “the species used for the comparative analysis was *P. monodon* since this was the only shrimp species produced in large volumes in all the three countries...” *Id.* at Exhibit 7, page 13. Finally, the NACA study provides Bangladeshi-specific analyses of black tiger shrimp trade volumes. *Id.* at Exhibit 7, pages 58-59. Therefore, based on the NACA study, a public and reliable source, we find that Bangladesh is a producer of comparable merchandise. With respect to the argument that the FishStat data for Bangladesh does not provide the specific species name of *P. monodon*, we note that FishStat reported the species of *Penaeus Shrimps nei* for Bangladesh, which includes the various specific species such as *Penaeus Monodon*, *Penaeus Indicus*, *Penaeus Vannamei*, etc. See FishStat Data Memo at Attachment II. Thus, because FishStat reported that Bangladesh produced *Penaeus Shrimp nei* and the NACA study has affirmed the *Penaeus Monodon* is the primary shrimp species produced in Bangladesh, we find that these two sources are reliable evidence showing that Bangladesh is a significant producer of comparable merchandise.

Additionally, Domestic Processors assert that Bangladesh is not a significant producer of comparable merchandise compared to India and Vietnam. However, in their arguments, Domestic Processors neglected to include Indonesia, Sri Lanka, and Pakistan in the comparison with Bangladesh, India, and Vietnam. As stated above, among the potential surrogate countries, Sri Lanka and Pakistan were ranked significantly beneath Indonesia, India, and Bangladesh in terms of volume of comparable merchandise produced. See FishStat Data Memo. Furthermore, if production rankings of significant producers were the only criterion to consider, then Indonesia, ranked above India, would be the clear frontrunner. However, based on the available FAO data, we also considered production methodology of processors in the potential surrogate countries. The FishStat Data Memo shows that 78 percent of Vietnam’s shrimp production is based on aquaculture, or farming, while only 27 percent of India’s shrimp production is aquaculture-based and 64 percent of Indonesia’s shrimp production is aquaculture-based.¹⁵ However, 100 percent of Bangladesh’s shrimp production is aquaculture-based. *Id.* Therefore, we continue to find that, compared with Indonesia and India, Bangladesh is a significant producer of comparable merchandise with shrimp production methods that closely mirror the raw shrimp production methodology practiced in Vietnam.

Finally, we considered the available data from Indonesia, India, and Bangladesh with which to value raw shrimp, the main input for subject merchandise production. The Department’s determination to select Bangladesh as the primary surrogate country rested with considering the available data that would fulfill a wider range of our established surrogate value selection criteria. Specifically, among other factors examined, we considered the availability of publicly-available count-size specific data representing a broad-market average. With respect to Indonesia, we found that, unlike the Bangladeshi data within the NACA study, “the Indonesian shrimp data is

¹⁴ See NACA Study submitted by Minh Phu Group and Camimex dated January 30, 2009 at Exhibit 7, page 12.

¹⁵ See FishStat Data Memo at Attachment II. We note that, while the world production rankings of comparable merchandise (frozen shrimp) was based on 2005 FAO data, the data in Attachment II of the FishStat Data Memo represents raw shrimp production quantities from 2006, which were available on FAO’s website at the Preliminary Results.

limited and does not satisfy as many factors of the Department's data selection criteria (e.g., broad-market average)." See Preliminary Results at 10014. Moreover, other than a surrogate value for shrimp scrap, the record does not contain any Indonesian surrogate values for non-shrimp factors of production or financial statements of Indonesian companies to calculate surrogate financial ratios. Additionally, 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. Thus, not only is the Indian data not contemporaneous with the POR, but it represents the ranged data of only one company. However, as we stated in the Preliminary Results, "the Bangladeshi shrimp values within the NACA study are compiled by the UN's FAO from actual pricing records kept by Bangladeshi farmers, traders, depots, agents, and processors..." which represent "...a broad-market average and are publicly available, unlike those of the single Indian processor." See Preliminary Results at 10014-15.

Therefore, based on the evidence on the record, we determine that Bangladesh continues to be the most appropriate surrogate country in this review, and we will continue to use Bangladesh as the primary surrogate country for the final results of this administrative review.

Comment 3: Treatment of Sales with Negative Margins

Contessa argues that the Department should recalculate Camimex's margin to comply with the World Trade Organization's ("WTO") decision regarding transaction-specific or product-specific negative dumping margins calculated in the dumping margin programming. Contessa claims that if the Department offset positive and negative margins, it would eliminate the preliminary weighted-average dumping margin calculated for Camimex. Contessa further argues that the Department's continued practice setting negative margins to zero (i.e., "zeroing") does not comply with the WTO Appellate Panel.¹⁶ Contessa also claims that the Department's previous interpretation of section 771(35)(A) of the Act with respect to dumping margin calculations does not preclude the Department from considering the inclusion of negative dumping margins in the weighted-average margin applied to respondents, as the law does not provide for the practice of zeroing. Citing to SKF USA Inc. v. United States, 254 F.3d 1022, 1029-30 (Fed.Cir. 2001), Contessa argues that the U.S. Court of Appeals for the Federal Circuit ("CAFC") has held that where the Department has authority to interpret the statute, the Department may reassess its policy with respect to a pending case. Contessa also claims that, in the past, the Department has adopted changes in its interpretation of the statute for use in pending cases. Finally, Contessa argues that the Department ought to change its zeroing methodology to comply with international obligations.¹⁷ Thus, Contessa argues, for the final results, the Department should account for negative margins in the weighted-average dumping margin calculation.

Fish One and Phuong Nam argue that the Department should not employ its practice of "zeroing" in calculating the final results weighted-average dumping margin, in accordance with findings of

¹⁶ Contessa cites to United States – Measures Relating to Zeroing and Sunset Reviews, WT/DS322/AB/R (January 9, 2007).

¹⁷ Contessa cites to Alexander Murray v. Schooner Charming Betsy, 6 U.S. (2 Cranch.) 64, 118 (1804) and Luigi Bormioli Corp. v. United States, 304 F.3d 1362, 1368 (Fed.Cir. 2002) which addressed statutory interpretations consistent with international obligations.

the Appellate Body of the WTO. Specifically, Fish One and Phuong Nam note that, recently, the WTO Appellate Body found that zeroing in administrative reviews is inconsistent with the WTO Antidumping Agreement.¹⁸ Fish One and Phuong Nam argue that, because the WTO Appellate Body has ruled that zeroing in reviews is contrary to U.S. obligations and the Department has already eliminated its practice of zeroing in investigations, the Department should recalculate the margins in this review without incorporating the practice of zeroing in the final results.

Minh Phu Group, Camimex, and certain SR Respondents argue that the Department should refrain from utilizing the “zeroing” methodology in the final results, in compliance with the findings of the WTO Appellate Body.¹⁹

In rebuttal, Petitioner argues that the Department should continue to employ its zeroing methodology for the final results. According to Petitioner, other than in antidumping investigations, where the average-to-average comparison methodology is used, the Department does not permit non-dumped sales to offset the amount of dumping with respect to dumped sales. Petitioner notes that this methodology and interpretation of the statute was upheld by the CAFC, which affirmed the Department’s use of zeroing in administrative reviews until the Department itself officially abandons the practice. See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722 (December 27, 2006) (“Zeroing Notice”); and NSK Ltd. v. United States, 510 F.3d 1375 (Fed. Cir. 2007) (“NSK”). Petitioner further argues that the Department has already considered the claims in other proceedings that the decisions of the WTO Appellate Body require the Department to eliminate zeroing in administrative reviews, and determined that the Appellate Body’s decisions to date have no bearing on whether the Department’s zeroing practice is consistent with U.S. law.²⁰ Petitioner further argues that the Department has repeatedly rejected parties’ “zeroing” arguments in other antidumping cases.²¹ Therefore, Petitioner asserts that the Department should continue to deny offsets for non-dumped transactions in the final results of this administrative review.

Domestic Processors argue that the respondents’ arguments are in error with respect to the Department’s “zeroing” practice as it applies to administrative reviews. Domestic Processors contend that the statute does not prohibit the “zeroing” methodology. The Domestic Processors argue that, on the contrary, the very nature of the statute requires the “zeroing” methodology to be

¹⁸ Fish One and Phuong Nam cite to United States - Measures Relating to Zeroing and Sunset Reviews, Appellate Body Report, WT/DS322/AB/R (January 9, 2007).

¹⁹ Minh Phu Group, Camimex, and certain SR Respondents cite to United States – Continued Existence and Application of Zeroing Methodology, WT/DS350/AB/R (February 4, 2009).

²⁰ See e.g., Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part, 73 FR 15132 (March 21, 2008) and accompanying Issues and Decision Memorandum at Comment 2; Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Thirteenth Administrative Review 73 FR 14220 (March 17, 2008) and accompany Issues and Decision Memorandum at Comment 1; Petitioner additionally cites four other recent determinations where the Department rejected a zeroing argument in the final results. See Petitioner’s Rebuttal Brief dated May 14, 2008, at 14.

²¹ Petitioner cites to numerous recent antidumping duty cases where the practice of “zeroing” has been applied by the Department in administrative reviews. See Petitioner’s rebuttal brief dated April 24, 2009, at footnote 7.

applied to sales of goods at less than fair value. Domestic Processors contend that the Department's "zeroing" methodology in administrative reviews has been repeatedly affirmed by the CAFC.²²

Department's Position:

We have not changed our calculation of the weighted-average dumping margin as suggested by the respondent for these final results of review.

Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." Outside the context of antidumping investigations involving average-to-average comparisons, the Department interprets this statutory definition to mean that a dumping margin exists only when normal value is greater than export or constructed export price. As no dumping margins exist with respect to sales where normal value is equal to or less than export or constructed export price, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The CAFC has held that this is a reasonable interpretation of the statute. See, e.g., Timken Co. v. United States, 354 F.3d 1334, 1342 (Fed. Cir. 2004) ("Timken"); Corus Staal BV v. Department of Commerce, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005), cert. denied; 126 S. Ct. 1023, 163 L. Ed. 2d 853 (Jan. 9, 2006) ("Corus I").

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

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

The CAFC explained in Timken that denial of offsets is a "reasonable statutory interpretation given that it legitimately combats the problem of masked dumping, wherein certain profitable sales serve to mask' sales at less than fair value." Timken, 354 F.3d at 1343. As reflected in that

²² The Domestic Processors cite to, among others, the recent Koyo Seiko Co. v. United States, 551 F.3d 1286, 1290-91 (Fed. Cir. 2008) and SKF USA Inc. v. United States, 537 F.3d 1373, 1382 (Fed. Cir. 2008), where the "zeroing" methodology was upheld for administrative reviews.

opinion, the issue of so-called masked dumping was part of the policy reason for interpreting the statute in the manner interpreted by the Department. No U.S. court has required the Department to demonstrate “masked dumping,” before it is entitled to invoke this interpretation of the statute and deny offsets to dumped sales. See, e.g., Timken, 354 F.3d at 1343; Corus I, 395 F.3d 1343; Corus Staal BV v. United States, 502 F.3d 1370, 1375 (Fed. Cir. 2007) (“Corus II”); and NSK Ltd. v. United States, 510 F.3d 1375 (Fed. Cir. 2007).

The respondent has cited WTO dispute-settlement reports (“WTO reports”) finding the denial of offsets by the United States to be inconsistent with the Antidumping Agreement. As an initial matter, the CAFC has held that WTO reports are without effect under U.S. law, “unless and until such a [report] has been adopted pursuant to the specified statutory scheme” established in the Uruguay Round Agreements Act (“URAA”). See Corus I, 395 F.3d at 1347-49; accord Corus II, 502 F.3d at 1375; NSK, 510 F.3d 1375. Congress has adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports. See, e.g., 19 USC 3538. 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. See 19 USC 3538(b)(4) (implementation of WTO reports is discretionary). Moreover, as part of the URAA process, Congress has provided a procedure through which the Department may change a regulation or practice in response to WTO reports. See 19 USC 3533(g); see, e.g., Zeroing Notice. With regard to the denial of offsets in administrative reviews, the United States has not employed this statutory procedure.

With respect to United States-Laws, Regulations and Methodology for Calculating Dumping Margins (Zeroing), WT/DS294/AB/R (April 18, 2006) (“US-Zeroing (EC)”), the Department has modified its calculation of weighted-average dumping margins when using average-to-average comparisons in antidumping investigations. See Zeroing Notice. In doing so, the Department declined to adopt any other modifications concerning any other methodology or type of proceeding, such as administrative reviews. Id. 71 FR at 77724.

With respect to United States-Measures Relating to Zeroing and Sunset Reviews, WT/DS322/AB/R (Jan. 9, 2007) (“US-Zeroing (Japan)”), and United States-Continued Existence and Application of Zeroing Methodology, WT/DS350/AB/R (Feb. 9, 2009) (“US-Zeroing (EC II)”), the steps taken in response to these reports do not require a change to the Department’s approach of calculating weighted-average dumping margins in the instant administrative review. For all these reasons, the various WTO Appellate Body reports regarding “zeroing” do not establish whether the Department’s denial of offsets in this administrative review is consistent with U.S. law. Accordingly, and consistent with the Department’s interpretation of the Act described above, in the event that any of the export transactions examined in this review are found to exceed normal value, the amount by which the price exceeds normal value will not offset the dumping found in respect of other transactions.

Surrogate Values

Comment 4: Wage Rate Calculation

Contessa, Fish One, Phuong Nam, Minh Phu Group, Camimex, and certain SR Respondents argue that the Department should adopt a new surrogate value for labor following the direction of a U.S. Court of International Trade (“CIT”) decision.²³ All respondents argue that the CIT decision in Allied concluded that the Department’s regulation under section 351.408(c)(3) is contrary to section 773(c) of the Act, and thus invalid because the regulation contradicts the statutory language which directs the Department to value factors of production using data from a country at a comparable level of economic development and a significant producer of comparable merchandise. All respondents argue that the contemporaneous Bangladeshi labor rate submitted by Contessa on March 30, 2009, should be used to value labor for the final results.

Petitioner and Domestic Processors rebut respondents’ argument by stating that Allied is not a final decision since the appeal period has not run, citing to Fed. R. App. P. 4(a)(1)(B), nor has the Department indicated that it will change its methodology. Therefore, Petitioner and Domestic Processors state that it remains Department practice to use the regression analysis methodology. Petitioner and Domestic Processors also contend that, in fact, the Department recently reaffirmed its practice in Frontseating Service Valves From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances, 74 FR 10886 (March 13, 2009) and accompanying Issues and Decision Memorandum at Comment 3 (“FSV LTFV”).

Petitioner adds that the Department had explained its regression analysis methodology in Dorbest Ltd. v. United States, 547 F. Supp.2d 1321 (CIT 2008) (“Dorbest II”), in which it was also stated that Allied has not been issued as a final order, nor had appellate rights been exhausted. Petitioner notes that none of the respondents had addressed the fact that the Department has repeatedly rejected arguments opposing the regression analysis methodology within Dorbest II and FSV LTFV. Domestic Processors add that it would be premature for the Department to abandon the regression analysis methodology before the CIT appeals process runs. Moreover, Domestic Processors argue that, in any event, if the Department were to select an alternative labor surrogate value, the value should be from an Indian source rather than a Bangladeshi source.

Department’s Position:

We disagree with the Vietnamese respondents’ and Contessa’s argument that the regression methodology is contrary to the antidumping statute. The Department’s long-standing regression methodology, set forth in the Department’s regulations at 19 CFR 351.408(c)(3) had been affirmed by the CIT in Dorbest II and was used recently, in FSV LTFV. As we stated in FSV LTFV, “the Department disagrees that the regression methodology, provided for in 19 CFR 351.408(c)(3), is in contravention with our obligations under section 773(c) of the Act.” See FSV LTFV at Comment 5.

Section 773(c)(1) of the Act states that, where, as in this case, the subject merchandise is exported

²³ Contessa cites to Allied Pacific Food Co., Ltd. v. United States, 587 F. Supp. 2d 1330, 1360 (CIT 2008) (“Allied”) and subsequent final results of redetermination pursuant to court remand, Allied Pacific Food, et. al v. United States Court No. 05-00056 Slip Op. 08/138 (CIT December 22, 2008).

from a non-market economy (“NME”) country, “the valuation of factors of production shall be based on 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.” See section 773(c)(1) of the Act. While the Act does not define “best available information,” it provides that the Department, “in valuing factors of production under paragraph (1), shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are -- (A) at a level of economic development comparable to that of the nonmarket economy country, and (B) significant producers of comparable merchandise.” See section 773(c)(4) of the Act.

In accordance with the guidance provided, and discretion permitted pursuant to section 773(c) of the Act, the Department calculates the labor wage rate using a regression analysis. Section 351.408(c)(3) of the Department’s regulations provides that the Department:

. . . will use regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries. The Secretary will calculate the wage rate to be applied in nonmarket economy proceedings each year. The calculation will be based on current data, and will be made available to the public.

See 19 C.F.R. 351.408(c)(3).

Furthermore, in FSV LTFV, the Department provided a detailed and thorough explanation of the regression analysis methodology for labor. We stated that:

First, the Department uses a regression analysis to estimate the linear relationship between per-capita GNI and hourly wage rates in all market economy countries that meet the requirements detailed below. Second, the Department uses the results of the regression analysis and the GNI data for the particular NME country to estimate the hourly wage rate for that country. The result is the expected NME country labor/wage rate for each NME country.

See FSV LTFV at Comment 5.

Further, we stated that:

to calculate the regression, the Department uses four separate data series: country-specific earnings data from the ILO’s Yearbook of Labour Specifics; country-specific consumer price index (“CPI”) data from the International Monetary Fund (“IMF”); exchange rate data from the IMF; and country-specific GNI data from the World Bank. The wage rate data from the ILO are converted to hourly wage rates and adjusted using CPI data so that they are representative of the current “Base Year,” the most recent reporting year, which is two years prior to the current year. These data are then converted into U.S. dollars using exchange rate data.

In order to ensure that the wage rate data provide a complete picture of labor in the particular market economy, the Department requires that the data fall within the following hierarchy of parameters: (1) coverage of both men and women; (2) coverage of different types of industries; (3) coverage of different types of workers, such as wage earners or salaried employees; (4) the unit of time for which the wage is reported, such as per hour or per month; and (5) a code for the source of the data. Because the parameters are hierarchical, the Department first looks to the parameter for gender, and always chooses data that cover both men and women, then chooses data that cover all reported industries as described in (2) above, and so on.

Id.

If there is more than one record in the ILO database that meets the criteria of (1) and (2), the Department looks to the remaining parameters. The Department then prioritizes the data that are closest to the Base Year with respect to the remaining parameters. The Department uses wage rate data from all market economy countries that meet the criteria discussed above. The data are converted into US dollars using Base Year period-average exchange rates reported by the IMF. Next, the Department uses Base Year GNI data for each of the countries in the Department's analysis, as reported by the World Bank, to calculate a regression for these data. The results of this regression analysis describe generally the relationship between hourly wage rates and GNI. In order to determine the estimated wage rate for the specific NME country, the Department applies the Base Year GNI for the NME.

As stated above, this methodology was affirmed by the CIT in Dorbest II. Moreover, a detailed description of the Department's labor methodology is set forth in Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology, 70 FR 37761 (June 30, 2005), and was further updated in Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716 (October 19, 2006).

The Vietnamese respondents and Contessa argue that the Department must utilize labor rates taking into account economic comparability of the market economies used, and whether the countries used are significant producers of comparable merchandise. The Department considers its method for valuing labor to be consistent with the statute. The Department further considers that the regression methodology constitutes the best available information for purposes of valuing labor. The Department's methodology avoids extreme variances in labor wage rates that exist across market economies, and instead, accounts for the global relationship between GNI and wages. This is then used to determine an expected wage rate for the specific NME country, using that country's GNI. When promulgating its regulations, the Department explained:

{U}se of this average wage rate will contribute to both the fairness and the predictability of NME proceedings. By avoiding the variability in results depending on which economically comparable country happens to be selected as the surrogate, the results are much fairer to all parties. To enhance predictability, the average wage to be applied in any NME proceeding will be calculated by the

Department each year, based on the most recently available data, and will be available to any interested party.

See Antidumping Duties; Countervailing Duties Part II, 61 FR 7308, 7345 (February 27, 1996) (“Proposed Rule”).

Although section 773(c) of the Act provides guidelines for the valuation of the FOPs, it also accords the Department wide discretion in the valuation of FOPs.²⁴ The statute requires the use of the “best available information,” but it does not define the term, nor does it clearly delineate how the Department should determine what constitutes the best available information.²⁵ The Department’s regulation prescribes a methodology that reflects a permissible interpretation of what the statute allows with respect to the determination of labor wage rates, by calculating the market economy wage rate for a country at a comparable level of economic development, that is, for a market economy country with the same per capita GNI as the nonmarket economy. While the requirement to use the “best available information” is an unqualified statutory mandate, the statute only directs the Department to draw factor values from economically comparable countries and significant producers of comparable merchandise, “to the extent possible.” See section 773(c)(4) of the Act. For this reason, we do not find that we can select values that meet the requirements of sections 773(c)(4)(A) and (B) of the Act, if such values do not represent the “best available information. . . in a market economy country or countries considered to be appropriate by {the Department}” as required by section 773(c)(1) of the Act. Moreover, the CIT found the Department’s regulation is not inconsistent with its statutory mandate. See Dorbest I.

Furthermore, the Department considers that its regression analysis sufficiently takes economic comparability of market economies, utilized in the regression, into account. The regression analysis utilized by the Department calculates a wage rate that reflects what the market economy rate would be for a country at a level of economic development comparable to the NME country. The regression analysis’ function is to determine the relationship between income and wages. The use of the regression and application of the subject NME country’s GNI generates an expected wage rate that for a market economy country at a comparable level of development, and constitutes the use of the best available information. In addition, the expected wage rate calculated for the NME country is “by definition a wage rate for a producer country at a comparable level of development, as required by 19 U.S.C. § 1677b(c)(4) {section 773(c)(4) of the Act}.” See Dorbest I, 462 F. Supp. 2d at 1293.

