

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND  
*Tri Union Frozen Products, Inc. et. al., v. United States*  
Consol. Court No. 14-00249, Slip Op. 17-71 (CIT June 13, 2017)

**I. SUMMARY**

The Department of Commerce (the Department) has prepared these final results of redetermination pursuant to the remand order of the Court of International Trade (Court or CIT) in *Tri Union Frozen Products Inc., et.al., v. United States*, Court No. 14-00249, Slip Op. 17-71 (June 13, 2017) (*Remand II Opinion and Order*). These final remand results concern the following: *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2012– 2013*, 79 FR 57047 (September 24, 2014) (*AR8 Final Results*), *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Amended Final Results of Antidumping Duty Administrative Review, 2012–2013*, 79 FR 65377 (November 4, 2014) (*AR8 Amended Final Results*); and the Department’s Remand Redetermination<sup>1</sup> (*Remand I*) pursuant to *Tri Union Frozen Products Inc., et.al., v. United States*, Court No. 14-00249, Slip Op. 16-33 (April 6, 2016) (*Remand I Opinion and Order*). In the *Remand II Opinion and Order*, the Court remanded back to the Department its determination in *Remand I*. In *Remand II Opinion and Order*, the Court directed the Department to: (1) articulate a reasonable method by which a petitioner can demonstrate aberration or unreliability where, as here, there is a claim of widespread, systemic labor abuse; and (2) address the record evidence of widespread labor abuses in the Bangladeshi shrimp industry that undermines Commerce’s implicit findings that the Bangladesh Bureau of Statistics (BBS) data are non-aberrational, reliable, and thus the best information available; and (3) explain why the Bangladeshi wage rate

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<sup>1</sup> Remand I is available at: <http://enforcement.trade.gov/remands/16-33.pdf>

data are reliable and not aberrational, in light of the record evidence of systemic labor abuses; or (4) if the data are aberrational and unreliable, explain why they are, nonetheless, the best available information; or (5) reconsider its determination that the Bangladeshi data are the best available information.<sup>2</sup>

As explained below, pursuant to the Court's *Remand II Opinion and Order*, we have determined to reconsider our determination that the Bangladeshi data are the best available information on the record to value labor usage as submitted by the mandatory respondents. Consequently, the Department has reconsidered its selection of the wage rate published by the BBS in the *AR8 Final Results*, and, in light of that reconsideration, we have determined to use an alternative data source from an appropriate surrogate country on the record to value the respondents' labor inputs.

## **II. BACKGROUND**

### *A. Administrative Background*

On March 29, 2013, the Department initiated an administrative review of 312 exporters of certain frozen warmwater shrimp from Vietnam for the period February 1, 2012, through January 31, 2013.<sup>3</sup> On May 24, 2013, the Department issued the respondent selection memorandum, in which it explained that, because of the large numbers of exporters or producers involved in the review, it would not be practicable to individually examine all companies. Rather, the Department determined that it could only reasonably examine two exporters in this

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<sup>2</sup> See *Remand II Opinion and Order* at 24-25. Apart from the labor surrogate value applied in the *AR8 Final Results*, unchanged in *AR8 Amended Final Results*, the CIT previously affirmed the Department's determinations for all other litigated issues before the Court. See *Remand II Opinion and Order* at 7, citing to *Tri Union Frozen Prods. Inc. v. United States*, 163 F. Supp. 3d 1255, 1312-13 (CIT 2016) ("*Tri Union I*").