Additionally, relying only on data from countries that are economically comparable to each NME would undermine, rather than enhance, the accuracy of the Department’s regression analysis. The number of “economically comparable” countries would be extremely small. For example, when examining countries with GNIs that range between US\$ 480 and US\$ 1420 (e.g., countries that might be considered economically comparable to Vietnam), there are just six countries out of

²⁴ See Nation Ford v. United States, 166 F.3d 1373, 1377 (Fed. Cir. 1999); accord Magnesium Corp. of America v. United States, 166 F.3d 1364, 1372 (Fed. Cir. 1999).

²⁵ See Shakeproof Assembly Components v. United States, 59 F. Supp. 2d 1354, 1357 (CIT 1999), aff’d Shakeproof Assembly Components v. United States, 268 F.3d 1376 (CIT 2001); China Nat’l Mach. Import & Export Corp. v. United States, 264 F. Supp. 2d 1229, 1236 (CIT 2003).

a full dataset of 61 countries used in the revised wage calculation in May 2008.²⁶ A regression based on such a small subset of countries would be highly dependent on each and every data point, and thus, the inclusion or exclusion of any one country could have an extreme effect on the regression results from case-to-case, and from year-to-year. Relying on a broad data set, as opposed to data from just the economically comparable countries, maximizes the accuracy of the regression results, minimizes the effects of the potential year-to-year variability in the basket, and provides predictability and fairness. See, e.g., Antidumping Duties; Countervailing Duties Part II, 62 FR 27296, 27367 (May 19, 1997) (“Final Rule”); see also Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716, 61720 (October 19, 2006).

Finally, the Department does not find Vietnamese respondents’ and Contessa’s reliance on Allied to be persuasive. For reasons previously stated, the Department finds the regression methodology, applied pursuant to 19 CFR 351.408(c)(3), constitutes the best available information for purposes of valuing labor in NME cases. In Dorbest II, the Department’s regression analysis was affirmed in its entirety. Furthermore, the decision in Allied is not final, as a final order has not been issued by the CIT, nor have all appellate rights been exhausted.

Respondents and Contessa argued that the Department should use the labor rates submitted in Contessa’s March 30, 2009, surrogate value submission. Specifically, respondents and Contessa urge the Department to value labor using a wage rate from a survey conducted by the Bangladeshi Bureau of Statistics because it is from the surrogate country selected by the Department for FOP valuations and is specific to the shrimp industry. However, while surrogate values for other FOPs are selected from a single surrogate country, due to the gross variability between wage rates and GNI, we do not find reliance on wage data from a single surrogate country reliable for purposes of valuing the labor input. While there is a strong positive correlation between wage rates and GNI, there is also variation in the wage rates of comparable market economies. For example, even for countries with relatively comparable GNI for purposes of factor valuation (e.g., where GNI is below US\$ 2500), the wage rate spans from US\$ 0.21 to US\$ 2.06. See “Expected Wages of Selected NME Countries,” revised in May 2008, available at <http://ia.ita.doc.gov/wages/index.html>. Moreover, in determining surrogate values for FOPs, the Department need not “duplicate the exact production experience of the...manufacturers.”²⁷

Because the Department’s regression analysis utilizes the best available information for the calculation of a surrogate value for labor, complies with the Department’s regulation, and comports with the statute, the Department will continue to rely on its regression analysis, as provided in 19 CFR 351.408(c)(3) to value labor for the final results.

²⁶ Note that due to the lag-time in data availability, the regression calculation performed in 2008, is based on data from 2005.

²⁷ See Nation Ford Chemical Company v. United States, 166 F.3d 1373, 1377 (Fed. Cir. 1999) (citing Magnesium Corp. of America v. United States, 938 F. Supp. 885 (CIT 1996), aff’d, 166 F.3d 1364 (Fed. Cir. 1999) (upholding the Department’s use of a surrogate value for a primary input of production where the actual input differed from the production experience in the nonmarket economy)). See also Shakeproof Assembly Components Div. of Ill. Tool Works, Inc. v. United States, 268 F.3d 1376, 1381 (Fed. Cir. 2001) (“we have specifically held that Commerce may depart from surrogate values when there are other methods of determining the ‘best available information’ regarding the values of the factors of production.”)

Comment 5: Bangladeshi Inflator Data

Petitioner argues that if the Department continues to use the raw shrimp prices contained in the NACA Survey as the surrogate value for raw shrimp, then the Department should inflate those prices to the POR using changes in the Bangladeshi CPI for Food, Beverages and Tobacco, rather than the change in the Bangladeshi CPI overall. Petitioner contends that because shrimp is a food product the CPI for Food, Beverages and Tobacco is more relevant, and therefore the more appropriate choice for an inflator.

Minh Phu Group and Camimex argue that the Department's practice is to use a broad-range index to calculate inflators²⁸ and that Petitioner has not explained how using a different inflator for different surrogate values would lead to more accurate results. Minh Phu Group and Camimex assert that Bangladeshi CPI for Food, Beverages and Tobacco has never been examined by the Department and what it consists of is unknown. Further, Minh Phu Group and Camimex assert that it is unclear whether unprocessed raw shrimp would even be classified as food, and therefore, urge the Department to use the Bangladeshi CPI because they argue it is an accurate countrywide inflator. Contessa also asserts that raw shrimp is not a food product but rather a material input and the overall CPI for Bangladesh would be more accurate as an inflator. Contessa contends that Petitioner has failed to provide any evidence that the CPI for Food, Beverages and Tobacco is relevant to raw shrimp prices.

Additionally, Fish One argues that the Department should not use the CPI for Food, Beverages and Tobacco because it is not specific to shrimp as it encompasses all food and it includes the unrelated sectors of beverages and tobacco. Fish One contends that the Department should continue to use a broad market average CPI to calculate inflation as Petitioner has not demonstrated that the CPI for Food, Beverages and Tobacco is a better source than the CPI for the entire country.

Department's Position:

The Department disagrees with Petitioner with respect to the appropriate CPI to inflate the surrogate values. Petitioner has not provided any compelling arguments to warrant a change in our practice regarding the appropriate CPI to use for inflation purposes. First, Petitioner did not provide any evidence on the record that the CPI for Food, Beverages and Tobacco is relevant to raw shrimp, nor any data indicating that the CPI for this category even includes raw shrimp. With respect to shrimp, we note that, in this case, whole, raw shrimp is a raw material used to produce a type of food. However, without any further description or detail as to what types of "food" are included in the CPI for Food, Beverages and Tobacco, there is no evidence that the CPI for Food, Beverages and Tobacco is more appropriate than the national CPI. Additionally, as Fish One has argued, the fact that beverages and tobacco are included in this CPI renders it only one-third relative to a commodity which may or may not include raw shrimp. The Department's established practice is to use a broad-range index to inflate or deflate surrogate values. See *Folding Metal Tables and Chairs from the People's Republic of China; Final Results*

²⁸ See e.g., *Folding Metal Tables and Chairs from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 71 FR 2905 (January 18, 2006), and accompanying Issues and Decision Memorandum at Comment 6.

of Antidumping Duty Administrative Review, 71 FR 2905 (January 18, 2006) and accompanying Issues and Decision Memorandum at Comment 6. Absent any evidence on the record which would compel the Department to deviate from our practice, we will not make any changes to the national CPI used to inflate the FOPs for the final results.

Comment 6: Raw Shrimp

A. Surrogate Value Source

Petitioner argues that the basis of the Department's selection of the NACA data on the assumption that it is more reliable than Indian raw shrimp surrogate value data is incorrect. Petitioner claims that the NACA study data is unaudited, imprecise, and compiled from voluntary information and limited to only eight Bangladeshi shrimp processors. Additionally, Petitioner argues that the survey's coverage of the industry is extremely limited given that data from Apex Foods Limited ("Apex"), one of the largest shrimp processors, was not included in the survey. Petitioner states that the NACA data are incomplete because they only cover five broad count size categories, while the respondents have reported as much as fifteen count size categories. Petitioner contends that because of the count size limitations of the NACA data, the Department was forced to base raw shrimp surrogate values for eight of the count size categories on extrapolations of the NACA study. Petitioner claims that, conversely, the Indian data would provide exactly matching count size data, not requiring any extrapolation. Petitioner urges the Department to reevaluate the appropriate surrogate country selection based on these aforementioned arguments and use the Indian data to value raw shrimp.

However, Petitioner urges that if the Department were to continue to use Bangladesh as the surrogate country, the Bangladeshi shrimp prices which it placed on the record should be used instead of the NACA prices. Petitioner argues that the Department's justification for using the NACA data over Petitioner's Bangladeshi values is flawed. Petitioner claims that the Department rejected Petitioner's Bangladeshi prices because the values were averaged for confidentiality reasons, showing evidence that the underlying data is not publicly available. Petitioner, however, argues that the NACA data are also averaged values. Petitioner further argues that its Bangladeshi prices are contemporaneous with the POR, unlike the NACA study. Additionally, Petitioner asserts that the count size categories of its Bangladeshi data are comparable to that of the NACA study.

In rebuttal, Contessa argues that the Department should reject Petitioner's Bangladeshi data and continue to use the NACA data to value raw shrimp. Contessa contends that the Bangladeshi data placed on the record appears to be a survey commissioned by Petitioner, which contains no additional information as to the firm that conducted the survey. Moreover, Contessa claims that prices within the survey are not supported by any backup transaction price documentation such as invoices, accounting documents, or financial statements. Contessa further claims that the four Bangladeshi processors within the survey provided figures but no supporting documentation for those figures. Contessa contends that, if the four processors provided those figures on actual transactions with supporting documentation, the survey would surely have included them to corroborate the pricing data. Contessa argues that the range of prices was not included in the survey and all that was provided were single prices that were averaged for confidentiality

purposes. Contessa asserts that, following its practice, the Department must reject Petitioner's survey because the prices therein are not publicly available, cannot be tested or corroborated, are unaudited, and are otherwise unreliable.²⁹ Lastly, Contessa argues that the conductors of the survey did not certify the data as accurate pursuant to the Department's regulations. Thus, Contessa argues, the absence of any certifying or authenticating elements highlights the lack of reliability of the data and renders it unusable for surrogate valuation purposes.

Phuong Nam and Fish One argue that Petitioner's Bangladeshi data obtained from a commissioned survey is flawed and has been disavowed by one of the processors included therein. Phuong Nam and Fish One contend that Petitioner's Bangladeshi survey should be rejected because the data is not public, and, absent any supporting data from the processors, should be deemed unreliable. Additionally, Phuong Nam and Fish One claim that the owner of the one of processors included in the survey has attested to the inaccuracy of the survey data,³⁰ which is inferior to the financial statements of that same company placed on the record by Phuong Nam.

Minh Phu Group, Camimex, and certain SR Respondents also rebut Petitioner's Bangladeshi data obtained from a commissioned survey. Minh Phu Group, Camimex, and certain SR Respondents contend that Petitioner has historically submitted data of this sort in every segment since the first administrative review and has been continually rejected by the Department.³¹ Minh Phu Group, Camimex, and certain SR Respondents further contend that the Department has rejected such data in other cases as well.³² Furthermore, Minh Phu Group, Camimex, and certain SR Respondents reiterate Phuong Nam's and Fish One's argument that Apex, one of the subjects of the survey, has itself refuted the veracity of this study (see footnote 30 above), which leaves the NACA study as the only reliable source on the record with which to value raw shrimp.

Department's Position:

We disagree with Petitioner regarding the NACA data used in the Preliminary Results to value the main input, raw shrimp. As stated above, we selected Bangladesh as the surrogate country because the data submitted on the record for Bangladesh satisfied a wide range of the Department's selection criteria, such as publicly available sources representing a broad-market average that are product-specific and tax exclusive.³³

²⁹ Contessa cites to Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China, 69 FR 67313 (November 17, 2004) and accompanying Issues and Decision Memorandum at Comment 17, stating that audited transaction prices are preferable to price quotes or other data deemed less reliable.

³⁰ See Phuong Nam's letter dated February 12, 2009.

³¹ See Minh Phu Group, Camimex, and certain SR Respondents Rebuttal Brief, dated May 13, 2009, at 19-20, footnotes 67-69.

³² Minh Phu Group, Camimex, and certain SR Respondents cite to Writing Instrument Manufactures Assoc. v. United States, 21 CIT 1185, 1202, 984 F. Supp. 629, 644 (1997), where the Department chose publicly available pricing information over information from a private study for surrogate valuation purposes.

³³ See Surrogate Country Memo at 9. See also Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances 73 FR 40485 (July 15, 2008) and accompanying Issues and Decision Memorandum at Comment 9.

As stated above, an important factor in selecting Bangladesh as the surrogate country was due to data considerations, specifically, the availability of count-size specific data that is publicly available and compiled from a broad-market average. We have already noted that Petitioner provided, as raw shrimp surrogate value, the publicly ranged shrimp prices from a single Indian shrimp processor. See Comment 2 above. With respect to Petitioner's subsequent submission of a survey containing Bangladeshi raw shrimp values, we note that, as stated in the Preliminary Results, "the authors of the survey averaged the shrimp prices they collected for business confidentiality reasons, thus the underlying data are not publicly available." See Preliminary Results at 10016. Although we are aware that the NACA prices are also an average, as Petitioner points out, the NACA study, unlike the survey, does not state that the prices contained therein have been averaged to maintain the confidentiality of the individual companies. Moreover, Petitioner's survey did not contain any underlying data or supporting documentation of the prices contained within the survey that is comparable to data provided in the NACA study.³⁴ Thus, we find that Petitioner's survey of Bangladeshi shrimp prices is not a more reliable source than the NACA study with which to value raw shrimp.

Second, with respect to the exclusion of Apex within the study, we have previously stated that "because eight other shrimp processors were included in the study, we do not find that the exclusion of Apex renders the study unrepresentative of the Bangladeshi shrimp industry." See Vietnam Shrimp AR1 at Comment 1 and Vietnam Shrimp AR2 at Comment 2. Additionally, although Phuong Nam and Fish One submitted Apex's financial statements as a raw shrimp surrogate value source, we find that Apex, on its own, does not represent a broad-market average within Bangladesh.

Third, we also disagree with Petitioner's argument that the method by which NACA collected its information makes the study unreliable. As we stated in Vietnam Shrimp AR1 and Vietnam Shrimp AR2, the NACA study states that: (1) "data on prices and quantity traded over the period under study were collected from most stakeholders using actual records of sales maintained by the stakeholders themselves," (2) "since data were collected mostly by fisheries officers residing in the area, no major difficulties were faced in having access to records," and (3) "procurement price data were consistent with data collected over the 2004-2004 period as part of the USAID funded Agro-based Industries and Technology Development Project ("ATDP"), Shrimp Seal of Quality, therefore validating the information collected through this survey." Id.

Fourth, we also disagree with Petitioner's assumption that the NACA study is deficient due to the limited availability of count sizes compared with the respondents' reported count sizes. We note that the NACA study count size brackets are expressed as shrimp per kilogram.³⁵ However,

³⁴ See Petitioner's Submission dated February 4, 2009, at Attachment I, page 3. See also Vietnam Shrimp AR2 at Comment 2 (where the Department rejected shrimp surrogate values obtained from price quotes or ranged proprietary data).

³⁵ Memorandum to the File through Catherine Bertrand, Program Manager, Office 9 from Irene Gorelik, Senior Analyst, Office 9; Third Antidumping Duty Administrative Reviews of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results, dated March 2, 2009 ("Prelim Surrogate Value Memo").

respondents' reported count size brackets are expressed in shrimp per pound. Therefore, the Department converted the respondents' reported count size brackets to shrimp per kilogram to match the count size brackets of the NACA study. For example, the NACA count size for 0-20 shrimp per kilogram covered any respondents' reported count size brackets of 0-13 shrimp per pound. Additionally, for any respondents' count size brackets that overlapped the NACA study count size brackets (upon converting the units of measure), we performed a weighted average of the price points and applied it to the overlapping count sizes. See Prelim Surrogate Value Memo at 3-5 and Exhibit 4. However, we do not find that extrapolation of NACA's shrimp prices render the data less reliable than publicly-ranged shrimp prices from one Indian shrimp processor or an unreliable survey with no underlying data, as submitted by Petitioner. We note that the extrapolation of NACA shrimp prices occurred only partially for respondents reporting 61-70 shrimp per pound or 90-103 shrimp per kilogram. A full extrapolation was required for any reported count sizes greater than 71 shrimp per pound or 104 shrimp per kilogram. Therefore, while additional extrapolation was necessary, the majority of count sizes reported by the mandatory respondents were accounted for within the NACA study.

Finally, with respect to Petitioner's argument that the NACA data is not contemporaneous with the POR, we note that the Indian data submitted by Petitioner is, likewise, not contemporaneous with the POR. Moreover, "the Department does not place more weight on contemporaneity above the other surrogate value selection criteria."³⁶ Therefore, consistent with the CIT's holding in Hebei Metals and our determination in Vietnam Fish AR1, we find that the other surrogate value selection criteria supporting the use of the NACA data (broad-market average, specificity, publicly available) outweigh the use of more contemporaneous data.

Therefore, we continue to find the NACA study to be the best information on the record with which to value raw shrimp, because it is based on prices that are product-specific, and a broad-market average that is publicly available. Thus, we will continue to use the NACA shrimp prices for Bangladesh for the final results of this review.

B. Period of NACA Data Used

Contessa, Minh Phu Group, Camimex, certain SR Respondents, Phuong Nam and Fish One argue that, for the final results, the Department should recalculate the raw shrimp surrogate values using the most recent 12-month period of NACA data, rather than the full breadth of the study, encompassing 23 months of data.³⁷ Contessa claims that averaging the most recent twelve

³⁶ See e.g., Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the First Administrative Review 71 FR 14170 (March 21, 2006) ("Vietnam Fish AR1") and accompanying Issues and Decision Memorandum at Comment 3A; Hebei Metals & Minerals Import & Export Corporation and Hebei Wuxin Metals & Minerals Trading Co., Ltd. v. United States, Slip Op. 05-32 (CIT 2005) ("Hebei Metals 2005") (where the CIT found that "while contemporaneity of data is one factor to be considered by Commerce...three months of contemporaneity is not a compelling factor where the alternative data is only a year-and-a-half distant from the POI.")

³⁷ In arguing that the Department's practice is to select the most contemporaneous surrogate values for valuation purposes, Contessa cites to Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review, 70 FR 38873 (July 6, 2005) (citing to Notice of Preliminary Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol from the People's Republic of China, 69 FR 3887, 3892 ("THFA")); Wuhan Bee Healthy Co., Ltd. v. United States, Slip Op. 07-113 (CIT 2007) at 49-50 ("Wuhan Bee 2007"). See also Contessa's Case Brief dated April 10, 2009, at 5 for additional case cites.

months of NACA data would correspond to the Department's use of 12-month data for all the other direct materials. Contessa argues that, unlike in other case, the Department would not be sacrificing specificity for contemporaneity in selecting only 12 months of data out of a 23-month data period because the 12-month data would still fulfill the Department's criteria for surrogate value selection. Contessa contends that it is unreasonable to use data beyond the 12-month period, which would be even less contemporaneous with the POR, when the 12-month period is equally valid. Minh Phu Group, Camimex, and certain SR Respondents also argue that the Department prefers to use annual data as close to the POR as possible, if contemporaneous data or data overlapping the POR are not available.³⁸ Finally, Contessa, Minh Phu Group, Camimex, certain SR Respondents, Phuong Nam and Fish One argue that if surrogate financial ratios are calculated from annual financial statements, so should the raw shrimp surrogate value.

In rebuttal, Petitioner argues that, if the Department continues to use the inapposite NACA data, then all 23 months of data should continue to be employed for the raw shrimp surrogate values. Petitioner argues that if respondents did not wish all 23 months of data to be averaged and used to value raw shrimp, then the full 23 months of data should not have been placed on the record. Petitioner further argues that, despite respondents' case brief arguments in favor of using a 12-month period, citing the Department's preferences, the respondents had previously requested that the Department use the same four month period of data employed in the immediately preceding administrative review.³⁹ Notwithstanding respondents' arguments to the contrary, Petitioner claims that there is no statutory or regulatory requirement or practice that the Department must use the most recent 12-month period data available, as evidenced by the Department's use of only four months of data in the preceding administrative review. Petitioner adds that the Department's decision in the preceding administrative review was consistent with past cases where contemporaneous data was not available.⁴⁰ Petitioner contends that, because there is no NACA data overlapping the POR, as in the second administrative review, employing the data for the entire 23-month period results in less distortive pricing than using only a subset of the full data range. Petitioner also contends that using data for the entire, non-contemporaneous 23-month period is consistent with the Department's practice in THFA and upheld in Wuhan Bee 2007. Petitioner asserts Contessa's own argument that using all the data would be inaccurate insofar as this proves that the NACA data is unreliable in its entirety. Petitioner argues that, to the extent that the Department has found the NACA study to be reliable, then all the data should be used to derive the raw shrimp surrogate values, thereby employing the largest quantity of data points on the record. Petitioner further argues that, if the Department intends to select a subset of pricing points from the NACA study for the final results, then it should use the same four months as in the preceding administrative review, as those data reflected the most recent overlap in review periods. Moreover, as no respondents argued the Department's use of the four month period in

³⁸ See Minh Phu Group, Camimex, and certain SR Respondents' Case Brief dated April 10, 2009, at 2-3 and footnotes 2-5.

³⁹ See Petitioner's Rebuttal Brief dated April 24, 2009, at 10 and footnotes 24-25.

⁴⁰ See Petitioner's Rebuttal Brief dated April 24, 2009, at 11 and footnotes 28-30, citing cases where the Department employed non-annualized data for surrogate values.

the second administrative review, then there is no basis to conclude that using less than an annual period for purposes of this review would be distortive.

Additionally, the Domestic Processors request that the Department continue to use the full 23-month period of NACA data, the division of which, they argue, would result in a disaggregation of the data and compromise the reliability of the study. The Domestic Processors argue that, no matter how the data is divided with respect to time period, none of the data overlaps with the POR of this review. Moreover, the Domestic Processors contend that, if the Department's concern with the NACA rests with contemporaneity, then the Indian data is superior because it is fully contemporaneous with the POR, while also fulfilling the other surrogate value selection criteria.

Department's Position:

The Department disagrees with Petitioner regarding the appropriate period of NACA data used to calculate the average price for each count size bracket. In the Preliminary Results, we averaged the monthly shrimp prices for each count size bracket from July 2004 through May 2006, constituting the entire universe of raw shrimp price points. See Prelim Surrogate Value Memo. However, for these final results we will use the most recent twelve months because our stated practice in determining the most appropriate SVs to use in a given case, is to use review period-wide price averages. See, e.g., Brake Rotors From the People's Republic of China: Preliminary Results of the 2007 Administrative Review and Partial Rescission, 74 FR 11911, 11915 (March 20, 2009) unchanged in Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2007 Antidumping Duty Administrative Review, 74 FR 26371 (June 2, 2009) ("Brake Rotors 2009") (where we stated that "in determining the most appropriate SVs to use in a given case, the Department's stated practice is to use review period-wide price averages...").

While the respondents and Petitioner cite to cases where the Department has employed data both on an annual basis as well as a non-annual basis, we note that the selection of a pricing period has been considered on a case-by-case basis.⁴¹ In Romanian Hot-Rolled 2005, the Department departed from its normal practice of using period-wide price averages due to the special circumstances regarding Romania's graduation from non-market economy status to market economy status during the POR. The Department has reiterated its practice of using period-wide averages in more recent cases.⁴² Likewise, in Vietnam Shrimp AR2, the Department departed

⁴¹ See Certain Hot-Rolled Carbon Steel Flat Products From Romania: Final Results of Antidumping Duty Administrative Review, 70 FR 34448 (June 14, 2005) and accompanying Issues and Decision Memorandum at Comment 1 ("Romanian Hot-Rolled 2005") (where we stated that "in a six-month NME investigation or 12-month administrative review, the Department ordinarily attempts to base its surrogate values on investigation or review period-wide price averages. This practice is articulated in the NME Surrogate Selection Policy Bulletin which affirms that 'it is the Department's stated practice to use investigation or review period-wide price averages, prices specific to the input, prices that are net of taxes and import duties, prices that are contemporaneous with the period of investigation or review, and publicly available data.' See NME Surrogate Selection Policy Bulletin, (<http://ia.ita.doc.gov/policy/index.html>) at page 4 of the website version.")

⁴² See, e.g., Brake Rotors 2009; 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 14

from its normal practice and used only a four-month data period because those four months of data overlapped with the POR. However, here, there is no period of surrogate data overlapping with the current POR, thus in order to replicate a 12-month reporting period, following our preference and established practice, the Department will amend its preliminary use of the entire NACA study and rely only on the most recent 12-month period of data within the NACA study and inflate it for the POR in these final results. See Memorandum to the File through Catherine Bertrand, Program Manager, Office 9 from Irene Gorelik, Senior Analyst, Office 9; Third Antidumping Duty Administrative Reviews of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Surrogate Values for the Final Results, dated September 8, 2009 (“Final Surrogate Value Memo”).

C. Count Size Classifications

Petitioner further requests that if the Department continues to use the NACA study to value raw shrimp for the final results, the count size classifications must be amended for Minh Phu Group and Camimex. Specifically, Petitioner argues that the raw shrimp surrogate values derived for RM10 through RM15 for Minh Phu Group and Camimex are not correct, because the Department ignored the percentage decline in value between RM1 and RM2. Petitioner claims that there is no basis for the Department having excluded the average percentage difference between RM1 and RM2 and urges the Department to correct these ministerial errors for the final results.

Minh Phu Group, Camimex, and certain SR Respondents argue that there is no ministerial error made by the Department in the Preliminary Results. Minh Phu Group, Camimex, and certain SR Respondents argue that Petitioner’s claim that the Department wrongly ignored the percentage decline between RM1 and RM2 is incorrect. The respondents contend that calculating a percentage decline between RM1 and RM2 is not only wrong, but unnecessary, because the count sizes of RM1 and RM2 both fall within the same HOSO count size of the NACA study, 0-20 pieces per pound.

Department’s Position:

The Department disagrees with Petitioner regarding the calculation of extrapolated count sizes. As stated above, the first two count sizes reported by two respondents, represented by variable names RM1 and RM2, contain 0-8 shrimp per pound and 8-12 shrimp per pound, respectively. After having converted these two brackets to a shrimp per kilogram basis, we noted that both RM1 and RM2 fall within the surrogate value bracket of 0-20 shrimp per kilogram. In other words, the Department has one price point, one surrogate value, for all shrimp falling within the 0-20 shrimp per kilogram range. Because RM1 and RM2 fall within the same surrogate value count size bracket when converted to a kilogram basis, the surrogate value is identical for RM1 and RM2. Consequently, it was not necessary to calculate a percentage decline in price between RM1 and RM2 because these two count sizes are assigned the same surrogate value. Thus, the Department disagrees with Petitioner that the extrapolated prices for RM10 through RM15 are incorrect resulting from not calculating the relative difference in price from RM1 to RM2. The Department notes, as stated above, that there is no relative difference in price between RM1 and RM2.

(“OTR Tires”).

Similarly, the surrogate values for the other count sizes in the NACA study, 21-30 shrimp per kilogram, 31-44 shrimp per kilogram, 45-66 shrimp per kilogram, 67-100 shrimp per kilogram, are assigned to the respondents' reported count sizes after conversion from shrimp per pound to shrimp per kilogram. In instances where company-specific count-sizes overlapped with the NACA study count size brackets (for example, 18-25 shrimp per kilogram), we weight-averaged the two surrogate values. For reported count sizes smaller than 67-100 shrimp per kilogram, the Department extrapolated the surrogate values from the existing surrogate values. Therefore, the Department did not make an error in the calculation methodology of the extrapolated prices for RM10 through RM15 and will make no changes to this calculation methodology in the final results.

Comment 7: Other Surrogate Values

A. Byproducts

Petitioner argues that the Department should value byproducts using the surrogate value obtained from India because this value is contemporaneous with the POR. Petitioner argues that the surrogate value obtained from Indonesia is from five years prior to the POR and there is no Bangladeshi surrogate value for byproducts on the record. At a minimum, Petitioner argues, the Department should base its byproduct surrogate value on an average of the Indian and Indonesian surrogate value on the record.

Phuong Nam, Minh Phu Group, Camimex, and Contessa rebut Petitioner's arguments that a contemporaneous Indian value of zero for byproducts is a more valid source than older data from Indonesia. Phuong Nam argues that the mandatory respondents did not give away shrimp byproducts, but sold them for valuable consideration. Therefore, in order to use the best information available for the final results, the Department should use a value commensurate with the value at which these byproducts were sold. Further, the respondents and Contessa argue that it has been demonstrated that the Vietnamese respondents sold their byproducts, as opposed to the Indian shrimp producers, who appear to give away their byproducts for free. Additionally, Contessa asserts that there is no logic to Petitioner's argument equating Indian producers' absence of byproduct sales to a zero byproduct value. Instead, Contessa maintains that the Department has properly granted byproduct offsets, where appropriate, based on a correctly applied surrogate value. The respondents and Contessa urge the Department not to abandon this correct approach in its final results.

Department's Position:

The Department disagrees with Petitioner regarding the appropriate surrogate value applied to byproduct offsets. Petitioner has argued that the Department should use an Indian surrogate value for byproducts equal to zero through the implication that since Indian shrimp processors did not produce scrap, the Vietnamese respondents ought to receive a byproduct offset valued at zero.⁴³ First, the Department has articulated its practice with respect to the application of the byproduct

⁴³ Petitioner has submitted information from a respondent in the companion administrative review of frozen warmwater shrimp from India where the respondent, Falcon, stated that it did not produce byproducts. See Petitioner's Surrogate Value Submission dated January 30, 2009, at Attachment 8.

offset to normal value in the remand re-determination of sebacic acid from the PRC. See Final Determination Pursuant to Court Remand Guangdong Chemicals Import & Export Corporation v. United States, Court No. 05-00023 (May 3, 2006) (“Sebacic Acid Remand”). In determining whether to apply the byproduct offset to normal value or COM, in NME cases, we first look to the surrogate financial statements and treat the byproduct offset in a manner consistent with those statements when a byproduct offset is evidenced in those statements. Id., at 8. However, as explained in the Sebacic Acid Remand, where the surrogate financial statement does not indicate how the surrogate producer treated byproducts in its financial statements, “it is appropriate to consider other information on the record, such as whether the byproduct was re-introduced into the production process or sold for revenue purposes.” Id. Where the byproduct is sold, we deduct the byproduct from normal value. This is consistent with accounting principles based on a reasonable assumption that if a company sells a byproduct, the byproduct necessarily incurs expenses for overhead, selling, general and administrative (“SG&A”) expenses, and profit. Id., at 12. Conversely, where the byproduct is reused, we deduct it from the cost of manufacture because by reintroducing the byproduct into production, the material costs of the subject merchandise are directly reduced. Id.

In the instant proceeding, a careful review of the Apex and Gemini financial data reveals that there is no reference to byproducts in the calculations of surrogate financial ratios. Accordingly, the Department has treated byproducts based on whether the respondent sold or reused them. For the byproducts sold by the mandatory respondents, the Department has applied the byproduct offset to normal value using a byproduct surrogate value from Indonesia, which has been reliably used in all prior segments. See Prelim Surrogate Value Memo at 8 and Exhibit 11.

Second, to assign a surrogate value of zero to byproducts, as Petitioner suggested, necessarily assumes that the byproducts sold by the respondents had no commercial value and incurred no expenses. This is clearly not the case here, where the respondents have provided sufficient information that byproducts were sold for a value above zero. See Minh Phu Group’s Section D Questionnaire Response dated August 14, 2008, at Exhibit 11; Camimex’s Section D Questionnaire Response dated July 30, 2008 at Exhibit 12. Moreover, the record also contains the Department’s verification of claimed byproduct offsets. See e.g., Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Irene Gorelik, Analyst, Office 9; Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Verification of Sales and Factors of Production for Phuong Nam Co., Ltd. (“Phuong Nam”), dated March 2, 2009, at 30-32. There is no evidence on the record to suggest that the mandatory respondents’ sales of byproducts had no commercial value, sold *gratis*, or priced at a zero value. Thus, we will not use a byproduct surrogate value of zero to value byproduct offsets for the final results. Petitioner has also suggested that the Department average the Indian byproduct surrogate value of zero with the Indonesia byproduct surrogate value used in the Preliminary Results and apply the resulting average to the mandatory respondents’ byproduct offset. However, again, the evidence indicates that the respondents sold byproducts for a value of more than zero. Thus, there is no reason to include a zero value in calculating the byproduct offset.

Finally, *in arguendo*, notwithstanding the fact that we used Bangladeshi surrogate companies to calculate surrogate financial ratios, rather than Indian surrogate companies offered by Petitioner, the court has ruled that the Department is not required to “duplicate the exact production

experience” of the surrogate manufacturer. See Nation Ford Chem. Co. v. United States, 166 F.3d. 1373, 1377 (Fed. Cir. 1999); see also OTR Tires at Comment 18.H. That is, the Department is not required to adjust the cost structure of a respondent to mirror the cost structure of the surrogate company used in calculating either surrogate values or surrogate financial ratios.

As a result, the Department will continue to use the Indonesian byproduct surrogate value on the record of this review to value the mandatory respondents’ byproduct offset.

B. Master Cartons

Contessa argues that the Department should not value master cartons based on import prices because the record demonstrates that Vietnamese and Bangladeshi shrimp producers do not use imported corrugated cartons in their production processes. Contessa contends that the record shows corrugated carton prices are available in Bangladesh in the form of rate sheets and invoices specific to master cartons and from five different Bangladeshi corrugated carton suppliers.⁴⁴ Contessa also argues that using the Comtrade import data for the master carton surrogate value is not reasonable and urges the Department to use the average corrugated carton prices from Bengal Printing & Packaging Ltd., KLN Printing & Packaging, Pacific Paper Products, Ltd., Sharifa Printers & Packagers, and Touch Pack Ltd. (collectively, “Bangladeshi Carton Suppliers”). Alternatively, Contessa argues that the Department should use the prices in the financial statements of three Indian producers of corrugated cartons and a news article that it had placed on the record. Contessa claims that these prices are from reliable sources because they reflect a broad market average of publicly available and tax-exclusive domestic prices in an economically comparable country and are contemporaneous to the POR. Finally, Contessa argues that if the Department does not value master cartons using domestic Bangladeshi values or domestic Indian values, then it must adjust its calculation of the average Bangladeshi import price under HTS 4819.10. Contessa asserts that the master carton value used in the Preliminary Results is not representative and based on insignificant quantities which were skewed by aberrational values imported from Hong Kong. Contessa asserts that the Department should include imports from “Areas NES” because this category of imports accounts for approximately 90 percent of Bangladeshi imports during the POR, the exclusion of which causes the average import price to lose all representativeness. Alternatively, Contessa urges the Department to replace the aberrational Bangladeshi import quantity and value reported from Hong Kong with the Hong Kong export quantity and value exported from Hong Kong.

Minh Phu Group, Camimex, and certain SR Respondents also argue that the Department should not use the Comtrade data to value master cartons for the final results. Minh Phu Group, Camimex, and certain SR Respondents argue that this value is aberrational due to the inclusion of incorrectly reported high values from Hong Kong that distort the overall average. Minh Phu Group, Camimex, and certain SR Respondents contend that the Department should use one of the

⁴⁴ Contessa cites to Dorbest I at 1278; Hebei Metals & Minerals Imp. & Exp. Corp. v. United States, Slip Op. 04-88 at 22 (CIT 2004) (“Hebei”); 374 F. Supp. 2d 1299, 1310 (CIT 2005); Yantai Oriental Juice Co. v. United States, 26 CIT 605, 617 (2002) (“Yantai 2002”); Wuhan Bee Healthy Co. v. United States, 374 F. Supp. 2d 1299, 1310 (CIT 2005) (“Wuhan Bee 2005”). Contessa argues that these rulings instruct the Department that the use of import data for surrogate value purposes is appropriate when there is reason to believe the industry in question would use imported inputs.

average prices of the Bangladeshi Carton Suppliers or an inflated average unit value (“AUV”) derived from the Comtrade Bangladeshi import data that includes those entries listed as “Areas NES”. Minh Phu Group, Camimex, and certain SR Respondents state that if the Department includes entries listed as “Areas NES” in the average unit value for cartons then it will not be necessary to exclude the data from Hong Kong. Minh Phu Group, Camimex, and certain SR Respondents also assert that if the Department chooses to maintain its exclusion of the “Areas NES” category, the aberrational imports from Hong Kong must also be excluded. Minh Phu Group, Camimex, and certain SR Respondents also suggest that the Department could substitute Bangladeshi import data with export data from each included country or use inflated Bangladeshi import data from a previous year that does not suffer from the same aberration or lack of representativeness. The respondents claim that any of these options would result in a more accurate master carton surrogate value than the value used in the Preliminary Results.

Fish One and Phuong Nam argue that the Comtrade data used in the Preliminary Results is not the best available information because it includes aberrational figures from Hong Kong and covers imports of a much broader type of carton than that used to package shrimp. Fish One and Phuong Nam contend that the \$22.69 per kg AUV for imports of outer cartons from Hong Kong is improper because it is well outside the range of Comtrade import data to Bangladesh from countries other than Hong Kong (\$0.39 - \$4.87), and the AUV of exports of outer cartons from Hong Kong to Bangladesh was \$0.73 per kg for the same tariff number and time period. Fish One and Phuong Nam argue that this shows the Comtrade import data from Hong Kong was incorrectly input and should not be used for the final results. Additionally, Fish One and Phuong Nam assert that Apex’s price for master cartons constitutes the best available information because it is contemporaneous to the POR, represents purchases by the largest shrimp processor in Bangladesh from two major Bangladeshi carton manufacturers of the same type of carton used in the Preliminary Results, and is tied to Apex’s audited financial statement. Fish One and Phuong Nam further suggest that the Department could use Bangladeshi price quotes or audited financial statements from several Indian producers of cartons that are on the record because these sources are contemporaneous to the POR and specific to the cartons used to package subject merchandise. If, however, the Department decides not to use Bangladeshi domestic prices for cartons, Fish One and Phuong Nam urge the Department to use the Hong Kong 2006 export data because it is not aberrational.

Petitioner rebuts that the arguments presented by the respondents and Contessa failed to demonstrate that the Comtrade data is aberrational for any reason other than the values being too high. Specifically, Petitioner argues that it was both reasonable and appropriate for the Department to exclude non-market, unspecified, and subsidized data points, which is consistent with the Department’s established practice and the Department cannot have any confidence in the reliability of data pertaining to unspecified areas. Petitioner also rebuts the allegations that because the Bangladeshi import data for master cartons differs from the export data, the import data is aberrational. Rather, Petitioner argues that it is just as likely that the export data is flawed.⁴⁵ Petitioner also contends that, although Bangladeshi imports of master cartons from

⁴⁵ Petitioner cites to Citric Acid and Certain Citrate Salts From the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, 74 FR 16838 (April 13, 2009) and accompanying Issues and Decisions Memorandum at Comment 5B (“Citric Acid”), stating that when comparing only two data sources, there is insufficient evidence to determine that one value is aberrational in comparison to the other.

Hong Kong do not surpass an AUV of \$1.76/kg between 2002 and 2005, as the respondents attest, during the POR, Indian imports of corrugated paperboard cartons had an AUV of \$5.72/kg. Petitioner argues that this demonstrates Bangladeshi imports of master cartons from Hong Kong during 2006 with an AUV of \$22.69/kg are neither obviously wrong nor necessarily aberrational.⁴⁶

Additionally, citing Tapered Roller Bearings 2009, Petitioner rebuts Fish One and Phuong Nam's arguments that the Comtrade data used was obtained from too broad a category. Petitioner contends that Fish One and Phuong Nam's criticism is insufficient to demonstrate a lack of reliability of the data.⁴⁷ Petitioner further rebuts Fish One and Phuong Nam's argument that the Department should value master cartons using the financial statements of an Indian carton producer. Petitioner argues that the data from Indian producers cannot constitute the best available information on the record in this review because it is not from the selected surrogate country. Finally, Petitioner also rebuts Minh Phu Group, Camimex, and certain SR Respondents' arguments that the Department should base its master carton surrogate value on price quotes from Bangladeshi companies, stating that these price quotes are not publicly available and appear to have been obtained in direct response to requests for purposes of this proceeding. Furthermore, Petitioner cites to Fresh Garlic from China, where the Department rejected the use of price quotes for valuing FOPs.⁴⁸ Additionally, Petitioner asserts that the Department should not deem these price quotes as reliable information because of the manner in which they were converted to a per kilogram basis.

The Domestic Processors also rebut Minh Phu Group's, Camimex's, and certain SR Respondents' argument that the Department should exclude the Hong Kong import data from the Bangladeshi Comtrade import statistics used for the master carton surrogate value because this data does not meet the normal criteria the Department has used to determine aberrational import data.⁴⁹ Specifically, the Domestic Processors argue that the Hong Kong data does not fit the Department's criteria to be considered aberrational because there were imports from only nine countries in the import data and Hong Kong had the second highest volume of imports among these countries. Additionally, the Domestic Processors argue that the Department should reject the argument to include import data from countries listed as "Areas NES" and maintain its established practice of excluding imports from non-specified countries.⁵⁰ Finally, the Domestic Processors rebut

⁴⁶ Petitioner cites to Lightweight Thermal Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73FR 57329 (October 2, 2008) and accompanying Issues and Decisions Memorandum at Comment 10 ("Thermal Paper") arguing that the difference between the two values is not large enough to demonstrate that one is aberrational.

⁴⁷ See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 3987 (January 22, 2009) and accompanying Issues and Decisions Memorandum at Comment 6 ("Tapered Roller Bearings 2009").

⁴⁸ See Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the Eleventh Administrative Review and New Shipper Reviews, 72 FR 34438 (June 22, 2007) and accompanying Issues and Decisions Memorandum at Comment 5 ("Fresh Garlic 2007").

⁴⁹ Domestic Processors cite to Hebei Metals v. United States, 28 CIT 1185, 1198-99, n. 6-7 (CIT 2004).

⁵⁰ See Notice of Amended Final Results of Third Antidumping Duty Administrative Review: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 73 FR 47885, 47886 (August 15, 2008) ("Vietnam Fish").

Phuong Nam's suggestion that the Department substitute the aberrational Bangladeshi import data from Hong Kong with 2006 export data from Hong Kong, stating that, if the Department determines that the Comtrade import data for Hong Kong is aberrational, it should exclude the Hong Kong data rather than seek substitutes from other sources.

Department's Position:

The Department agrees, in part, with the respondents that Comtrade's Bangladeshi import data for 2006 is not the best information available on the record to use for the master carton surrogate value. In the Preliminary Results, the Department relied on Comtrade's Bangladeshi import data for 2006, inflated for contemporaneity with the POR, for the master carton surrogate value source. However, upon further review, the Department has determined that this data is aberrational, and the Department will not use these data for the final results. See Minh Phu and Camimex Surrogate Values Submission, dated March 30, 2009, at Exhibit ASV-1. Specifically, the AUV of Bangladeshi imports from Hong Kong are abnormally high when compared against the historical data on the record, and appear to distort the overall value of Bangladeshi 2006 imports of master cartons. Consequently, for the final results, we are not using Comtrade's 2006 Bangladeshi import data to value master cartons, but rather rely upon Comtrade's 2005 Bangladeshi import data. Id.; see also Surrogate Value Memo.

Section 773(c)(1)(B) of the Act directs the Department to use "the best available information" from the appropriate market-economy country to value FOPs. In selecting the most appropriate surrogate values, the Department considers several factors including whether the surrogate value is publicly available, contemporaneous with the POR, represents a broad market average, chosen from an approved surrogate country, is tax and duty-exclusive, and specific to the input. The Department's preference is to satisfy the breadth of the aforementioned selection criteria. However, where all the criteria cannot be satisfied, the Department will choose a surrogate value based on the best available information on the record. See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 11349 (March 17, 2009) and accompanying Issues and Decisions Memorandum at Comment 1 ("Fish Fillets 2009").

The record currently contains several sources for master carton surrogate values, including Comtrade's Bangladeshi import data under HTS 4819.10 from 2002 through 2007, master carton import data from India, export data of master cartons to Bangladesh during 2007, rate sheets from Bangladeshi suppliers of master cartons, master carton price quotes from a Bangladeshi shrimp producer, Comtrade's Hong Kong export data of master cartons to Bangladesh in 2006, financial statements of three Indian producers of corrugated cartons, and a news article from India.⁵¹

As stated above, the Department selected Bangladesh as the primary surrogate country. Thus, our preference is to rely on a master carton surrogate value from a Bangladeshi source, if available.