<sup>3</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 78 FR 19197 (March 29, 2013) (*Initiation*); see also *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 78 FR 25418, 25421 (May 1, 2013) (containing a correction to the original *Initiation*). After accounting for duplicate names and additional trade names associated with certain exporters, we initiated on 86 actual companies/groups.

review.<sup>4</sup> Pursuant to section 777A(c)(2)(B) of the Tariff Act of 1930, as amended (the Act), the Department selected the Minh Phu Group<sup>5</sup> and Stapimex for individual examination.<sup>6</sup> We issued the preliminary results of review on March 24, 2014.<sup>7</sup>

In the *Preliminary Results*, the Department stated that it considers Vietnam to be a non-market economy (NME) country and that, in accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority.<sup>8</sup> The Department further stated that when it is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value (NV), in most circumstances, on the NME producer's factors of production (FOP), valued in a surrogate market economy (ME) country or countries considered to be appropriate by the Department.<sup>9</sup> Further, in accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department is directed to utilize, to the extent possible, the prices or costs of FOPs in one or

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<sup>4</sup> See Memorandum to James Doyle, Director, Office 9, AD/CVD Operations, from Irene Gorelik, Senior Analyst, Office 9, "Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Selection of Respondents for Individual Examination," dated May 24, 2013.

<sup>5</sup> Since the issuance of the *AR8 Final Results*, the Department has revoked the antidumping duty order with respect to the Minh Phu Group. See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order*, 81 FR 47756, 47757-47758 (July 22, 2016). Moreover, the Minh Phu Group is not subject to this litigation, the original injunction enjoining the lifting of suspension has been lifted and the suspended entries covering this period of review (POR) have been liquidated. See U.S. Customs and Border Protection (CBP) Message Number 6207308, dated July 25, 2016, available at:

[http://adcvd.cbp.dhs.gov/adcvdweb/ad\\_cvd\\_msgs/21568?filter\\_cat=ALL&filter\\_type=ALL&page=1&per\\_page=10&search=6207308](http://adcvd.cbp.dhs.gov/adcvdweb/ad_cvd_msgs/21568?filter_cat=ALL&filter_type=ALL&page=1&per_page=10&search=6207308); see also CBP Message Number 6209303, dated July 27, 2016, available at:

[http://adcvd.cbp.dhs.gov/adcvdweb/ad\\_cvd\\_msgs/21594?filter\\_cat=ALL&filter\\_type=ALL&page=1&per\\_page=10&search=6209303](http://adcvd.cbp.dhs.gov/adcvdweb/ad_cvd_msgs/21594?filter_cat=ALL&filter_type=ALL&page=1&per_page=10&search=6209303); see also CBP Message Number 6224308, dated August 11, 2016, available at:

[http://adcvd.cbp.dhs.gov/adcvdweb/ad\\_cvd\\_msgs/21661?filter\\_cat=ALL&filter\\_type=ALL&page=1&per\\_page=10&search=6209303](http://adcvd.cbp.dhs.gov/adcvdweb/ad_cvd_msgs/21661?filter_cat=ALL&filter_type=ALL&page=1&per_page=10&search=6209303).

<sup>6</sup> See Memorandum to James Doyle, Director, Office 5, AD/CVD Operations, from Irene Gorelik, Senior Analyst, Office 5, "Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Selection of Respondents for Individual Examination," dated May 24, 2013.

<sup>7</sup> See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results Antidumping Duty Administrative Review*, 79 FR 15944 (March 24, 2014) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (Preliminary Decision Memo).

<sup>8</sup> See Preliminary Decision Memo at 5.

<sup>9</sup> *Id.*, at 11-12.

more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.<sup>10</sup>

In the *Preliminary Results*, the Department determined that Bangladesh, Bolivia, India, Nicaragua, Pakistan, and the Philippines are countries with per capita gross national incomes (GNI) which are comparable to Vietnam in terms of economic development.<sup>11</sup> In the *Preliminary Results*, we also acknowledged comments from interested parties regarding surrogate country selection. Within the summarized comments, we stated that “Petitioner contends that the Department cannot select Bangladesh as the primary surrogate country because of the difference between the GNI between Bangladesh and Vietnam and the poor labor conditions which exist in Bangladesh’s shrimp industry.”<sup>12</sup> After analyzing the information on the record, the Department selected Bangladesh as the primary surrogate country,<sup>13</sup> which was upheld by the Court.<sup>14</sup>

The Department published the *AR8 Final Results* on September 24, 2014, and on November 4, 2014, it published the *AR8 Amended Final Results*, which addressed issues unrelated to the labor surrogate value.<sup>15</sup> In the *AR8 Final Results*, the Department continued to find the BBS data to be the best available information on the record to value labor.<sup>16</sup>

#### *B. Litigation Background*

In *Tri Union I*, the Court granted our request for a voluntary remand on the issue of the labor surrogate value. The Court explained that the petitioner challenged the Department’s “reliance on the BBS data because it claims the labor wage rate contained therein is aberrational

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<sup>10</sup> See Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (*Policy Bulletin 4.1*) and Preliminary Decision Memo at 11-12.