⁵¹ See Minh Phu Group's and Camimex's Surrogate Values Submission, dated March 30, 2009, at Exhibit ASV-1 and ASV-2; Petitioner's Surrogate Value Submission, dated January 30, 2009, at Attachment 7; Petitioner's Rebuttal Surrogate Value Submission, dated April 9, 2009, at Attachment 1; Phuong Nam Surrogate Value Submission, dated March 30, 2009, at Exhibits 1 and 2; Contessa's Surrogate Value Submission, dated March 30, 2009, at Exhibits 1-4.

Additionally, with respect to Bangladeshi price quotes submitted by interested parties, we note that our general practice is to not use price quote information if other publicly available data is on the record, because these do not represent actual prices, broad ranges of data, and the Department does not know the conditions under which these were solicited and whether or not these were self-selected from a broader range of quotes.⁵² Accordingly, we will not rely on these price quotes because the record contains more reliable data with which to value master cartons.

We disagree with Contessa's argument that the Department must use domestic price quote data as its surrogate value source simply because the record allegedly shows that Vietnamese and Bangladeshi frozen shrimp producers do not import master cartons. In making its argument, Contessa cites to the court's decisions in Dorbest I, Hebei, Yantai 2002, and Wuhan Bee 2005, in which the Court stated that the Department should use domestic price data to value its FOPs in cases when the domestic industry does not use imported inputs. However, in Tapered Roller Bearings 2009, the Department stated that the burden is on the party making the claim to establish that a particular surrogate value is not appropriate based on the Department's preferred criteria for selecting surrogate values. Additionally, section 773(c) of the Act instructs the Department to value FOPs based on the best available information. In the instant review, the Department has considered the domestic price quote data placed on the record and, for the reasons detailed above, has determined that this is not the best available information on which to base its master carton surrogate value. Furthermore, the Department finds that Contessa has not provided sufficient supporting evidence to establish that the domestic industries in Vietnam and Bangladesh never use imported cartons in their production and, therefore, finds that it is appropriate to use import data to value master cartons in this review.

With respect to respondents' suggestion that the Department use export data, we note that, consistent with our past practice, we only use export data when it represents the best available information on the record and no other appropriate surrogate value data is available from the surrogate countries provided by the OP.⁵³ In the instant review, we find that there are other appropriate surrogate value data available from the surrogate country Bangladesh in the form of the Comtrade import data. Consequently, we will not use export data because the record contains more appropriate data with which to value master cartons.

Concerning the respondents' arguments that the Department should include imports from the category "Areas NES" within the Comtrade's 2006 Bangladeshi import data, we note that it is the Department's established practice, when using import data as a surrogate value source, to use the AUV for the input imported from all countries, with three exceptions: imports from countries that the Department has previously determined to be NME countries, imports from countries which the Department has determined subsidize exports,⁵⁴ and imports that are labeled as originated from an

⁵² See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China, 68 FR 47538 (August 11, 2003), and accompanying Issues and Decision Memorandum at Comment 1 ("PVA 2003"); see also Fresh Garlic 2007.

⁵³ See Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 70 FR 12651 (March 15, 2005), and accompanying Issues and Decisions Memorandum at Comment 3 ("Carbon Steel Plate from Romania").

⁵⁴ See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of

“unspecified” country. See Vietnam Fish. In the instant case, those imports categorized as originating from “Areas NES” are excluded because the Department cannot determine whether these imports are from either an NME or a country with general export subsidies. Therefore, the Department has determined not to include imports classified as originating from “Areas NES” within the Comtrade’s 2006 Bangladeshi import data.

Additionally, the Department disagrees with Petitioner’s argument that the respondents failed to demonstrate any reason for excluding the Comtrade’s 2006 Bangladeshi imports from Hong Kong other than the values being too high. While the Department acknowledges that the basis of the respondents’ arguments are centered around the high value reported for the 2006 Bangladeshi imports from Hong Kong, the Department finds that the respondents have sufficiently demonstrated, through historical comparisons of Hong Kong exports to Bangladesh and other Bangladeshi imports of master cartons from 2002 through 2006, that the values reported in 2006 for Bangladeshi imports of master cartons from Hong Kong are abnormal and, therefore, unreliable. The Department finds that the values reported in 2006 for Bangladeshi imports of master cartons from Hong Kong are abnormal because of the dramatic difference in the percent change that occurred from 2005 to 2006, which was unusually high when compared to the historical trend. Furthermore, consistent with the Court’s ruling in Hebei, the Department has found that the inclusion of the Hong Kong imports has a singularly disproportionate impact on the overall average value of Bangladeshi imports of master cartons in 2006. See Hebei at 1198-1199. Consequently, for the final results, we are not using Comtrade’s 2006 Bangladeshi import data to value master cartons.

The Department has determined that, of the sources on the record, Comtrade’s 2005 Bangladeshi import data is the most recent source for the master carton surrogate value that is publicly available, represents a broad market average, is chosen from the surrogate country, is tax and duty-exclusive, and is specific to the input. Therefore, for the final results, we find that Comtrade’s 2005 Bangladeshi import data represents the best available information for valuing master cartons and we will rely upon this source, inflated for contemporaneity, to value master cartons for the final results.

C. Inner Boxes

Minh Phu Group, Camimex, and certain SR Respondents argue that the Department should discontinue using Comtrade’s 2006 Bangladeshi import data for HTS 4819.20 for the final results. Minh Phu Group, Camimex, and certain SR Respondents urge the Department to use the pricing data on the record from Bangladeshi Packaging Suppliers because it is more specific to the input.

Fish One and Phuong Nam argue that the Department should use Comtrade’s 2007 export data from Italy, Hong Kong, Singapore, and the UK to Bangladesh as the surrogate value source for inner boxes, rather than the Comtrade’s 2006 Bangladeshi import data from the countries used in the Preliminary Results, because the Comtrade’s 2007 export data is from the same exporting countries, contemporaneous to the POR, and the best available information.

China: Final Results of 1999-2000 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part, 66 FR 57420 (November 15, 2001), and accompanying Issues and Decision Memorandum at Comment 1.

Petitioner rebuts the arguments that the Comtrade data used in the Preliminary Results is flawed simply because it resulted in a higher inner box value than in the preceding administrative review. Citing Tapered Roller Bearings 2009, Petitioner argues that the respondents failed to present specific evidence that the value derived from Comtrade is otherwise aberrational. Petitioner also rebuts arguments that the Department should base its inner box surrogate value on price quotes from Bangladeshi companies, stating that these price quotes are not publicly available and appear to have been obtained in direct response to requests for purposes of this proceeding. Furthermore, with respect to using price quotes, Petitioner cites to Fresh Garlic 2007, where the Department has rejected the use of price quotes for valuing FOPs. Additionally, Petitioner asserts that the Department should not deem these price quotes as reliable information because of the manner in which they were converted to a per kilogram basis. Finally, Petitioner rebuts Fish One and Phuong Nam's argument that the Department should use Comtrade's 2007 export data to determine the inner box surrogate value by stating that there is no reason to believe that Comtrade's 2006 import data is flawed. Petitioner argues that, if the Department discontinues using the Comtrade data for the final results, it should use the Indian surrogate value for inner boxes in its surrogate value submission dated March 27, 2009.⁵⁵ Petitioner argues that this value is contemporaneous with the POR, based on a larger import volume than the Bangladeshi import data, and from a country designated as a potential surrogate country by the Department.

The Domestic Processors also rebut arguments that the Department should not continue to use Comtrade data to value inner boxes for the final results. The Domestic Processors argue that the respondents and Contessa have not provided evidence that the Comtrade data does not reflect prices for packaging materials other than arguing the value is high. Additionally, the Domestic Processors contend that the price quotes that the respondents placed on the record should be rejected because they are not publicly available, do not represent a broad-market average, and are not reliable. The Domestic Processors urge the Department to continue using the Comtrade Bangladeshi import data to value inner boxes for the final results.

Department's Position:

The Department disagrees with respondents that Comtrade's 2006 Bangladeshi import data is a flawed surrogate value source for inner boxes. In the Preliminary Results, the Department relied on Comtrade's 2006 Bangladeshi import data for HTS 4819.20, inflated for contemporaneity with the POR, for the inner box surrogate value source. As explained below, we find that the respondents have failed to demonstrate that Comtrade's 2006 Bangladeshi import data for inner boxes are inappropriate and should be replaced with another surrogate value source for this input.

Section 773(c)(1)(B) of the Act directs the Department to use "the best available information" from the appropriate market-economy country to value FOPs. In selecting the most appropriate surrogate values, the Department considers several factors including whether the surrogate value is publicly available, contemporaneous with the POR, represents a broad market average, chosen from an approved surrogate country, are tax and duty-exclusive, and specific to the input. The Department's preference is to satisfy the breadth of the aforementioned selection criteria.

⁵⁵ See Petitioner's Surrogate Value Submission, dated March 27, 2009, at Attachment 4.

However, where all the criteria cannot be satisfied, the Department will choose a surrogate value based on the best available information on the record. See Fish Fillets 2009.

The Department has determined that, of the sources on the record, Comtrade's 2006 Bangladeshi import data is the most recent source for the inner box surrogate value that is publicly available, represents a broad market average, is chosen from the surrogate country, is tax and duty-exclusive, and is specific to the input. Therefore, for the final results, we find that Comtrade's 2006 Bangladeshi import data represents the best available information for valuing inner boxes and we will rely upon this source, inflated for contemporaneity, to value inner boxes for the final results.

In Tapered Roller Bearings 2009, the Department stated that the burden is on the party making the claim to establish that a particular surrogate value is not appropriate based on the Department's preferred criteria for selecting surrogate values. Here, MPG, Camimex, and certain SR Respondents have argued that the 2006 Bangladeshi import data reflects a higher value when compared to previous reviews of this order. However, the existence of higher prices alone does not necessarily indicate that price data is distorted or misrepresented. See Tapered Roller Bearings 2009. Thus, the existence of a higher price is not sufficient to exclude a particular surrogate value, absent specific evidence that the value is otherwise abnormal or unreliable. Furthermore, contrary to the Department's findings with regard to master cartons, the historical data on the record for inner boxes does not show a dramatic or unusual percent change between the 2006 Bangladeshi import data and the previous years. Rather, this historical data demonstrates a gradual increase in the price of Bangladeshi imported inner boxes between years, which, absent any other information on the record to conclude otherwise, the Department finds is commercially reasonable. Accordingly, we do not find the difference in price so great as to constitute an anomaly from the AUV's in previous years. Therefore, in the instant case, the Department finds that MPG, Camimex, and certain SR Respondents have not provided sufficient evidence that the 2006 Bangladeshi import data is aberrational.

Additionally, with respect to the submitted Bangladeshi price quotes, we note that the Department's general practice is to not use price quote information if other publicly available data is on the record, because these do not represent actual prices, broad ranges of data, and the Department does not know the conditions under which these were solicited and whether or not these were self-selected from a broader range of quotes. See Fresh Garlic 2007. Accordingly, we will not rely on these price quotes because the record contains more reliable data with which to value inner boxes.

Regarding Fish One and Phuong Nam's suggestion that the Department use export data, we note that, consistent with our established practice, we only use export data when it represents the best available information on the record and no other appropriate surrogate value data is available from the potential surrogate countries provided by the OP. See Carbon Steel Plate from Romania. In the instant review, we find that there are other appropriate surrogate value data available from Bangladesh, the primary surrogate country, using Comtrade's import data. Consequently, we will not use export data because the record contains more reliable data with which to value inner boxes.

Therefore, the Department determines that Comtrade's 2006 Bangladeshi import data used in the Preliminary Results remains the best available information on the record and we will continue to rely upon this value for the final results.

D. Plastic Trays/Rings

Fish One and Phuong Nam argue that the Department should not use Comtrade's 2006 Bangladeshi import data to value plastic rings/trays for the final results because this data is far different from what Bangladeshi importers reported and therefore must be wrong, aberrational, or both. Instead, Fish One and Phuong Nam urge the Department to use Comtrade's 2006 export data from those countries listed in the Bangladeshi import data because it represents the most accurate data, thus, the best available information.

Petitioner rebuts Fish One's and Phuong Nam's argument that the Department should not use Comtrade's 2006 Bangladeshi import data to determine the surrogate value for plastic rings/trays. Petitioner contends that Fish One's and Phuong Nam's argument against using Comtrade import data, *i.e.*, that it differs from Comtrade export data, is insufficient evidence that export data is accurate while import data is inaccurate. Therefore, Petitioner urges the Department to make no changes to the plastic rings/trays surrogate value for the final results.

Department's Position:

The Department disagrees with Fish One and Phuong Nam that Comtrade's 2006 Bangladeshi import data is flawed. In the Preliminary Results, the Department relied on Comtrade's 2006 Bangladeshi import data for HTS 3923.10, inflated for contemporaneity with the POR, for the plastic trays/rings surrogate value source. As explained below, we find that Fish One and Phuong Nam have not provided sufficient evidence on the record that Comtrade's 2006 Bangladeshi import data for plastic trays/rings is aberrational.

Section 773(c)(1)(B) of the Act directs the Department to use "the best available information" from the appropriate market-economy country to value FOPs. In selecting the most appropriate surrogate values, the Department considers several factors including whether the surrogate value is publicly available, contemporaneous with the POR, represents a broad market average, chosen from an approved surrogate country, are tax and duty-exclusive, and specific to the input. The Department's preference is to satisfy the breadth of the aforementioned selection criteria. However, where all the criteria cannot be satisfied, the Department will choose a surrogate value based on the best available information on the record. See Fish Fillets 2009.

The Department has determined that, of the sources on the record, Comtrade's 2006 Bangladeshi import data is the most recent source for the plastic trays/rings surrogate value that is publicly available, represents a broad market average, is chosen from the surrogate country, is tax and duty-exclusive, and is specific to the input. Therefore, for the final results, we find that Comtrade's 2006 Bangladeshi import data represents the best available information for valuing plastic trays/rings and we will rely upon this source, inflated for contemporaneity, to value plastic trays/rings for the final results.

In Tapered Roller Bearings 2009, the Department stated that the burden is on the party making the claim to establish that a particular surrogate value is not appropriate based on the Department's preferred criteria for selecting surrogate values. In the instant review, the Department finds that Fish One and Phuong Nam have not provided any evidence to prove that Comtrade's 2006 export data is more accurate than Comtrade's 2006 import data for Bangladesh. Rather, they argue that the import data is aberrational because it differs from the export data. We note that, consistent with our established practice, we only use export data when it represents the best available information on the record and no other appropriate surrogate value data is available from the potential surrogate countries provided by the OP. See Carbon Steel Plate from Romania. In the instant review, for the reasons described above, we find that the Comtrade import data is appropriate. Consequently, we will not use export data to value plastic trays/rings.

E. Sticker/Label

Fish One and Phuong Nam argue that the Department should not use Comtrade's 2006 Bangladeshi import data to value stickers/labels for the final results because this data is far different from what Bangladeshi importers reported and therefore must be either wrong, aberrational, or both. Instead, Fish One and Phuong Nam urge the Department to use Comtrade's 2006 export data from those countries listed in the Bangladeshi import data because it represents the most accurate data, and thus, the best available information.

Petitioner rebuts Fish One and Phuong Nam's argument that the Department should not use Comtrade's 2006 Bangladeshi import data to determine the surrogate value for stickers/labels. Petitioner contends that Fish One and Phuong Nam's argument against using Comtrade import data, i.e., that it differs from Comtrade export data, is insufficient evidence that export data is accurate while import data is inaccurate. Therefore, Petitioner urges the Department to make no changes to the stickers/labels surrogate value for the final results.

Department's Position:

The Department disagrees with Fish One and Phuong Nam that Comtrade's 2006 Bangladeshi import data is flawed. In the Preliminary Results, the Department used Comtrade's 2006 Bangladeshi import data for HTS 4823.12, inflated for contemporaneity with the POR, for the stickers/labels surrogate value source. As explained below, we find that Fish One and Phuong Nam have not provided sufficient evidence on the record that Comtrade's 2006 Bangladeshi import data for stickers/labels is aberrational.

Section 773(c)(1)(B) of the Act directs the Department to use "the best available information" from the appropriate market-economy country to value FOPs. In selecting the most appropriate surrogate values, the Department considers several factors including whether the surrogate value is publicly available, contemporaneous with the POR, represents a broad market average, chosen from an approved surrogate country, are tax and duty-exclusive, and specific to the input. The Department's preference is to satisfy the breadth of the aforementioned selection criteria. However, where all the criteria cannot be satisfied, the Department will choose a surrogate value based on the best available information on the record. See Fish Fillets 2009.

The Department has determined that, of the sources on the record, Comtrade's 2006 Bangladeshi import data is the most recent source for the stickers/labels surrogate value that is publicly available, represents a broad market average, is chosen from the surrogate country, is tax and duty-exclusive, and is specific to the input. Therefore, for the final results, we find that Comtrade's 2006 Bangladeshi import data represents the best available information for valuing stickers/labels and we will rely upon this source, inflated for contemporaneity, to value stickers/labels for the final results.

In Tapered Roller Bearings 2009, the Department stated that the burden is on the party making the claim to establish that a particular surrogate value is not appropriate based on the Department's preferred criteria for selecting surrogate values. In the instant review, the Department finds that Fish One and Phuong Nam have not provided any evidence to prove that Comtrade's 2006 export data is more accurate than Comtrade's 2006 import data for Bangladesh. Rather, they argue that the import is aberrational because it differs from the export data.

Regarding Fish One and Phuong Nam's suggestion that the Department use Comtrade's 2006 export data instead of the 2006 Bangladeshi import data, we note that, consistent with our established practice, we only use export data when it represents the best available information on the record and no other appropriate surrogate value data is available from the potential surrogate countries provided by the OP. See Carbon Steel Plate from Romania. In the instant review, for the reasons described above, we find that the Comtrade import data is appropriate. Consequently, we will not use export data to value stickers/labels.

F. Cold Storage

Minh Phu Group, Camimex, and certain SR Respondents argue that the Department should not use the Green World Foundation cold storage value for the final results because it is not reliable, not reported on a daily rate, is inaccurate, and is more than 15 times higher than the value in the preceding administrative review. Minh Phu Group, Camimex, and certain SR Respondents contend that the Department should use a value obtained from an Oregon State University ("OSU") study which, the respondents claim, is publicly available and specific to the subject merchandise. The respondents maintain that the Department has used U.S. values in the past when reliable values are not available for comparable merchandise in any of the countries deemed economically comparable. The respondents allege that if the Department decides to use the OSU value, it should combine the storage and handling charges to arrive at an average rate of \$0.00184/kg/day.

Contessa argues that the Department should recalculate the rate used for the cold storage surrogate value from the Preliminary Results because the cold storage rate calculated by the Department was on a taka per year, not a taka per day, basis. Contessa contends that in order to express the cold storage rate on a daily basis the Department should divide the 3.379 takas per kg by 365 and then deflate the resulting figure by 0.89221 to determine the appropriate POR value, which Contessa claims will be 0.00826 takas per kg per day. Alternatively, Contessa urges the Department to use the F.J. Seafoods price quote for Bangladeshi cold storage services, as provided in its surrogate value submission, dated March 30, 2009, at Exhibit 5.

Petitioner rebuts arguments that the cold storage surrogate value used in the Preliminary Results was not a daily rate, stating that there is no evidence to suggest that the prices reported for cold storage are for anything other than a daily period. Citing to Tapered Roller Bearings 2009, Petitioner also argues that a claim that a surrogate value is too high is insufficient to demonstrate that the value is unreliable. Petitioner argues that this rationale is not a sufficient basis to alter the Department's cold storage surrogate value from the Preliminary Results. Additionally, Petitioner rejects the price quotes for F.J. Seafoods as an alternate cold storage surrogate value because the price quote represents data that is not publicly available and not a broad market average. Petitioner also argues that the OSU surrogate value is inappropriate because it was obtained from a source in the United States, which is not at a comparable level of economic development to Vietnam. Petitioner further argues that the record contains a reliable cold storage value from Bangladesh, the surrogate country selected by the Department.

The Domestic Processors also rebut arguments that the cold storage data used in the Preliminary Results should be replaced with data from OSU. The Domestic Processors contend that the respondents fail to demonstrate how the cold storage surrogate value used in the Preliminary Results does not meet the Department's criteria. The Domestic Processors also argue that the OSU data is from the United States, which is not one of the potential surrogate countries identified by the Department. Further, the Domestic Processors argue that the OSU data is based on large scale cold storage facilities and does not account for all costs related to the services of cold storage facilities. The Domestic Processors contend that actual data from cold storage facilities located in an appropriate surrogate country is more comparable to the production experience of cold storage facilities in Vietnam and, therefore, the Department should continue to use the cold storage surrogate value from the Preliminary Results. In the alternative, the Domestic Processors urge that, if the Department discontinues its use of the cold storage surrogate value from the Green World Foundation, it should use the cold storage value from the preceding administrative review.

Department's Position:

The Department agrees with Petitioner, the Domestic Processors, and the respondents, in part, with respect to the surrogate value used for domestic cold storage warehousing. In the Preliminary Results, we used a cold storage surrogate value obtained from a study conducted by the Green World Foundation. We find that, although this study contained pricing for storage rent, the basis of the pricing is ambiguous. Specifically, the prices indicated do not show whether those storage rates are on a daily basis, monthly basis, or yearly basis. See Prelim Surrogate Value Memo at Exhibit 10. Consequently, for the final results, we are not using the rates from the Green World Foundation Study to value cold storage.

Section 773(c)(1)(B) of the Act directs the Department to use "the best available information" from the appropriate market-economy country to value FOPs. In selecting the most appropriate surrogate values, the Department considers several factors including whether the surrogate value is publicly available, contemporaneous with the POR, represents a broad market average, chosen from an approved surrogate country, are tax and duty-exclusive, and specific to the input. The Department's preference is to satisfy the breadth of the aforementioned selection criteria. However, where all the criteria cannot be satisfied, the Department will choose a surrogate value

based on the best available information on the record. See Fish Fillets 2009.

The record currently contains several sources for cold storage surrogate values. Specifically, prior to the Preliminary Results, the respondents placed a Bangladeshi cold storage surrogate value from Tropical-Seeds.com on the record. See Minh Phu Group's and Camimex's Surrogate Value Submission dated January 30, 2009 at Exhibit 1. Petitioner also placed on the record a cold storage surrogate value from an Indian source. See Petitioner's Surrogate Value Submission dated January 30, 2009, at 7 and Attachment 9. Following the Preliminary Results, additional cold storage surrogate values were placed on the record. Among those are cold storage rates obtained from a U.S. source and a Bangladeshi price quote.⁵⁶

As stated above, the Department selected Bangladesh as the primary surrogate country. We have reaffirmed this determination above in Comment 2. Because we selected Bangladesh as the surrogate country, our preference is to use a cold storage surrogate value from a Bangladeshi source. Therefore, we will not use the Indian cold storage surrogate value, as the record contains suitable Bangladeshi values. Furthermore, we will not use the cold storage surrogate value based on a U.S. price, as the United States was not one of the potential surrogate market economy countries provided by the OP. See Surrogate Country List. Additionally, with respect to Contessa's submitted price quote, we note that our strong preference is not to rely on price quotes for factor valuation purposes as they do not represent actual prices, broad ranges of data, and the Department does not know the conditions under which they were solicited and whether or not they were self-selected from a broader range of quotes.⁵⁷ Consequently, we will not rely on the price quote from FJ Seafoods because the record contains more reliable data with which to value cold storage. Although the Bangladeshi cold storage surrogate value from Tropical-Seeds.com is not contemporaneous with the POR, we determine that it remains the best available information on the record because it is not a price quote or from a market economy country not provided on the Surrogate Country List. Moreover, the pricing terms reported in the Tropical-Seeds.com data are on a kilogram per day basis, unlike the value used in the Preliminary Results. Therefore, for the final results, we will use the Tropical-Seeds.com price to value cold storage and will inflate the value to the POR. See Final Surrogate Value Memo.

Surrogate Financial Ratios

Comment 8: Use of Gemini Foods Inc.

Petitioner argues that the Department should not use Gemini Foods Inc. ("Gemini") as a source for surrogate financial ratios, but rather base the surrogate financial ratios exclusively on information provided from Apex. Petitioner contends that in fiscal year ("FY") 2006-07 and FY 2007-08, Gemini received export subsidies from the Bangladeshi government, which taint Gemini's

⁵⁶ As noted in case brief and rebuttal brief arguments, the U.S. surrogate value was submitted by the respondents after the Preliminary Results. See Minh Phu Group's and Camimex's Surrogate Value Submission dated March 30, 2009 at Exhibit ASV-4. Additionally, Contessa submitted a price quote from FJ Seafoods Int'l Ltd., a Bangladeshi firm. See Contessa's Surrogate Value Submission dated March 30, 2009 at Exhibit 5.

⁵⁷ See, e.g., PVA 2003 at Comment 1; Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 34082 (June 13, 2005) and accompanying Issues and Decision Memorandum at Comment 10.

financial statements and render them unusable for determining financial ratios. Petitioner argues that the export subsidies Gemini received are countervailable under section 771(5) of the Act. Petitioner states that it is the Department's practice to disqualify financial statements from companies that receive export subsidies, citing OTR Tires and accompanying Issues and Decision Memorandum at Comment 17a.

Contessa argues that the Department should not use Gemini's 2007-08 financial statements, but rather should continue to use Gemini's 2006-07 financial statements. Contessa contends that Gemini's 2006-07 financial statements are more contemporaneous with this POR, in that Gemini's 2006-07 financial statements cover eight months of the POR whereas Gemini's 2007-08 financial statements cover four months of the POR. Contessa asserts that this situation is analogous with Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review, 70 FR 38873 (July 6, 2005), and accompanying Issues and Decisions Memorandum at Comment 2 ("Honey 2005").

In rebuttal, Minh Phu Group and Camimex contend that there is insufficient information on the record for the Department to discard Gemini's financial statements. Minh Phu Group and Camimex assert that the Department has consistently determined that it is appropriate to use financial statements where there is insufficient information on record regarding a subsidy program to warrant disregarding the financial statements.⁵⁸ Moreover, Minh Phu Group and Camimex state that in OTR Tires, the Department rejected the financial statement of a surrogate company who had participated in a subsidy program that the Department had previously found to be countervailable. Minh Phu Group and Camimex contend that the mere mention of export subsidies is not sufficient to disregard Gemini's financial statements.

Fish One argues that it is appropriate to include Gemini's financial statements for the purpose of calculating surrogate financial ratios. Fish One contends that the Department recently decided the issue of Gemini's FY 2006-07 financial statements in Fish Fillets 2009 at Comment 1. Fish One states that in that review, the Department cited, H.R. Conf. Rep. No. 100-576 at 590 (1988), reprinted in 1988 U.S.C.A.N. 1547, 1623 ("House Report"), to decide the issue based on whether there is reason to believe or suspect that prices being used may be dumped or subsidized. Fish One states that the Department used the very same FY 2006-07 Gemini financial statements in the calculation of surrogate financial ratios in that case and should continue the practice in the instant review.

In rebuttal, Contessa argues that the Department should continue to use Gemini's financial information in the calculation of surrogate financial ratios. Contessa contends that in OTR Tires, the Department utilized financial statements of three surrogate companies that had received subsidies where the Department found that there was no evidence that those three companies received countervailable subsidies during that review period. Moreover, Contessa states that, in OTR Tires, the Department discarded the surrogate financial statements of only those surrogate companies that received export subsidies that the Department had found to be countervailable. In addition, Contessa claims that there is no evidence on record that the income received by Gemini

⁵⁸ Camimex cites OTR Tires and Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Second Administrative Review, 72 FR 13242 (March 21, 2007), and accompanying Issues and Decisions Memorandum at Comment 9.

represent a countervailable subsidy. Moreover, Contessa asserts that the Department has already concluded that reliance on the financial experience of one company alone would not reflect the entire Bangladeshi industry, and that the surrogate financial ratios would be bolstered by including both Apex and Gemini.

Department's Position:

The Department disagrees with Petitioner with respect to the surrogate companies used to calculate the surrogate financial ratios. In the Preliminary Results, the Department averaged the surrogate financial ratios of two Bangladeshi shrimp processors: Apex (fiscal year ending in June 2008) and Gemini Seafood Limited ("Gemini") (fiscal year ending September 2007). Petitioner argues that Gemini's financial statements should not be considered for surrogate financial ratios because there is a reason to believe or suspect that Gemini received a subsidy.

One of the criteria to evaluate in determining what is the best available information in valuing an FOP is whether there is a reason to believe or suspect that prices being used may be dumped or subsidized. See Peer Bearing Co. v. United States, 298 F. Supp. 2d 1328, 1331 (CIT 2003) ("Peer Bearing"); see also House Report. The House Report further explains that a formal countervailing duty ("CVD") investigation is not required in making the determination and that the Department should base its decision on the available record evidence. See Peer Bearing; see also House Report at 1623-24. Congress provided no further guidance as to what would constitute a reasonable basis to believe or suspect that a price may be subsidized. As a result, Congress left the determination to the Department's discretion.

The Department has exercised its discretion in deciding what constitutes a reasonable basis to believe or suspect that a value may be subsidized. For example, if a financial statement contains a reference to a specific subsidy program that the Department found countervailable in a formal CVD determination, that would constitute a reasonable basis to believe or suspect that the prices may be subsidized. However, the Department has also explained that where there is a mere statement in a financial statement that a subsidy was received, and for which there is not additional information as to the nature of such as a potential subsidy, the Department would determine that there was insufficient evidence to support a finding that there is a reasonable basis to believe or suspect that the company has received a subsidy.

Petitioner argues that a ten percent export subsidy was made available to Gemini from the Bangladeshi government. See Petitioner's Case Brief dated April 10, 2009, at 13. However, absent further specific information, such as evidence that this statement refers to a program previously found by the Department to provide a countervailable subsidy, we cannot conclude that Gemini's 2006/2007 financial statements are unsuitable for calculating surrogate financial ratios. As a result, the Department will continue to include Gemini's 2006/2007 financial statements in the calculation of surrogate financial ratios. Finally, we note that no party has challenged the use or appropriateness of Apex's financial statements, and thus, we will average the financial ratios calculated for Gemini and Apex in the calculation of surrogate financial ratios for these final results.

Comment 9: Treatment of Depreciation Expenses

Minh Phu Group, Camimex, certain SR Respondents, and Contessa argue that the Department incorrectly calculated the surrogate financial ratios of Apex and Gemini by using the total value of depreciated assets rather than the depreciation costs recognized during the fiscal year. The respondents and Contessa contend that the proper depreciation amounts to use are the amounts from the income statements rather than the companies' balance sheets. The respondents and Contessa suggest that for Apex, the Department should have used the amount 31,896,348 takas, found in Note 2 of Apex's financial statements, rather than the 132,736,509 taka figure the Department utilized. Additionally, the respondents and Contessa suggest that for Gemini, the Department should have used the amount 4,863,168.06, found in Note 2 of Gemini's financial statements, in the "during the year" column rather than the 47,663,277.71 taka figure used in the Preliminary Results. For the final results, the respondents and Contessa suggest the Department include additional depreciation categories and amounts found in the financial statements of Apex and Gemini in the surrogate financial ratio worksheets.

In rebuttal, Petitioner argues that the Department should continue to use the depreciation accounting methodology employed in the Preliminary Results. Petitioner contends that the manner in which the depreciation expense was calculated for the surrogate financial ratios is identical to that in the preceding administrative review. Petitioner also asserts that respondents argued for this depreciation expense calculation methodology in the previous review.

Department's Position:

The Department agrees with the respondents and Contessa that depreciation expenses in the surrogate financial ratios were calculated using the incorrect depreciation column from the surrogate financial statements. In the Preliminary Results, the Department incorrectly calculated depreciation expenses using data that was reported within the column "Written down value" or "W.D.V.," which reports the net book value as the original cost of the assets less the depreciation expenses that have accumulated over the years since the assets were placed in service. We have determined that the appropriate column from which yearly depreciation expenses ought to be calculated is the "for the year" column in Apex's financial statements and the "during the year" column in Gemini's financial statements. For the final results, we have revised the depreciation expenses accordingly, using the appropriate columns from both financial statements, resulting in updated surrogate financial ratios. See Final Surrogate Value Memo.

Comment 10: Treatment of Labor Expenses

Petitioner argues that bonus payments made by Apex are not direct labor costs, but rather, are manufacturing overhead expenses. Additionally, Petitioner argues that if the Department continues to use Gemini's financial statements, it should reclassify salary and allowance payments made by Gemini as SG&A expenses and not direct labor when calculating the surrogate financial ratios. Petitioner states that in the previous review, the Department had determined that Apex's director's remuneration payments, salary and allowance payments, and bonus payments to staff

and workers and Gemini's salary and allowance payments were SG&A expenses and should continue this practice in the instant review.⁵⁹

In rebuttal, Minh Phu Group, Camimex, Contessa, and Fish One argue that the Department correctly classified all of Apex's director's remuneration payments, salary and allowance payments, and bonus payments to staff and workers, and Gemini's salary and allowance payments as direct labor expense for the surrogate financial ratio calculation for the final results. The respondents and Contessa assert that the Department correctly applied its policy change from OTR Tires.

Department's Position:

The Department agrees with Petitioner with respect to the classification of certain line items within the surrogate financial statements to the appropriate expense categories. First, we note that "Director's Remuneration" was inadvertently and erroneously categorized as a direct labor expense in the Preliminary Results. In OTR Tires, the Department stated that, "in each instance where the financial statements contained data allowing the Department to segregate labor into 1) wages corresponding to Chapter 5B of the ILO database and 2) other labor costs, the Department did so, and has treated as direct labor only those items corresponding to the wages described in Chapter 5B as direct labor costs." See OTR Tires at Comment 18g. The Department also noted in OTR Tires that: two of the surrogate financial statements, "Manufacturing, Administrative, Selling & Distribution Expenses" were all included together; one surrogate financial statement listed "personnel" as its own category irrespective of production labor and administrative labor; and one surrogate financial statement listed labor expenses under the "expenses" category. See id. Moreover, the Department has previously found that it "normally classifies the entire value of the salary and wages recorded on the surrogate producer's financial statements as labor expenses when the financial statements do not clearly distinguish between wages and salaries attributed to manufacturing and/or SG&A Personnel." See Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 72 FR 12762 (March 19, 2007) and accompanying Issues and Decision Memorandum at Comments 3a and 3b ("PRC Bags").

However, unlike in OTR Tires and PRC Bags, where the surrogate financial statements did not differentiate labor classified between manufacturing expenses and selling and administrative expenses, Apex's and Gemini's financial statements do make a clear distinction between the two expense categories, labeled as "cost of production" expenses and "administrative and selling expenses." See Minh Phu Group's and Camimex's Surrogate Value Submission dated January 30, 2009 at Exhibit 14; Phuong Nam Surrogate Value Submission dated January 29, 2009 at Exhibit 1a. Thus, where the Department is able to distinguish production-related labor expenses from SG&A-related labor expenses, we have treated salaries and labor expenses in a manner consistent with each of the surrogate company's audited financial statements.⁶⁰ Specifically,

⁵⁹ See Petitioner's Case Brief dated April 10, 2009, at 10-12.

⁶⁰ See, e.g., Wooden Bedroom Furniture from the People's Republic of China: Final Results of the 2004-2005 Semi-Annual New Shipper Reviews, 71 FR 70739 (December 6, 2006) and accompany Issues and Decision Memorandum at Comment 6.

where Apex and Gemini classified “Salary and Allowances,” “Contribution to Provident Fund,” or other labor-related costs under SG&A expenses, we will treat those administrative labor expenses accordingly with the surrogate financial ratio calculation. Additionally, because Apex classified “Bonus to Staff” under SG&A expenses, we will, for the final results, also include that expense line item within the SG&A calculation. See Final Surrogate Value Memo. Finally, for the final results, we will appropriately amend the categorization of “Director’s Remuneration” from direct labor expenses to SG&A expenses.

Company-Specific Issues

Comment 11: Application of Adverse Facts Available to Minh Phu Group’s U.S. Warehousing Expenses

Petitioner argues that the Department should correct Minh Phu Group’s reported U.S. warehousing expense to more accurately reflect how those expenses were incurred.⁶¹ Petitioner alleges that U.S. warehousing inconsistencies exist with respect to certain sales made by Minh Phu Group during the POR. Petitioner further alleges that, due to Minh Phu Group’s failure to act to the best of its ability in properly answering questions with respect to its U.S. warehousing expenses, the Department ought to apply adverse facts available (“AFA”) to Minh Phu Group’s warehousing expenses reported for certain sales.

Minh Phu Group rebuts Petitioner’s arguments by stating that there is no justification to warrant the application of AFA to Minh Phu Group’s U.S. warehousing expenses. Minh Phu Group claims that the reported U.S. warehousing expenses had been revised in a supplemental questionnaire response dated November 19, 2008. Minh Phu Group argues that the revised expenses were adjusted to take into account the length of time the merchandise remained in storage on a transaction-specific basis. Minh Phu Group claims that, once adjusted, the correct expenses were applied to each sale. Minh Phu Group contends that the revised expense calculation was explained in a sample calculation, showing that the per-unit expenses were accurately reflected in the revised sales database.

Minh Phu Group adds that Petitioner’s oversimplification of the U.S. warehousing activities does not acknowledge differences in warehousing expenses on a sale-by-sale basis. Moreover, Minh Phu Group argues that Petitioner does not account for the variance in prices charged by different U.S. warehouses or the rate variance for a given lot size. Minh Phu Group claims that it has fully cooperated with the Department during this administrative review and should not be penalized with a finding of facts available, adverse or not.

Department’s Position:

The Department disagrees with Petitioner as we find that the application of AFA for Minh Phu Group is not appropriate for alleged inaccuracies reported for U.S. warehousing expenses. In making this determination, the Department must first assess whether the use of facts available is

⁶¹ Due to the business proprietary nature of Minh Phu Group’s information contained in Petitioner’s case brief dated April 10, 2009, see Petitioner’s case brief dated April 10, 2009, at 14-17.

justified, and then, whether the criteria for an adverse inference have been met, pursuant to section 776 of the Act. We find that the application of facts otherwise available is not warranted under section 776(a) of the Act. Section 776(a)(1) of the Act mandates that the Department use facts available if necessary information is not available on the record of a proceeding. In addition, Section 776(a)(2) of the Act states that if an interested party or any other person: (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadline, or in the form or manner requested; (C) significantly impedes a proceeding; or (D) provides such information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination.

If, after being notified by the Department of a deficiency, the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. See Section 782(d) of the Act. Section 782(e) of the Act states that the Department shall not decline to consider information deemed “deficient” under section 782(d) if: (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 has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. Furthermore, section 776(b) of the Act provides that the Department, in selecting from the facts otherwise available, may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department’s requests for information. The Act provides, in addition, that in selecting from among the facts available the Department may, subject to the corroboration requirements of section 776(c), rely upon information drawn from the petition, a final determination in the investigation, any previous administrative review conducted under section 751 (or section 753 for countervailing duty cases), or any other information on the record. See Section 776(b) of the Act.

As stated above, we find that the application of AFA for Minh Phu Group’s U.S. warehousing expenses is not appropriate. Because Minh Phu Group reported its U.S. warehousing expenses in a timely manner and in the form requested and also provided revised data in its supplemental questionnaire responses, there is no record evidence to support Petitioner’s assertion that the expenses were not reported accurately. Minh Phu Group provided a narrative explanation of its U.S. warehousing expense calculation. See Minh Phu Group’s Section C Questionnaire Response dated August 6, 2008, at page 30. The Department issued a supplemental questionnaire requesting a more detailed explanation of the calculation. Minh Phu Group answered the Department’s questions in addition to self-correcting some U.S. warehousing calculation oversights reported in the original response. See Minh Phu Group’s Supplemental Questionnaire Response dated November 30, 2008, at 16 and Exhibit SCD-11. Furthermore, Minh Phu Group has not impeded this proceeding under the antidumping statute, as the company responded to our questions throughout the course of the administrative review. Moreover, Minh Phu Group’s reported data was verifiable. Finally, we consider Minh Phu Group to have cooperated to the best of its ability.

Minh Phu Group has explained that unaffiliated U.S. warehousing companies charge different rates for different lot sizes which sufficiently explains the differentiation in expenses reported to

the Department on a sale-by-sale basis, and there is no record evidence to contradict this explanation. The Department finds that Minh Phu Group's explanation of its U.S. warehousing expense calculation is reasonable. Therefore, for the final results, we find that the application of AFA, pursuant to sections 776(a) and (b) of the Act, to Minh Phu Group's U.S. warehousing expenses is entirely inappropriate and have accepted the reported expenses for the final results.

Comment 12: Application of Facts Available to Minh Phu Group's Domestic Warehousing Expenses

Petitioner argues that the Department ought to accurately account for Minh Phu Group's warehousing expenses in Vietnam prior to exportation. Petitioner alleges that the Department calculated Minh Phu Group's domestic warehousing accounting for a single day of storage prior to exportation, which Petitioner claims is a presumption not supported by record evidence. Petitioner argues that the Department's alleged presumption understates the number of days that merchandise for export spends in domestic warehousing prior to export. Petitioner urges the Department to apply facts available to Minh Phu Group's domestic warehousing for the final results, because Minh Phu Group failed to report the period associated with warehoused merchandise prior to exportation. Petitioner provides a sample calculation of how the Department ought to assess domestic warehousing based on the timing gap between production and actual exportation. See Petitioner's case brief dated April 10, 2009, at 18-19.

Minh Phu Group rebuts Petitioner's arguments by stating that the Department has sufficiently considered domestic warehousing expenses incurred during the POR. Minh Phu Group argues that a facts available determination with respect to domestic warehousing would be inappropriate because the Department did not request such information from Minh Phu Group in either the original questionnaire or supplemental questionnaires. Minh Phu Group further contends that, even if the Department were to apply facts available to Minh Phu Group's domestic warehousing, Petitioner's facts available calculation was derived from a single sales packet of an export price ("EP") sale, which is neither appropriate, nor representative because the majority of Minh Phu Group's sales are constructed export price ("CEP") sales. Moreover, Minh Phu Group argues that Petitioner's calculation of days between production and export assumes that Minh Phu Group warehoused the merchandise in rented facilities for that entire period, rather than at its own on-site cold storage facility, or a combination of both. Minh Phu Group argues that the most appropriate assumption with respect to domestic cold storage warehousing expenses incurred for all sales is that for the majority of time between production and export, the merchandise is housed in Minh Phu Group's own cold storage unit on-site, while the merchandise is housed in rented cold-storage warehousing in Ho Chi Minh City for a very brief period. Minh Phu Group argues that the Department's calculation of domestic cold storage expenses was accurate and correct. Thus, Minh Phu Group argues that Petitioner's suggestion to apply facts available to domestic warehousing is entirely inappropriate for CEP sales. Minh Phu Group adds that, if any facts available are applied to domestic warehousing, it should be limited to EP sales.

Department's Position:

The Department agrees with Minh Phu Group and Petitioner, in part, with respect to domestic warehousing calculated for Minh Phu Group. The absence from the record of the average number

of days subject merchandise was held in storage prior to exportation has resulted in an inaccurate calculation of the cold storage warehousing expense in the Preliminary Results. The Department acknowledges that it did not request this information from Minh Phu Group during the course of the review. However, the record does contain information regarding Minh Phu Group's unaffiliated cold storage provider as well as the distances reported between Minh Phu Group's facilities, the unaffiliated cold storage warehouse, and the port of export.⁶²

As stated in the Preliminary Results, in accordance with section 772(c)(2)(A) of the Act, we must deduct movement expenses from the U.S. price. See Preliminary Results at 10015. Because domestic cold storage expenses are considered part of movement expenses within the margin calculation, an accurate calculation of the average warehousing period is required. To properly calculate cold storage warehousing as part of movement expenses, we need to apply the cold storage surrogate value to a quantifiable period of time for the reported sales. However, during the course of the review, the Department did not ask Minh Phu Group to report the number of days that subject merchandise was held in unaffiliated cold storage warehousing prior to exportation.