<sup>11</sup> See Preliminary Decision Memo at 11-12.

<sup>12</sup> *Id.*, at 12, citing to *Amanda Foods (Vietnam) Ltd. v. United States*, 647 F. Supp. 2d 1368, 1378-81 (CIT 2009).

<sup>13</sup> *Id.*, at 15.

<sup>14</sup> See *Remand II Opinion and Order* at 7, citing to *Tri Union I*, 163 F. Supp. 3d at 1312–13.

<sup>15</sup> See *AR8 Final Results* and *AR8 Amended Final Results*.

<sup>16</sup> See *AR8 Final Results* and accompanying Issues and Decision Memorandum at Comment 6.

due to labor abuses and thus is not representative of the Vietnamese shrimp industry.”<sup>17</sup> The petitioner specifically argued that the Department failed to explain why the BBS data were, nonetheless, reliable and non-distortive and that the Department’s determination is, thus, unsupported by substantial evidence.<sup>18</sup> In response to the petitioner’s arguments to the Court, the Department requested the Court to grant a voluntary remand to reconsider the petitioner’s specific arguments in connection with its challenge to our reliance on the BBS data to value the labor wage rate.<sup>19</sup>

In the Department’s *Remand I*, the Department first acknowledged that its determination in the *AR8 Final Results* did not fully address the petitioner’s arguments against its reliance on the BBS wage rate as a labor surrogate value or the petitioner’s argument that the labor value was aberrational as a result of alleged labor abuses.<sup>20</sup> In *Remand I*, the Department determined that the petitioner had not provided the quantitative evidence necessary to evaluate meaningfully whether the BBS wage rate is aberrational.<sup>21</sup> The Department further stated that because the Court affirmed our selection of Bangladesh as the primary surrogate country, the petitioner’s arguments concerning the internal socio-political situation in Bangladesh and workplace conditions and practices did not provide a basis to conclude that the BBS data are aberrational.<sup>22</sup>

The Department explained that the use of the BBS wage data is consistent with the Department’s preference to use surrogate values from the primary surrogate country.<sup>23</sup> The Department reiterated the criteria required in selecting a surrogate value, which considers several

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<sup>17</sup> See *Tri Union I*, 163 F. Supp. 3d at 1312.

<sup>18</sup> *Id.*

<sup>19</sup> See *Remand I* at 5.

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

<sup>21</sup> *Id.*, at 40-41.

<sup>22</sup> *Id.*, at 41.

<sup>23</sup> *Id.*, at 8, citing to 19 CFR 351.408(c)(2); *Clearon Corp. v. United States*, 2013 Ct. Intl. Trade LEXIS 27 (Feb. 27, 2013), at \*20 (“{T}he court must treat seriously {the Department’s} preference for the use of a single surrogate country.”); *Globe Metallurgical v. United States*, 32 CIT 1070, 1076 (Oct. 1, 2008); see also *Peer Bearing Company-Changshan, v. United States*, 752 F. Supp. 2d 1353, 1373 (CIT 2011).

factors including whether the surrogate value is publicly available, is contemporaneous with the POR, represents a broad market average, is tax- and duty-exclusive, and is specific to the input.<sup>24</sup> We specified that when those criteria cannot be satisfied, the Department will choose a surrogate value based on the best information available on the record.<sup>25</sup> We further determined that the BBS wage data from Bangladesh, the surrogate country we selected, satisfy the surrogate value selection criteria because those data are publicly available, specific to the shrimp industry, and far more contemporaneous than the data provided by the petitioner.