Section 776(a)(1) of the Act states that where needed information is not available on the record, the Department shall use facts otherwise available. Because the record does not contain the average period of time that subject merchandise was held in cold storage warehousing, the Department must use facts available in accordance with section 776(a)(1) of the Act. To determine a non-adverse proxy, we reviewed Petitioner's suggested proxy provided in its case brief dated April 10, 2009, which is calculated from information contained within a set of shipping documents for one EP sale during the POR. To gather more information from which the Department could more accurately calculate the cold storage warehousing expenses, the Department also looked to the immediately preceding segment of this proceeding for any cold storage warehousing data which may serve as a proxy in the instant review. On June 22, 2009, the Department placed on the record cold storage warehousing data reported by Minh Phu Group in the second administrative review, for the period February 1, 2006 through January 31, 2007. See Memorandum to the File from Irene Gorelik, Analyst, re; Domestic Warehousing Data for Minh Phu Group, dated June 22, 2009 at Attachment I. The Department stated its intent to use that information for the final results of this review and invited interested parties to comment on this data. No interested parties submitted comments regarding the data.

Consequently, for the final results of this review, we are relying on Minh Phu Group's reported cold storage warehousing data from the preceding administrative review, which we have placed on the record of this review, as facts available for the average number of days that subject merchandise was held in storage prior to exportation. See Memorandum to the File from Irene Gorelik, Analyst, re; Domestic Warehousing Data for Minh Phu Group, dated June 22, 2009 at Attachment I. We find that the average number of days that Minh Phu Group reported in the preceding review is more appropriate than Petitioner's suggestion as it was calculated using a wider range of data points from the company's records, rather than an inferred period of time gathered from one set of shipping documents. Id. For a detailed description of the cold storage warehousing calculation, see Memorandum to the File through Catherine Bertrand, Program

⁶² See Minh Phu Group Final Analysis Memo for a detailed explanation of the proprietary data reported for the domestic warehousing expenses incurred by Minh Phu Group during the POR.

Manager, Office 9, from Irene Gorelik, Senior Analyst, Office 9; Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Analysis for the Final Results of Minh Phu Group dated September 8, 2009 (“Minh Phu Group Final Analysis Memo”).

Comment 13: Clerical Errors Alleged for Minh Phu Group

A. Treatment of Minh Phu Group’s Sample Sales

Minh Phu Group argues that the Department should exclude Minh Phu Group’s sample sales from the margin calculation program for the final results. Minh Phu Group notes that, per the Department’s instructions, it reported sample sales in the sales database in the SAMPLEU field. Minh Phu Group contends that some of these sample sales had a gross unit price of zero, while others reflected a transportation cost charged to the customer. Minh Phu Group claims that all sample sales were reported as transactions that were provided to customers free of charge or showed a transportation or freight cost paid by the customer. Minh Phu Group argues that in those instances where the gross price was greater than zero, the net price was always zero or less, due to the price of the actual merchandise being zero. Minh Phu Group notes that the Department’s practice is to exclude sample sales from margin calculations.⁶³ Minh Phu Group argues that, for the final results, the Department should exclude those transactions coded as sample sales from the margin calculation program, expressed as follows:

IF SAMPLEU = ‘SAMPLE SALE’ THEN OUTPUT SAMPLES;

The Domestic Processors argue that the Department should reject Minh Phu Group’s claims that its sample sales ought to be excluded from the margin calculation program. The Domestic Processors contend that the record is unclear as to whether all such sales could be properly classified as *bona fide* sample sales. The Domestic Processors add that, absent convincing and verified evidence on the record establishing that these sales were, indeed, sample sales, they should not be excluded in the final results based solely on Minh Phu Group’s assertion.

Department’s Position:

The Department agrees, in part, with Minh Phu Group regarding its claimed sample sales. In the Preliminary Results, we did not exclude any sales observations identified in the sales database as a “sample sale.”

Minh Phu Group submitted a detailed listing of the sample sales provided during the POR, by customer, quantity, and gross price (including zero-priced transactions). See Minh Phu Group’s Section C Questionnaire Response dated August 6, 2008 at Exhibit C-9- F. This data properly reconciled to the CEP sales reconciliation submitted by Minh Phu Group. Id., at Exhibit C-9-A

⁶³ Minh Phu Group cites to NSK, Ltd. v. United States, 115 F.3d 965, 974-75 (Fed.Cir. 1997) (“NSK 1997”), NTN Bearing Corp. of Am v. United States, 104 F.Supp.2d 100, 143 (CIT 2000), NTN Bearing Corp., v. United States, 248 F.Supp.2d 1256, 1289 (CIT 2003).

through C-9-E. Additionally, the reconciliation shows that the quantity of the samples was a very small percentage of total reported U.S. sales for the POR.

Upon further review of the record, the Department has noted that, among the sales marked as “sample sales,” Minh Phu Group reported some zero-priced transactions within the sales database.⁶⁴ As stated above, the record also contains a master list of sample sales showing some zero-priced transactions, which reconciled to the monthly quantity and value chart for CEP sales and the annual income statements. The CEP sales reconciliation worksheet shows all the corresponding values from the monthly quantity and value chart and income statements. See Minh Phu Group Section C Questionnaire Response dated August 6, 2008 at Exhibit C-9-A through C-9-F. The Domestic Processors argue that because the information was unverified, the claimed sample sales are not legitimate. However, unlike less-than-fair-value investigations or new shipper reviews, the statute does not require the Department to verify respondents’ questionnaire responses in administrative reviews. Because there is no record evidence to the contrary, we find that the sample sales are legitimate.

Therefore, pursuant to our practice, we will not include any zero-priced transactions, as reported in the sales database, in our calculation of the final dumping margin for Minh Phu Group as there was no other record evidence indicating that Minh Phu Group received consideration for these transactions. See, e.g., AK Steel Corp. v. United States, 226 F. 3d 1361, 1371 (Fed. Cir. 2000); Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Preliminary Results of Antidumping Duty Administrative Reviews and Intent to Rescind Reviews in Part, 73 FR 25654, 25659 (May 7, 2008) unchanged in Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part, 73 FR 52823 (September 11, 2008).

However, we will retain those sales that Minh Phu Group identified as “sample” sales, but for which a price was charged (since it was a transaction for consideration). See Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value, 73 FR 55036 (September 24, 2008) and accompanying Issues and Decision Memorandum at Comment 7 (“UAE Pet Film”). We have retained these sales in the U.S. sales database for margin calculation purposes, deducting all of the relevant expenses.

Furthermore, as we determined in UAE Pet Film, for purposes of these final results, we have calculated the total expenses incurred on U.S. sample sale transactions and deducted them from U.S. price on a customer-specific basis, as the final U.S. customer was identified in the sales database. Id. For additional information about these adjustments, see Minh Phu Group Final Analysis Memo.

B. Treatment of Minh Phu Group’s Returned Merchandise

⁶⁴ We note that Minh Phu Group included the sample sales in the U.S. sales database at the Department’s request. See Minh Phu Group’s Supplemental Questionnaire Response dated November 20, 2008, at 21.

Minh Phu Group argues that, for the final results, the Department should exclude sales that were full returns. Minh Phu Group contends that the Department did not account for returned merchandise in the Preliminary Results, expressed in the net quantity of sales. Minh Phu Group suggests the following margin programming code to account for the net quantity sold after merchandise returns:

$$\text{QTY1U} = (\text{QTY1U} - \text{QTYRET1U}) / 2.204623;$$

No other interested parties submitted comments regarding this issue.

Department's Position:

The Department agrees with Minh Phu Group that there was a clerical error made in Minh Phu Group's margin calculation program with respect to the quantity variable used in the programming language. Specifically, although the Department used the correct quantity variable, QTY1U, at line 251 of Minh Phu Group's preliminary margin program, QTY1U was not input at line 581. The Department has corrected this error for the final results. See Minh Phu Group Final Analysis Memo.

C. Minh Phu Group's Import-Specific Assessment

Minh Phu Group argues that the Department did not convert the entered value to kilograms for importer-specific assessment rates. Minh Phu Group argues that, for the final results, the Department should properly convert the entered value to a USD per kilogram basis, expressed as follows:

$$\text{ENTVALUE} = \text{ENTVALUE} * 2.2046;$$

No other interested parties submitted comments regarding this issue.

Department's Position:

We agree with Minh Phu Group with respect to the calculation of the importer-specific assessment rate calculation in the margin calculation program. Consistent with the reported U.S. expenses, which we converted to a USD per kilogram basis, we will also convert the entered values to a USD per kilogram basis for the final results. See Minh Phu Group Final Analysis Memo.

Comment 14: Clerical Errors Alleged for Camimex

Petitioner contends that the Department made a ministerial error in Camimex's margin calculation program. Specifically, Petitioner states that when the Department converted Camimex's reported sales quantities and reported gross unit price, the Department failed to properly convert the international freight amounts reported by Camimex.⁶⁵ Additionally, the Domestic Processors

⁶⁵ Specific quantities and units discussed by Petitioner is business proprietary information. See Petitioner's Letter dated April 10, 2009, at 19-20.

assert that the Department made a clerical error in its assignment of certain surrogate values in the margin program for certain count sizes of shrimp reported by Camimex and that the Department should correct these errors for the final results.⁶⁶

No other interested parties submitted comments regarding this issue.

Department's Position

The Department agrees with Petitioner that there was a clerical error regarding the conversion of Camimex's reported international freight amounts. Accordingly, the Department will convert Camimex's international freight expenses to a USD per kilogram basis for the final results.

Additionally, the Department has clarified the assignment of raw shrimp surrogate values in the margin program for certain sizes of raw shrimp uniquely reported by Camimex. See Surrogate Value Memo and Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Robert Palmer, Analyst, Office 9; Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Analysis for the Final Results of Camimex, dated September 8, 2009.

Comment 15: Clerical Errors Alleged for Phuong Nam

Phuong Nam argues that the Department improperly inflated both the quantity and the potential uncollected dumping duty ("PUDD") in the margin calculation program in the Preliminary Results because the Department defined the variable QTYU as being QTY1U converted to kilograms but then failed to use QTYU as the variable for quantity in the margin calculation program. Phuong Nam suggests that the Department correct this alleged error by changing line 251 in Phuong Nam's margin calculation program to %LET USQTY = QTYU;.

Phuong Nam also argues that the Department made an error with respect to the count size brackets applied to raw shrimp in the normal value calculation.

No other interested parties submitted comments regarding this issue.

Department's Position:

The Department agrees with Phuong Nam that there was a clerical error made in Phuong Nam's margin calculation program with respect to the quantity variable used in the programming language. Additionally, we agree with Phuong Nam's claim that the Department applied the wrong count sizes to raw shrimp in the normal value calculation. We have reviewed Phuong Nam's supplemental questionnaire response which shows a revised listing of the raw shrimp count size brackets. See Phuong Nam Supplemental Questionnaire Response dated November 18, 2008, at page 6. The Department has corrected these clerical errors for the final results. See Memorandum from Blaine Wiltse, Analyst, to Catherine Bertrand, Program Manager, re:

⁶⁶ Specific surrogate value calculations are business proprietary information. See the Domestic Processors Letter dated April 13, 2009, at 13.

Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam (“Vietnam”): Analysis for the Final Results of Phuong Nam Co., Ltd. (“Phuong Nam”), dated September 8, 2009.

Comment 16: Treatment of Fish One Revocation Request

First, Fish One argues that the Department has failed to comply with the statute, regulations, and established policy with respect to Fish One’s request for revocation of the antidumping duty order. Fish One contends that, throughout this proceeding, it has submitted comments reminding the Department of its obligations under the statute and regulations. Fish One further contends that the statute and regulations with respect to revocations and requests for individual review are not ambiguous, as Fish One argues the Department determined in the Preliminary Results.

Second, Fish One argues that the Department violated Fish One’s due process and equal protection under the law because it treated another respondent in this review with similar circumstances differently than it treated Fish One. Fish One argues that both Camimex and itself requested status as mandatory respondents for revocation purposes. Fish One claims that the Department selected Camimex as a mandatory respondents for individual review but not Fish One, which, Fish One contends, is a violation of its due process.

Third, Fish One contends that the Department has ignored its established policy regarding the treatment of non-selected respondents with respect to revocation. Fish One cites to Certain Fresh Cut Flowers From Colombia: Final Results of Antidumping Duty Administrative Review, 62 FR 53287 (October 14, 1997) (“Flowers”) arguing that the precedent established therein clearly opens the door for the Department to review three consecutive years of hundreds of companies’ data regardless of how many mandatory respondents were selected for individual review. Fish One claims that the language set forth in Flowers provides for no exceptions due to statutory or regulatory language or interpretation.⁶⁷ Fish One comments that, since it was individually reviewed in the first administrative review and received a zero margin, it did not need to be reviewed in the following interim review period, where it also received a zero margin. Fish One argues that, for this review period, the Department has refused to review Fish One’s data for revocation purposes. Fish One alleges that the Department has refused to do so because of the number of companies initiated for review in the instant proceeding. Fish One argues that, in reality, only twenty five non-mandatory exporters filed separate rate certifications, which Fish One argues, would not burden the Department to review Fish One’s data.

Fourth, Fish One argues that the Department’s decision to not grant Fish One’s revocation request in the Preliminary Results has no basis under the statute, regulations, or established policy regarding revocation. Fish One contends the Department has accepted Fish One’s submissions, which contained all the requirements for requesting a revocation, but did not verify those submissions. Thus, Fish One argues, the Department has baselessly ignored its obligations under the statute, regulations, and policy.

⁶⁷ Fish One claims that the Department created a revocation policy in Flowers, wherein companies that were not selected for examination in prior reviews (because of the large number of companies for which a review was requested) will have a mechanism for obtaining revocation on the basis of three consecutive years of sales at not less than normal value. See Flowers at 53290-1.

Fifth, Fish One argues that, notwithstanding its non-selection for individual review, the Department should, for the final results of this review, give Fish One its most recently calculated margin from the first administrative review. Fish One argues that the Department's policy of assigning a rate to non-selected companies based on the non-adverse and non-zero margins of mandatory respondents is unfair. Fish One claims that if it received a calculated zero margin in the first administrative review and then received a zero margin in the second administrative review, it should also receive one in the third administrative review, as there is no record evidence in this review that suggests Fish One no longer deserves its zero margin. Fish One contends that any other methodology would presume a dumping margin where one does not exist. Consequently, Fish One urges the Department to comply with statutory and precedential mandates by expanding its practice of assigning separate rates to non-selected respondents based on actual margins that had been calculated for those respondents in past segments, regardless of whether the mandatory respondents' margins were based on AFA, de minimis, or zero.⁶⁸

Fish One adds that section 735(c)(5) of the Act addresses the issue of determining all-others rates for non-reviewed companies in antidumping duty investigations. Fish One also adds that the Statement of Administrative Action ("SAA") further addresses the Department's criteria in selecting an appropriate separate rate calculation methodology to reasonably represent non-reviewed companies' potential dumping margins.⁶⁹ Additionally, Fish One contends that the Department clarified its practice for assigning separate rates in administrative reviews, citing to the immediately preceding administrative review, where the Department assigned separate rates to companies not individually reviewed, who had previously earned their own calculated rates, rather than assign the de minimis or zero rates calculated for the mandatory respondents. Fish One argues that the determination in the second administrative review shows that the Department prefers using a company's own calculated rate as a separate rate in subsequent proceedings. Further, Fish One contends that the Department's departure from that determination in the Preliminary Results of this review is inconsistent with that precedent. Moreover, Fish One argues that because the Department assigned a separate rate to all the separate rate respondents, including Fish One, based on the calculated rates of the mandatory respondents, Fish One was treated in the same manner as separate rate respondents who had never received their own calculated rates, unlike Fish One.

Finally, Fish One argues that, based on Yantai Oriental Juice Co., et al., v. United States, 27 CIT 477, 487 (March 21, 2003) ("Yantai 2003") citing Shakeproof Assembly Components Division of Illinois Tool Works, Inc., v. United States, 268 F. 3d 1376, 1328 (October 12, 2001), any decision by the Department to assign antidumping duty margins must be based on the best available information and must establish antidumping margins as accurately as possible. Additionally, Fish One notes that the Department must articulate a rational connection between the facts found

⁶⁸ Fish One claims that the statute does not specifically address a methodology for assigning margins to non-selected respondents in NME proceedings, where all individually reviewed companies receive zero or de minimis margins or margins based entirely on AFA. Nor does the statute specifically address, Fish One further claims, a methodology for assigning dumping margins to companies that previously earned a calculated margin in a prior segment but are later subject to a separate rate based on the calculated margins for mandatory respondents in subsequent segments

⁶⁹ Fish One cites the SAA, accompanying the Uruguay Round Agreements act, H.R. Doc. No. 103-826(I) (1994), reprinted in 1994 U.S.C.C.A.N. 3598, 4201.

and the choice made, as quoted from Yantai 2003 citing Rhodia, Inv. v. United States, et al., 185 F.Supp. 2d 1343, 1348 (November 30, 2001). Fish One claims that the Department's preliminary assignment of the weighted-average calculated dumping margins to Fish One as a separate rate, when Fish One already has its own calculated rate from a prior review, does not satisfy these requirements. Consequently, Fish One urges the Department to assign to Fish One its calculated rate from the first administrative review as the separate rate in the instant review, if the revocation request continues to be denied in the final results.

In rebuttal, Petitioner argues that Fish One has not met the criteria required for revocation of the antidumping duty order. Petitioner also rebuts Fish One's claim that it is entitled to a zero margin in this administrative review based upon its calculated zero margin in the first administrative review. Petitioner contends that Fish One's assertions and requests lack legal support within the statute and regulatory practices, despite Fish One's claim that section 351.222(b)(2) of the Department's regulations requires selecting Fish One as a respondent. On the contrary, Petitioner argues that the Department addressed this issue in the Preliminary Results, by stating that the discretion for limiting respondent selection is provided under section 777A(c)(2)(B) of the Act. Further, Petitioner argues that this statutory provision does not require, or even discuss, the selection of respondents wishing to be reviewed for revocation purposes. Petitioner also argues that this statutory provision discusses the Department's discretion to select respondents based on the largest volume of exports, a fact which Fish One did not address. Moreover, Petitioner contends that Fish One did not provide respondent selection comments early in the proceeding and cannot protest not being selected for review at the final results. Petitioner asserts that if Fish One had been concerned that its lack of export volume would disqualify it from selection, then Fish One ought to have worked with Petitioner to argue for the sampling methodology to be used for selecting respondents.

Petitioner further rebuts Fish One's argument that the Department must assign it a zero dumping margin based upon the margin in the first administrative review. Petitioner contends that the statute is clear regarding the assignment of all-others rates, which is the weighted-average rate of the non-AFA, non-zero, non-de minimis dumping margins calculated for the selected respondents. Petitioner further contends that, as Fish One was not selected for review because it was not one of the largest exporters by volume, it was eligible to receive an all-others rate. Moreover, Petitioner notes that, since the dumping margins for the selected respondents were all positive margins not based on AFA, Fish One would receive the weighted-rate of those margins. Petitioner rebuts Fish One's argument that the statute does not provide for assessing dumping margins to companies that previously received its own calculated rate. Petitioner asserts that the statute does exactly that, notwithstanding whether a company had previously been given its own calculated rate.

Lastly, Petitioner rebuts Fish One's claim that the Department's decision in the second administrative review to assign a zero rate to Fish One established a precedent that Fish One ought to have a zero for all forthcoming administrative reviews. Petitioner argues that the Department's determination in the preceding review to assign Fish One a separate rate of zero, however flawed, was based on the Department's discretion under section 735(c)(5) of the Act, where a reasonable method to assign separate rates was required if all calculated rates were based on either zero or de minimis margins, or margins based entirely on AFA. Petitioner notes that the circumstances in this review do not require the Department to invoke the exception to section 735(c)(5) of the

Act. Therefore, for the final results, Petitioner urges the Department to reject Fish One's arguments and properly assign a separate rate based on the weighted-average dumping margins calculated for the selected respondents, as directed by statutory obligations.

Department's Position:

The Department disagrees with Fish One with respect to its arguments regarding the separate rate calculation and its request for revocation.

Regarding the rate assigned to Fish One, in the Preliminary Results, we assigned to Fish One a separate rate margin equal to the weighted-average of the non-zero, non-de minimis, non-FA margins calculated for the mandatory respondents. Fish One has argued that it was improperly treated in the same manner as separate rate respondents who, unlike Fish One, had never received their own calculated rates in prior administrative reviews. Fish One's argument essentially provides that, because the Department calculated a zero rate for it as a mandatory respondent in Vietnam Shrimp AR1, that same margin should be applied to it in subsequent segments where Fish One is not selected for individual examination, regardless of whether the calculated rates for the mandatory respondents are positive, zero, de minimis or based entirely on FA. However, we note that, excluding circumstances such as those in Vietnam Shrimp AR1 and Vietnam Shrimp AR2 where all calculated rates have been either zero or de minimis, the Department prefers to follow its well-established and court-affirmed policy in assigning separate rates based on the weighted-average margins of the mandatory respondents, provided they are non-zero, non-de minimis, and non-facts available margins, as we appropriately did in the Preliminary Results. See Longkou Haimeng Mach. Co. v. United States, 581 F. Supp. 2d 1344, 1357-60 (CIT 2008).

Nevertheless, in the instant proceeding, as a result of the changes to surrogate values, surrogate financial ratios, and the correction of certain clerical errors within the mandatory respondents' margin calculations since the Preliminary Results, the Department has calculated all de minimis dumping margins for the mandatory respondents. As a result, the Department must reevaluate the separate rate assignment methodology for these final results. Although Fish One correctly claims that the statute does not specifically address a methodology for assigning margins to non-selected respondents in NME proceedings, where all individually reviewed companies receive zero or de minimis margins or margins based entirely on facts available, the Department's practice in calculating separate rate margins for non-examined companies has been upheld by the CIT.⁷⁰ Thus, where calculated margins in administrative reviews are not zero, de minimis or based entirely on FA, our standard practice for calculating a separate rate margin would apply.

As we have previously stated the Department's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777(A)(c)(2) of the Act. The Department's practice in this regard, in cases involving limited

⁷⁰ See, e.g., Longkou Haimeng Mach. Co. v. United States, 581 F. Supp. 2d 1344, 1357-60 (CIT 2008) (where the court found that in "calculating the all-others rate in NME investigations....the agency conducted a review of past practice and determined that the conditions present in the underlying proceeding were most analogous to those extant in NME investigations").

selection based on exporters accounting for the largest volumes of trade, has been to weight-average the rates for the selected companies excluding zero and de minimis rates and rates based entirely on adverse facts available. Generally, we have looked to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents we did not examine in an administrative review. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any zero or de minimis margins or any margins based on total FA. Section 735(c)(5)(B) of the Act also provides that, where all margins are zero, de minimis, or based on total FA, we may use any reasonable method for assigning the rate to non-selected respondents. One method that section 735(c)(5)(B) of the Act contemplates as a possibility is “averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.” See, e.g., Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results of the First Administrative Review and New Shipper Review, 72 FR 10689, 10694 (March 9, 2007) (“Vietnam Shrimp AR1 Prelim”). See also Vietnam Shrimp AR2 at Comment 6. We note that in the preceding administrative review, the Department looked to other reasonable means to assign separate-rate margins to non-examined companies because we calculated zero, de minimis, or facts available margins for all the mandatory respondents. See Vietnam Shrimp AR2 at Comment 6.

Because the Department is faced with similar circumstances in these final results as in the preceding administrative review, we must, again, look to other reasonable means to assign separate rate margins to non-reviewed companies eligible for a separate rate in this review. We find that a reasonable method is to assign to non-reviewed companies in this review the most recent rate calculated for the non-selected companies in question, unless we calculated in a more recent review a rate for any company that was not zero or de minimis or based entirely on FA. This methodology is reasonable because it is reflective of the commercial behavior demonstrated by exporters of the subject merchandise during a recent period, and relies upon the only rates available that were not zero, de minimis, or based entirely upon FA.

Pursuant to this method, we are assigning a rate of 4.57 percent, the most recent positive rate calculated for cooperative separate rate respondents, to the separate rate respondents in the instant review with no history of a calculated margin, that is concurrent with or more recent than this rate. For those separate rate respondents that received a calculated rate in a prior segment, concurrent with or more recent than the 4.57 percent rate, we are assigning that calculated rate as the company’s separate rate in this review.

Specifically, for Fish-One and Grobest, we are assigning the rates most recently calculated for both companies (zero) as their separate rate in the instant review because these rates are more recent than the separate rate calculated in the LTFV and are based on the company’s own data. Additionally, for Minh Hai Joint-Stock Seafoods Processing Company (“Seaprodex Minh Hai”), we are also assigning, as a separate rate, the most recent calculated rate of 4.30 percent, from the LTFV, which was based on the company’s own data. For all other separate rate respondents in the instant review, the separate rate is 4.57 percent. This is the same methodology we applied in the final results of the prior review. See Vietnam Shrimp AR2.

With respect to our decision not to select Fish One for individual examination, we disagree that we were obligated to examine Fish One for purposes of revocation. On February 29, 2008, we received requests to conduct administrative reviews of 145 companies from Petitioner, two companies from the Domestic Processors, and requests by Vietnamese companies. See Initiation Notice. On April 7, 2008, the Department initiated an administrative review of 170 producers/exporters of subject merchandise from Vietnam. See Initiation Notice. However, after accounting for duplicate names and additional trade names associated with certain exporters, the number of entities upon which we initiated was 110. Of the 110 entities or company groups upon which we initiated an administrative review, 28 submitted separate-rate certifications to obtain a rate separate from the Vietnam-wide entity, and four companies stated that they did not export subject merchandise to the United States during the POR. See Preliminary Results at 10010.

In its Initiation Notice, the Department notified all interested parties that due to the large number of firms requested for this administrative review and the resulting administrative burden to review each company for which a request had been made, the Department was considering exercising its authority to “limit the number of respondents selected for individual review, in accordance with section 777A(c)(2) of the Act,” and that the Department intended to select respondents based on CBP data for entries of the subject merchandise during the POR. See Initiation Notice; Respondent Selection Memo at 1. As stated in section 777A(c)(2) of the Act, the statute gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. As such, the Department determined that it was not practicable to individually examine all companies upon which a review was requested, as 28 companies was too large a number to be examined in light of the Department’s limited resources. Additionally, where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits the Department to determine margins for a reasonable number of exporters or producers by limiting its examination through either a sampling of exporters, producers or types of products, or by selecting the exporters and producers accounting for the largest volume of the subject merchandise. Thus, consistent with the statute, we selected three respondents accounting for the largest volume of exports of subject merchandise. See SAA, H.R. Doc. No. 103-316, vol. 1 at 872 (1994).

The Department’s analysis in selecting the number of exporters to individually examine included a consideration of resources, such as current and anticipated workload and deadlines coinciding with the segment in question. After consideration of our resources, we concluded that it would not be practicable in this review to examine all 28 producers/exporters of the subject merchandise for which we had a request for review and which claimed to be separate from the Vietnam-wide entity. See Respondent Selection Memo at 2-3. Specifically, we noted that Office 9, AD/CVD Operations, the office to which this administrative review is assigned, did not have the resources to examine all such exporters/producers because it was concurrently conducting numerous antidumping proceedings, which place a constraint on the number of analysts that can be assigned to this case. Not only did these other cases present a significant workload, but the deadlines for a number of the cases coincided and overlapped with deadlines in this antidumping proceeding. Id.

The Act requires the Department to conduct administrative reviews within certain time limits. Specifically, a preliminary margin calculation must be made within 245 days of the last day of the anniversary month of the order, which can be extended, if such a deadline is determined not to be practicable, to 365 days. See section 751(a)(3)(A) of the Act. The final results of review must be issued within 120 days of publication of the preliminary results, a time limit which can also be extended to 180 days of the preliminary results (or 300 days if the preliminary results were not extended). Id. When, as here, there have been requests for review of 110 entities and company groups, prior to issuing questionnaires, the Department must compile and analyze CBP data for the companies upon which a review is requested, accept comments on respondent selection and the data, and compile and analyze the separate rate application and/or certification information. This initial work is required in order to determine whether the Department should limit its examination and if so, determine the number of companies that can reasonably be examined and identify those companies. In this case, the Department compiled data for the 110 entities/groups upon which a review was requested, analyzed the comments received on respondent selection, and analyzed the separate rate information submitted by 28 of them. Respondent selection occurred on June 9, 2008, approximately two months after publication of the Initiation Notice. See Preliminary Results at 10010.

The Department's determination to select three exporters necessarily involved an understanding of the work required to conduct this shrimp review in accordance with the Department's statutory and regulatory obligations, and consistent with its practice: the Department issues questionnaires requesting detailed information on a wide range of matters that are essential to the determination of an accurate dumping margin, such as, corporate structure and ownership, sales practices, U.S. sales pricing and adjustment information, packing, transportation and other movement related expenses, and detailed production data for multiple types of shrimp products and processes. In addition, in NME cases such as this, the Department solicits information and conducts its own research to obtain surrogate values for the multiple factors of shrimp production. Initial information received in response to questions must be carefully analyzed and follow-up questions issued to clarify points or obtain further information. The Department analyzes any such supplemental responses, often very quickly, in order to allow time for any further questions or to prepare for verification. The Department must conduct verifications under certain circumstances, which often take place in the foreign country, involve a detailed examination of price and cost data, and require a thorough report of the verification process and results thereafter. In this case, the Department verified one of the mandatory companies in Vietnam. See Preliminary Results at 10012. Following the Preliminary Results, the Department's regulations allow additional time for the submission of surrogate value data, which must then be analyzed in conjunction with the parties' final briefing in the case.

Accordingly, at the time the Department conducted respondent selection in this case, the Department evaluated the number of staff it had to assign to this case, in light of the information and analysis to be conducted within the time limits set forth in the statute. The Department also necessarily evaluated its commitments in other cases. The Department is obligated to determine and calculate margins in all of its cases on a timely basis and in accordance with all substantive statutory or regulatory requirements and consistent with its practices.

Thus, our respondent selection analysis and process were conducted in accordance with the discretion afforded under section 777A(c)(2) of the Act to determine whether or not it would be practicable, in light of the large number of producers and exporters involved, to examine each individually, and if not, to determine a reasonable number that could be examined. The Department selected the top three exporters based on the largest volume of exports of subject merchandise for individual examination, which did not include Fish One. See Respondent Selection Memo at Exhibit 1. Thus, pursuant to section 777A(c)(2)(B) of the Act, the Department determined that it could reasonably examine the three largest exporters by volume. Because Fish One was not included among the top three, the Department was under no obligation to select Fish One for individual examination. As we stated in the Preliminary Results:

Under Fish One's interpretation, the Department would be required to conduct individual reviews and verifications for any company requesting revocation, no matter how many such requests are received. The Department does not believe that such an interpretation is correct, nor warranted, under the Act.

See Preliminary Results at 10012.

Fish One has also argued that the Department violated Fish One's due process and equal protection under the law by treating Camimex, one of the respondents selected for individual examination, differently despite allegedly similar circumstances. Fish One erroneously argues that Camimex also requested revocation of the order, which is not the case. See Camimex's request for review dated February 29, 2008. However, the relevant difference between Fish One's and Camimex's circumstances is their respective size in terms of volume of subject merchandise sold to the United States. As we stated above and in the Respondent Selection Memo, section 777A(c)(2) of the Act permits the Department to limit its examination through either a sampling of exporters, producers or types of products, or by selecting the exporters and producers accounting for the largest volume of the subject merchandise. See Respondent Selection Memo at 2. Thus, based on the large number of requests for review and given our resources at the time, we chose the three producers/exporters accounting for the largest volume of exports that could reasonably be examined, pursuant to section 777A(c)(2)(B) of the Act. Id., at 4-5. Because Camimex was one of the three largest exporters by volume, it was selected for review. Id. As stated above, Fish One was not selected for review because it was not one of the top three exporters by volume.

The Department also reasonably interpreted its regulations as not requiring it to select Fish One for individual examination. The regulation, addressing partial revocation for individual companies, is silent with respect to its applicability when the Department has limited its examination under section 777A(c)(2). As the Department stated in the Preliminary Results:

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

See Preliminary Results at 10012. We do not interpret our regulation as limiting the discretion afforded by Congress under section 777A(c)(2).

Citing Flowers, Fish One also argued that the Department has ignored its policy regarding the treatment of non-selected respondents with respect to revocation. Although in Flowers the Department described a procedure for analyzing requests for revocation from small companies that were not individually investigated, that described procedure was never implemented in practice and was limited to the Flowers proceeding. See Flowers at 53290 (stating that the Department has developed the procedure “for addressing requests for revocation by small companies in this proceeding”) (emphasis added). Therefore, contrary to Fish One’s argument, we have not ignored Department policy.

For the final results of the instant review, we continue to find that our preliminary determination with respect to Fish One’s revocation request is not contrary to the statute or Department policy. Because Fish One was not selected for individual review pursuant to 777A(c)(2)(B) of the Act, it was treated as a cooperative separate-rate respondent, and has received a separate rate pursuant to the statute and the Department’s policy. The statute does not require the Department to select exporters for revocation purposes within the context of section 777A(c)(2)(B) of the Act. Rather, pursuant to that statutory provision, because of the large number of companies with review requests, the Department selected respondents for individual examination that could reasonably be examined. That Fish One requested revocation pursuant to the Department’s regulations does not require the Department to individually review Fish One for revocation purposes, when the Department, as it did here, limits the individually reviewed companies under the statute.

Further, although the Department’s regulations do not require the selection of a respondent requesting revocation, revocation, when considered, should depend on individual examination of a company’s own data during the periods on which the determination is based, including examination of commercial quantities and the conduct of a verification. See 19 C.F.R. § 351.222(d)(1) and (f)(2)(ii). Even the Department’s stated intent regarding revocation in Flowers, indicates that the Department intended to examine specific data for the time period considered irrespective of the rates assigned to the companies in prior reviews. Because Fish One was not selected for individual examination, pursuant to the statute, the Department did not conduct a review of, or verify, Fish One’s sales or production data or commercial quantities for the last two consecutive segments of the proceeding.⁷¹ We note that the only de minimis rate actually calculated by the Department for Fish One occurred in the first administrative review (for the period July 16, 2004 through January 31, 2006). That Fish One was assigned that same de minimis rate in Vietnam Shrimp AR2 and here, is incidental to the circumstances surrounding the calculation methodology in assigning rates to non-selected companies eligible for a separate rate. Consequently, the Department has not calculated a de minimis or zero margin for Fish One since Vietnam Shrimp AR1. Therefore, for the final results, we continue to determine not to revoke the order with respect to Fish One. The Department permissibly and reasonably determined to select the three companies accounting for the largest volume that could be

⁷¹ We note that Fish One was individually examined and verified in the first administrative review where the Department calculated a de minimis rate for Fish One. However, Fish One had not been selected for individual review in the subsequent segments of the proceeding.

reasonably examined pursuant to section 777A(c)(2)(B) of the Act. In light of the deadlines involved and work required, the Department determined that it was unable to choose another company, whether for revocation purposes or otherwise, at the time of respondent selection.⁷²

Comment 17: Separate-Rate Status of Certain SR Respondents

Bac Lieu

Bac Lieu notes that, in the LTFV, the Department granted separate-rate status to the following name variations: Bac Lieu Fisheries Company Limited, Bac Lieu, BACLIEUFIS, Bac Lieu Fis, Bac Lieu Fisheries Co. Ltd., Bac Lieu Fisheries Limited Company, and Bac Lieu Fisheries Company Ltd. Bac Lieu further notes that, in the first administrative review, the Department granted separate-rate status to Bac Lieu Fisheries. Bac Lieu indicates that the separate-rate status for these above-mentioned names has not been revoked.

Bac Lieu notes that, in the Preliminary Results, the Department granted separate-rate status to Bac Lieu Fisheries Company Limited and Bac Lieu Fisheries Company Limited (“Bac Lieu”). However, Bac Lieu argues, that its separate rate certification specifically requested for the following names to be granted separate-rate status: Bac Lieu Fisheries Limited Company (“Bac Lieu”), Bac Lieu Fisheries, and Bac Lieu Fisheries Joint Stock Company (“Bac Lieu”). Bac Lieu argues that, with respect to Bac Lieu Fisheries Limited Company (“Bac Lieu”) and Bac Lieu Fisheries, there is no reason why these names were excluded from the Preliminary Results, as they have been granted separate-rate status in a previous granting period. However, with respect to Bac Lieu Fisheries Joint Stock Company (“Bac Lieu”), Bac Lieu requested a changed circumstance review (“CCR”) and, pending the final results of the CCR, Bac Lieu argues that Bac Lieu Fisheries Joint Stock Company (“Bac Lieu JSC”) should also be granted separate-rate status as the successor-in-interest company to Bac Lieu.

In rebuttal, Petitioner argues that the existence of this issue of multiple company names per respondent is evidence that CBP data is flawed and must be corrected by the Department as requested in Petitioner’s Case Brief dated April 10, 2009.⁷³

Department’s Position:

The Department disagrees with Petitioner that the existence of multiple trade names per respondent renders the CBP data flawed. We have previously stated that:

With respect to the petitioner’s argument regarding alleged errors and inconsistencies in the CBP data, we note that the inaccuracies identified in its submission refer almost entirely to minor variations in spelling or punctuation of exporters’ names. For the most part, the Department has been able to readily identify which of these variations refer to the same company.

⁷² While we did not select Fish One at the time of the respondent selection, Fish One also did not file questionnaire responses as a voluntary respondent under section 782(a) of the Act.

⁷³ Petitioner’s rebuttal contains business proprietary information that is not available for public summary. See Petitioner’s Rebuttal Brief dated April 24, 2009, at 40-41.

See Respondent Selection Memo at 5.

The Department agrees with Bac Lieu regarding separate rate status for its claimed successor-in-interest, Bac Lieu JSC. In the Preliminary Results, we noted that certain entities requesting separate rate status for new trade names or additional trade names that had not been previously granted separate rate status required further analysis. Specifically, we stated that “separate-rate certifications filed by seven exporters showed that these seven companies claimed to have undergone changes in name, legal and/or corporate structure during the POR.” See Preliminary Results at 10012. We further stated that “a separate-rate certification is not the proper vehicle by which a company that has undergone name or other corporate changes should request a separate rate.” Id. Accordingly, we notified Bac Lieu that a changed circumstance review would be required for the Department to analyze any claims of successor-in-interest. However, the Department preliminarily granted separate rate status to Bac Lieu prior to any name or other corporate change. Id.

Since the Preliminary Results, the Department has conducted a changed circumstance review for Bac Lieu. The Department published its preliminary results of changed circumstance reviews, finding that, in accordance with 19 CRF 351.221(c)(3)(i), Bac Lieu is succeeded by Bac Lieu JSC. See Frozen Warmwater Shrimp From Vietnam: Notice of Preliminary Results of Antidumping Duty Changed Circumstances Reviews, 74 FR 31698, 31699 (July 2, 2009) (“CCR Prelim”). The Department subsequently published the final results of changed circumstance reviews, with no changes to its preliminary determinations. See Frozen Warmwater Shrimp From Vietnam: Notice of Final Results of Antidumping Duty Changed Circumstances Reviews, 74 FR 42050 (August 20, 2009) (“CCR Final”).

Following the Department’s determinations in the above changed circumstance reviews, the Department has determined that Bac Lieu JSC is the successor-in-interest to Bac Lieu and will assume the separate rate previously assigned to Bac Lieu (original entity). Therefore, for the final results, because we affirmatively determined an existing successorship, we have listed Bac Lieu JSC in the “Final Results of the Review” section of the Federal Register notice.

Cadovimex

Cadovimex argues that, in the Preliminary Results, the Department should have granted separate-rate status to “Cadovimex-Vietnam” in addition to the other trade names granted separate-rate status. Cadovimex claims that the names which were granted separate-rate status in the Preliminary Results, Cadovimex Seafood Import–Export and Processing Joint Stock Company (“CADOVIMEX”) and Cai Doi Vam Seafood Import–Export Company (Cadovimex), are not so vastly different than “Cadovimex-Vietnam,” that the latter cannot benefit from the separate-rate status granted to the former.

Cadovimex notes that it requested a CCR with respect to “Cadovimex-Vietnam” on March 18, 2009, and requests that, upon the final results of that proceeding, the Department grant separate-rate status to “Cadovimex-Vietnam” as its successor-in-interest in the final results of this proceeding. Cadovimex further notes that the following company names should be included in

the final results of this administrative review pending the final results of the CCR: Cadovimex-Vietnam and Cadovimex Seafood Import-Export and Processing Joint Stock Company (“Cadovimex-Vietnam”).

No other interested parties submitted comments regarding this issue.

Department’s Position:

The Department agrees with Cadovimex regarding separate rate status for its claimed successor-in-interest, Cadovimex Seafood Import-Export and Processing Joint Stock Company (“Cadovimex Vietnam”). In the Preliminary Results, we noted that certain entities requesting separate rate status for new trade names or additional trade names that had not been previously granted separate rate status required further analysis. Specifically, we stated that “separate-rate certifications filed by seven exporters showed that these seven companies claimed to have undergone changes in name, legal and/or corporate structure during the POR.” See Preliminary Results at 10012. We further stated that “a separate-rate certification is not the proper vehicle by which a company that has undergone name or other corporate changes should request a separate rate.” Id. Accordingly, we notified Cadovimex that a changed circumstance review would be required for the Department to analyze any claims of successor-in-interest. However, the Department preliminarily granted separate rate status to Cadovimex prior to any name or other corporate change. Id.

Since the Preliminary Results, the Department has conducted a changed circumstance review for Cadovimex. The Department published its preliminary results of changed circumstance reviews, finding that, in accordance with 19 CFR 351.221(c)(3)(i), Cadovimex is succeeded by Cadovimex Vietnam. See CCR Prelim at 31699. The Department subsequently published the final results of changed circumstance reviews, with no changes to its preliminary determinations. See CCR Final.

Following the Department’s determinations in the above changed circumstance reviews, the Department has determined that Cadovimex Vietnam is the successor-in-interest to Cadovimex and will assume the separate rate previously assigned to Cadovimex (original entity). Therefore, for the final results, because we affirmatively determined an existing successorship, we have listed Cadovimex Vietnam in the “Final Results of the Review” section of the Federal Register notice.

Cataco

Cataco argues that the Department made a typographical error in the spelling of Cataco’s full name in the Preliminary Results. Cataco notes that the “s” was missing from the word “Products” within the full name, Can Tho Agricultural and Animal Product Import Export Company (“CATACO”). Cataco requests that the error be corrected in the final results. Additionally, Cataco requests that its separate-rate status be extended to “Can Tho Agricultural and Animal Products Imex Company,” a name which appeared in Cataco’s business registration certificate in the separate rate certification dated May 7, 2008. Cataco notes that the difference in the names is limited to “Imex” as opposed to “Import Export.”

Finally, Cataco notes that it requested a CCR with respect to “Can Tho Import Export Fishery Limited Company” abbreviated as “CAFISH” on March 13, 2009, and requests that, upon the final results of that proceeding, the Department grant separate-rate status to “Can Tho Import Export Fishery Limited Company” as its successor-in-interest in the final results of this proceeding. Cataco further notes that the following company names should be included in the final results of this administrative review pending the Department’s corrections from the Preliminary Results and the final results of the CCR: Can Tho Import Export Fishery Limited Company, CAFISH, Can Tho Agricultural and Animal Products Import Export Company (“CATACO”), and Can Tho Agricultural and Animal Products Imex Company.

No other interested parties submitted comments regarding this issue.

Department’s Position:

The Department agrees, in part, with Cataco with respect to the trade names listed in the Preliminary Results. We agree with Cataco’s argument that the Department misspelled one of the trade names listed in the Preliminary Results, inadvertently leaving off an “s” from one of the trade names upon which we initiated a review. Thus, for the final results, we have corrected this inadvertent spelling error. Additionally, we have extended the separate rate status to Can Tho Agricultural and Animal Products Imex Company, as Cataco has provided evidence within its separate rate certification of this abbreviated form. See Cataco’s Separate Rate Certification dated May 8, 2008.

However, we disagree with Cataco regarding its claimed successor-in-interest, CAFISH. In the Preliminary Results, we noted that certain entities requesting separate rate status for new trade names or additional trade names that had not been previously granted separate rate status required further analysis. Specifically, we stated that “separate-rate certifications filed by seven exporters showed that these seven companies claimed to have undergone changes in name, legal and/or corporate structure during the POR.” See Preliminary Results at 10012. We further stated that “a separate-rate certification is not the proper vehicle by which a company that has undergone name or other corporate changes should request a separate rate.” Id. Accordingly, we notified Cataco that a changed circumstance review would be required for the Department to analyze any claims of successor-in-interest. However, the Department preliminarily granted separate rate status to Cataco prior to any name or other corporate change. Id.

Since the Preliminary Results, the Department has conducted a CCR for Cataco. The Department published its preliminary results of changed circumstance reviews, finding that, in accordance with 19 CFR 351.221(c)(3)(i), we preliminarily determined that CAFISH is not the successor-in-interest to CATACO. See CCR Prelim at 31700. The Department subsequently published the final results of changed circumstance reviews, with no changes to its preliminary determinations. See CCR Final.

Following the Department’s determinations in the above changed circumstance reviews, the Department has determined that CAFISH is not the successor-in-interest to Cataco and will not assume the separate rate previously assigned to Cataco (original entity). Therefore, for the final results, we have listed Cataco in the “Final Results of the Review” section of the Federal Register

notice, and have not included CAFISH. Additionally, we have also included those additional trade names that have been previously granted separate-rate status.

Grobest

Grobest argues that the Department made a typographical error in the spelling of Grobest's full name in the Preliminary Results. Grobest notes that the Department incorrectly used "Industry" rather than "Industrial" in the company's correct, full name, "Grobest & I-Mei Industrial (Vietnam) Co., Ltd." Grobest requests that the error be corrected in the final results.

No other interested parties submitted comments regarding this issue.

Department's Position:

The Department agrees with Grobest with respect to a typographical error regarding one of its trade names listed in the Preliminary Results. Thus, for the final results, we have corrected this inadvertent spelling error.

Minh Hai Jostoco

Minh Hai Jostoco notes that, in the Preliminary Results, the Department granted separate-rate status to the following name variations: Minh Hai Export Frozen Seafood Processing Joint Stock Company, Minh Hai Jostoco, Minh Hai Export Frozen Seafood Processing Joint-Stock Company ("Minh Hai Jostoco"), Minh Hai Export Frozen Seafood Processing Joint-Stock Company, Minh Hai Joint Stock Seafood Processing Joint-Stock Company, and Minh Hai Export Frozen Seafood Processing Joint-Stock Co.

Minh Hai Jostoco notes that, during the POR, it had exported under the following names: Minh Hai Export Frozen Seafood Processing Joint-Stock Company Minh Hai Jostoco" and "Minh Hai Export Frozen Seafood Processing Joint-Stock Company Minh Hai Export-Jostoco." Minh Hai Jostoco argues that the only difference between the names which were granted separate-rate status in the Preliminary Results and the names not included in the Preliminary Results is the absence of parentheses around the words "Minh Hai Jostoco" and "Minh Hai Export-Jostoco." Minh Hai Jostoco argues that it expects that the Department and CBP would allow for the slight variations in the names to accommodate the separate-rate status for the sales that entered under those names during the POR because these names are combinations of the full and abbreviated names of the ones listed in the Preliminary Results.

Minh Hai Jostoco contends that its separate rate certification specifically requested that "Minh Hai Export-Jostoco" be granted separate-rate status. Minh Hai Jostoco indicates that, in addition to the names granted separate-rate status in the Preliminary Results, the following company names should also be included in the final results of this administrative review: "Minh Hai Export Frozen Seafood Processing Joint-Stock Company Minh Hai Export-Jostoco," "Minh Hai Export Frozen Seafood Processing Joint-Stock Company Minh Hai Jostoco," and "Minh Hai

Export-Jostoco.”

In rebuttal, Petitioner argues that the existence of this issue of multiple company names per respondent is evidence that CBP data is flawed and must be corrected by the Department as requested in Petitioner’s Case Brief dated April 10, 2009.⁷⁴

Department’s Position:

The Department disagrees with Petitioner that the existence of multiple trade names per respondent renders the CBP data flawed. We have previously stated that:

With respect to the petitioner’s argument regarding alleged errors and inconsistencies in the CBP data, we note that the inaccuracies identified in its submission refer almost entirely to minor variations in spelling or punctuation of exporters’ names. For the most part, the Department has been able to readily identify which of these variations refer to the same company.

See Respondent Selection Memo at 5.

The Department disagrees, in part, with Minh Hai Jostoco regarding the allowance of additional trade names to be granted separate rate status. In Vietnam Shrimp AR2, we stated that:

With respect to Minh Hai Jostoco, the trade name at issue is Minh Hai Export Frozen Seafood Processing Joint-Stock Co., which is a secondary version of a trade name to which we granted separate-rate status in a previous granting period: Minh Hai Export Frozen Seafood Processing Joint-Stock Company. We note that the only difference between these two names is the word “Company” abbreviated to “Co.” Here, we find that it is reasonable to grant Minh Hai Jostoco’s separate-rate status to Minh Hai Export Frozen Seafood Processing Joint-Stock Co. as the trade name is the same as a trade name previously granted separate-rate status save for an abbreviation of the word “Company.”

See Vietnam Shrimp AR2 at Comment 7.

However, in this case, Minh Hai Jostoco is requesting that the Department grant separate rate status to trade names that are more than trivially different, such as an abbreviation of “Company” to “Co.” Specifically, in the Preliminary Results, we granted separate rate status to: (1) Minh Hai Export Frozen Seafood Processing Joint Stock Company, (2) Minh Hai Jostoco, (3) Minh Hai Export Frozen Seafood Processing Joint–Stock Company (“Minh Hai Jostoco”), (4) Minh Hai Export Frozen Seafood Processing Joint–Stock Company, (5) Minh Hai Joint Stock Seafood Processing Joint–Stock Company, and (6) Minh Hai Export Frozen Seafood Processing Joint–Stock Co. Here, Minh Hai Jostoco is requesting separate status for: (1) Minh Hai Export-Jostoco, (2) Minh Hai Export Frozen Seafood Processing Joint-Stock Company Minh Hai

⁷⁴ Petitioner’s rebuttal contains business proprietary information that is not available for public summary. See Petitioner’s Rebuttal Brief dated April 24, 2009, at 40-41.

Export-Jostoco, and (3) Minh Hai Export Frozen Seafood Processing Joint-Stock Company Minh Hai Jostoco.

The Department's separate rate certification clearly states that "the firm name provided to the Department in this Certification must be the name that appears on the firm's business license/registration documents." See, e.g., Minh Hai Jostoco Separate-Rate Certification dated May 7, 2008, at 2. However, although Minh Hai Jostoco certified in its separate rate certification that the firm conducted business under "the same trade names as identified in the previous granting period, as well as new trade names," the attached business registration certifications do not show the following trade names or abbreviated names: Minh Hai Export-Jostoco and Minh Hai Export Frozen Seafood Processing Joint-Stock Company Minh Hai Export-Jostoco. Id.

Therefore, since "Minh Hai Export-Jostoco" and "Minh Hai Export Frozen Seafood Processing Joint-Stock Company Minh Hai Export-Jostoco": (1) have not been granted separate-rate status in a previous granting period, and (2) do not appear on the business license submitted in Minh Hai Jostoco's separate-rates certification, we will not extend Minh Hai Jostoco's separate rate to these two names in the final results. However, with respect to "Minh Hai Export Frozen Seafood Processing Joint-Stock Company Minh Hai Jostoco," the only difference from previously granted trade names is two parentheses around "Minh Hai Jostoco." Thus, we find it reasonable to grant separate rate status to "Minh Hai Export Frozen Seafood Processing Joint-Stock Company Minh Hai Jostoco" in the final results.

Fimex VN

Fimex notes that the Department granted separate-rate status to "Sao Ta Foods Joint Stock Company ("Fimex VN")" in the Preliminary Results. However, Fimex argues that the Department should also grant separate-rate status to "Sao Ta Seafood Factory." Fimex notes that in both the LTFV and first administrative review, the Department granted separate-rate status to "Sao Ta Seafood Factory," which was also included in its separate rate certification dated May 6, 2008. Fimex requests that the Department correct this apparent oversight for the final results and grant separate-rate status to "Sao Ta Seafood Factory."

No other interested parties submitted comments regarding this issue.

Department's Position:

The Department agrees with Fimex VN with respect to an inadvertent exclusion of one of its trade names from the Preliminary Results. Thus, for the final results, we have included the trade name, Sao Ta Seafood Factory.

Stapimex

Stapimex notes that the Department granted separate-rate status to "Soc Trang Aquatic Products and General Import Export Company ("Stapimex")" in the Preliminary Results. However, following its request for a CCR on January 26, 2009, Stapimex argues that, pending the final results of the CCR, the Department should also grant separate-rate status in the final results of this

administrative review to “Soc Trang Seafood Joint Stock Company,” (“STAPIMEX JSC”) as the successor-in-interest to Stapimex.⁷⁵ Therefore, Stapimex contends that pending the Department’s final results of the CCR, the following name should be granted separate-rate status in the final results of this review: “Soc Trang Seafood Joint Stock Company.”

No other interested parties submitted comments regarding this issue.

Department’s Position:

The Department agrees with Stapimex regarding separate rate status for its claimed successor-in-interest, STAPIMEX JSC. In the Preliminary Results, we noted that certain entities requesting separate rate status for new trade names or additional trade names that had not been previously granted separate rate status required further analysis. Specifically, we stated that “separate-rate certifications filed by seven exporters showed that these seven companies claimed to have undergone changes in name, legal and/or corporate structure during the POR.” See Preliminary Results at 10012. We further stated that “a separate-rate certification is not the proper vehicle by which a company that has undergone name or other corporate changes should request a separate rate.” Id. Accordingly, we notified Stapimex that a changed circumstance review would be required for the Department to analyze any claims of successor-in-interest. However, the Department preliminarily granted separate rate status to Stapimex prior to any name or other corporate change. Id.

Since the Preliminary Results, the Department has conducted a CCR for Stapimex. The Department published its preliminary results of changed circumstance reviews, finding that, in accordance with 19 CFR 351.221(c)(3)(i), Stapimex is succeeded by STAPIMEX JSC. See CCR Prelim at 31699. The Department subsequently published the final results of changed circumstance reviews, with no changes to its preliminary determinations. See CCR Final.

Following the Department’s determinations in the above CCR, the Department has determined that STAPIMEX JSC is the successor-in-interest to Stapimex and will assume the separate rate previously assigned to Stapimex (original entity). Therefore, for the final results, because we affirmatively determined an existing successorship, we have listed STAPIMEX JSC in the “Final Results of the Review” section of the Federal Register notice.

Thuan Phuoc

Thuan Phuoc notes that the Department granted separate-rate status to “Thuan Phuoc,” “Thuan Phuoc Seafoods and Trading Corporation,” “Frozen Seafoods Factory No. 32,” “Frozen Seafoods Factory 32,” “Frozen Seafoods Fty,” and “Seafoods and Foodstuff Factory” in the Preliminary Results. Thuan Phuoc argues that the Department should have also granted separate-rate status to “My Son Seafoods Factory,” for which Thuan Phuoc specifically requested separate-rate status in its separate rate certification. Thuan Phuoc contends that the Department’s apparent oversight in including “My Son Seafoods Factory” from separate-rate status in

⁷⁵ Stapimex notes that the Department initiated the CCR with respect to Stapimex on March 18, 2009. See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Initiation of Changed Circumstances Reviews, 74 FR 11527 (March 18, 2009) (“CCR Initiation”).

the Preliminary Results should be corrected for the final results.

No other interested parties submitted comments regarding this issue.

Department's Position:

The Department agrees, in part, with Thuan Phuoc regarding its claim that “My Son Seafoods Factory” ought to have been granted separate rate status in the Preliminary Results as an additional trade name. We have noted that “My Son Seafoods Factory” was included in the separate rate certification as an additional trade name accompanied by a “Certificate of Activities Registration of Branch” and that Thuan Phuoc certified that “the same trade names as identified in the previous granting period, as well as new trade names.” See Thuan Phuoc’s Separate Rate Certification dated May 7, 2008 at 5 and Exhibit 1. However, since the Preliminary Results, the Department has conducted a CCR for Thuan Phuoc. The Department published its preliminary results of changed circumstance reviews, finding that, in accordance with 19 CRF 351.221(c)(3)(i), Thuan Phuoc is succeeded by Thuan Phuoc Seafoods and Trading Corporation (“Thuan Phuoc JSC”). See CCR Prelim at 31699. The Department subsequently published the final results of the CCR, with no changes to its preliminary determinations. See CCR Final.

Following the Department’s determinations in the above CCR, the Department has determined that Thuan Phuoc JSC is the successor-in-interest to Thuan Phuoc and will assume the separate rate previously assigned to Thuan Phuoc (original entity). Therefore, for the final results, because we affirmatively determined an existing successorship, we have listed Thuan Phuoc JSC in the “Final Results of the Review” section of the Federal Register notice.

UTXI

UTXI notes that the Department granted separate-rate status to “UTXI Aquatic Products Processing Company,” in the Preliminary Results. However, following its request for a CCR on January 27, 2009, UTXI argues that, pending the final results of the CCR, the Department should also grant separate-rate status in the final results of this administrative review to “UTXI Aquatic Products Processing Corporation,” as the successor-in-interest to UTXI.⁷⁶ Therefore, UTXI contends that pending the Department’s final results of the CCR, the following name should be granted separate-rate status in the final results of this review: “UTXI Aquatic Products Processing Corporation.”

No other interested parties submitted comments regarding this issue.

Department's Position:

The Department agrees with UTXI regarding separate rate status for its claimed successor-in-interest, UTXI Aquatic Products Processing Corporation (“UTXI Corp.”). In the Preliminary Results, we noted that certain entities requesting separate rate status for new trade names or additional trade names that had not been previously granted separate rate status required

⁷⁶ See CCR Initiation.

further analysis. Specifically, we stated that “separate-rate certifications filed by seven exporters showed that these seven companies claimed to have undergone changes in name, legal and/or corporate structure during the POR.” See Preliminary Results at 10012. We further stated that “a separate-rate certification is not the proper vehicle by which a company that has undergone name or other corporate changes should request a separate rate.” Id. Accordingly, we notified UTXI that a changed circumstance review would be required for the Department to analyze any claims of successor-in-interest. However, the Department preliminarily granted separate rate status to UTXI prior to any name or other corporate change. Id.

Since the Preliminary Results, the Department has conducted a CCR for UTXI. The Department published its preliminary results of changed circumstance reviews, finding that, in accordance with 19 CFR 351.221(c)(3)(i), UTXI is succeeded by UTXI Corp. See CCR Prelim at 31699. The Department subsequently published the final results of changed circumstance reviews, with no changes to its preliminary determinations. See CCR Final.

Following the Department’s determinations in the above CCR, the Department has determined that UTXI Corp. is the successor-in-interest to UTXI and will assume the separate rate previously assigned to UTXI (original entity). Therefore, for the final results, because we affirmatively determined an existing successorship, we have listed UTXI Corp. in the “Final Results of the Review” section of the Federal Register notice.

Comment 18: Treatment of C.P. Vietnam Livestock Co., Ltd.

C.P. Vietnam Livestock Company Limited (“CP Vietnam”) argues that the Department should rescind this administrative review for CP Vietnam. CP Vietnam states that the Department preliminarily decided not to rescind this review for CP Vietnam because data from CBP contradicts CP Vietnam’s claim of no shipment during the POR.⁷⁷ CP Vietnam states that it had provided the Department with additional information, which clarifies that the shipment identified in the CBP data was not a “sale” of subject merchandise.⁷⁸ CP Vietnam argues that, pursuant to Department practice and court precedent, the Department excludes sample transactions for which a respondent has established that there is either no transfer of ownership or no consideration.⁷⁹ CP Vietnam claims it received no consideration for its transaction. CP Vietnam further argues that if the Department does not rescind this review, then the Department should find good cause to accept CP Vietnam’s separate rate certification, as stated in 19 CFR 351.102(b), and permit CP

⁷⁷ See Preliminary Results at 10011.

⁷⁸ Information regarding the sale is company specific business proprietary information. See Letter from C.P. Vietnam dated April 10, 2009, at 3-4.

⁷⁹ CP Vietnam cites Bottle Grade Polyethylene Terephthalate Resin from Thailand: Final Determination of Sales at Less than Fair Value, 70 FR 13453 (March 21, 2005) (“PETfilm”) and accompanying Issues and Decisions Memorandum at Comment 6, citing NSK Ltd. v. United States 115 F.3d 965, 975 (Fed. Cir. 1997), Final Results of Antidumping Duty Reviews: Tapered Roller Bearings and Parts Thereof from Japan, Four Inches or Less in Outside Diameter, 63 FR 63860 (November 17, 1998) and accompanying Issues and Decisions Memorandum at Comment 14, and Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Final Results of Administrative Reviews and Revocation in Part, 65 FR 11767 (March 6, 2000) and accompanying Issues and Decisions Memorandum at Comment 1.

Vietnam to resubmit its separate rate certification for the final results. CP Vietnam argues that the Department wrongly rejected their separate rate certification submission of March 18, 2009, as untimely. CP Vietnam asserts that the Department should consider CP Vietnam's claim that it has good cause for submitting its separate rate certification beyond the established deadline because it believed that it had no reviewable shipments, thus did not need to submit at separate rate certification.

Petitioner alluded to the situation of CP Vietnam in its rebuttal brief in a comparison of the suggested treatment of Kim Anh Co., Ltd. See Petitioner's Rebuttal Brief dated April 24, 2009, at footnote 131. Petitioner did not make rebuttal arguments specific to the Department's treatment of CP Vietnam. No other interested parties submitted comments regarding this issue.

Department's Position:

The Department agrees with CP Vietnam with respect to its attestation that no shipments of subject merchandise at a commercial value were exported to the United States during the POR. Upon review of the entry documentation noted above, we determine that it is appropriate to rescind the review with respect to CP Vietnam in the final results.

Comment 19: Treatment of Kim Anh Co., Ltd.

Kim Anh Co., Ltd. ("Kim Anh") argues that it had no knowledge that its products were shipped to the United States until February 11, 2009. Kim Anh asserts that because it had no knowledge of the shipment by the deadline established for the separate-rate certifications, the knowledge test holds that Kim Anh was not required to file a separate-rate certification. Kim Anh states that one of its customers exported a small amount of its product to the United States during the POR. Moreover, Kim Anh states that it placed an affidavit from that customer on the record that confirms Kim Anh did not learn of the shipment until March 5, 2009, played no role in the shipment, and that the small amount was sent to the United States for testing. Additionally, Kim Anh contends that none of the CBP entry data documentation placed on the record by the Department ties Kim Anh to this shipment.⁸⁰

Kim Anh argues that because it had no knowledge, or reason to know, of this shipment until March 5, 2009, it passes the Department's knowledge test citing Wonderful Chemical Industrial, Ltd. v. United States, 259 F. Supp. 2d 1273 (CIT 2003) ("Wonderful") and Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain In-Shell Raw Pistachios From Iran, 69 FR 48197 (August 9, 2004) ("Pistachios"). Kim Anh argues that because of the shipment's size, Kim Anh's separate rate from the previous review and the ease of submitting a Separate Rate Certification, it is illogical for Kim Anh to hide and export from the Department. Therefore, Kim Anh argues the Department should rescind this review for Kim Anh.

In rebuttal, Petitioner argues that the information on the record is sufficient evidence that Kim Anh knew or should have known, at the time of the sale, that the subject merchandise was destined for

⁸⁰ The customer, mode of export, and quantity are company specific business proprietary information. See Letter from Mayer Brown dated April 10, 2009, at 2.

the United States. Petitioner contends that the knowledge test, as raised by Kim Anh, does not require the Department to prove that the producer had actual knowledge, as such a requirement would eviscerate the acknowledged standard.⁸¹ Moreover, Petitioner argues that the circumstances and record evidence in the form of CBP entry documents show the differences between Kim Anh and CP Vietnam with respect to the nature of the transactions claimed by both companies as non-sales of subject merchandise.⁸² Petitioner notes that, while CP Vietnam's no-shipment claims have merit, those of Kim Anh do not, based on record evidence contained within CBP entry documentation. See Petitioner's Rebuttal Brief dated April 24, 2009, at 42-43, and footnote 131.

Petitioner argues that if the Department accepts Kim Anh's no-shipment claims and does not apply the Vietnam-wide rate to Kim Anh, then it would be a further confirmation that relying exclusively on CBP data is an unreliable methodology with respect to respondent selection.

Department's Position:

The Department agrees with Kim Anh with respect to its attestation that it made no sales or exports of subject merchandise to the United States during the POR. Moreover, the Department addressed Petitioner's arguments regarding the reliability of CBP data in comment 1 above.

In the Preliminary Results, we stated that pending a review of certain information obtained from CBP and Kim Anh, we would not preliminarily rescind the review for Kim Anh. Subsequently, the Department placed on the record import entry documentation obtained from CBP. See Memorandum to the File from Irene Gorelik, Analyst, Office 9, Re; Third Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: CBP 7501 Entry Packages, dated March 4, 2009. The Department also invited comment from Kim Anh regarding the information contained within the CBP entry documentation. Based on the Department's review of CBP's entry documentation and Kim Anh's subsequent explanations, arguments, and affidavits regarding the information contained therein, we have determined that, although Kim Anh may have produced the merchandise in question, Kim Anh does not appear to have exported that merchandise to the United States during the POR. See Kim Anh's Comments dated March 19, 2009 at 4 and Attachment I. Thus, upon review of the entry documentation noted above, we determine that it is appropriate to rescind the review with respect to Kim Anh in the final results. However, based on Kim Anh's proprietary explanation of the circumstances regarding Kim Anh-produced merchandise which entered the United States during the POR, we will forward the matter to CBP for further investigation.

⁸¹ Petitioner cites to Hyundai Electronics Industries Co., Ltd. v. United States, 28 CIT 517, 521, 342 F. Supp. 2d 1141, 1146 (CIT 2004) as quoted in Allegheny Ludlum Corp. v. United States, 24 CIT 1424, 1434-35, 215 F. Supp. 2d 1322, 1332 (CIT 2000).

⁸² As noted above, CBP entry documentation and the information therein are business proprietary information and not available for public summary.

RECOMMENDATION:

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

AGREE _____

DISAGREE _____

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

Date