Subsequently, as noted above, in the *Remand II Opinion and Order*, the Court remanded this issue again to the Department and directed the agency to: (1) articulate a reasonable method by which a petitioner can demonstrate aberration or unreliability where, as here, there is a claim of widespread, systemic labor abuse; (2) address the record evidence of widespread labor abuses in the Bangladeshi shrimp industry that undermines Commerce’s implicit findings that the BBS data are non-aberrational, reliable, and thus the best information available; and (3) explain why the Bangladeshi wage rate data are reliable and not aberrational, in light of the record evidence of systemic labor abuses or (4) if the data are aberrational and unreliable, explain why they are, nonetheless, the best available information or (5) reconsider its determination that the Bangladeshi data are the best available information.<sup>26</sup>

In the “Analysis” section below, the Department has provided its analysis of the record evidence to address the Court’s *Remand II Opinion and Order*.

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<sup>24</sup> See *Remand I* at 7, citing to Preliminary Decision Memo at 12.

<sup>25</sup> *Id.*, at 16, citing to *Certain Activated Carbon from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 70163 (November 25, 2014) and accompanying Issues and Decision Memorandum at Comment 4.

<sup>26</sup> See *Remand II Opinion and Order* at 24-25.

### III. ANALYSIS

#### A. The Department's Practice of Determining Whether Data Are Aberrational for Use as a Surrogate Value in General and for Labor FOPs, In Particular

In accordance with section 773(c) of the Act, the Department determines NV for subject merchandise from an NME country by valuing each respondent's FOPs using the "best available information" for these factors from ME countries.<sup>27</sup> In doing so, the Department relies on ME countries that are economically comparable to the NME country at issue and significant producers of merchandise that are comparable to the subject merchandise.<sup>28</sup>

Pursuant to 19 CFR 351.408(c)(2), Commerce "normally will value all factors in a single surrogate country." However, up until 2010, this regulation did not apply to the valuation of labor. Indeed, in 1996 we recognized in the *Preamble* to the Department's regulations that labor values, in particular, can vary greatly from country to country, depending on the "country the Department selects as the economically comparable surrogate economy."<sup>29</sup> This was the policy reason behind 19 CFR 351.408(c)(3), which directed the Department to use a "regression-based" methodology which incorporated the wage rates from multiple countries.<sup>30</sup>

The Department's labor-valuation regulation was invalidated, however, by the Court of Appeals for the Federal Circuit in *Dorbest Ltd. v. United States*, 604 F.3d 1363, 1372 (Fed. Cir. 2010), which determined that the Department's regression-based methodology was inconsistent with the statute. As a result, the Department reconsidered its practice in this regard and concluded that, in light of the Court's holding, "relying on multiple countries to calculate the wage rate {wa}s no longer the best approach for calculating the labor value."<sup>31</sup> The Department, therefore, concluded that, under such constraints, "using the data on industry-specific wages

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<sup>27</sup> See section 773(c)(1)(B) of the Act.

<sup>28</sup> See section 773(c)(4)(A)-(B) of the Act; see also 19 CFR 351.408(b).

<sup>29</sup> See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27295, 27367 (May 19, 1997) (*Preamble*).

<sup>30</sup> *Id.* (explaining that "combining data from more than one country" would "yield a more accurate result").

<sup>31</sup> See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092, 36093 (June 21, 2011).

from the primary surrogate country is the best approach for valuing the labor input in NME antidumping duty proceedings,” in part because it is “fully consistent with how the Department values all other FOPs, and it results in the use of a uniform basis for FOP valuation – a single surrogate.”<sup>32</sup>

This is not to say, however, that once the Department ceased using wage rates derived from multiple countries in determining a surrogate value for labor that labor values suddenly became similarly situated with many other FOPs. As a factual matter, that is simply not the case. For example, the volume and commercial value of internationally traded commodities, such as preservatives, salt, fuel, and chlorine, are objectively obtainable through commercial sources that provide statistical data.<sup>33</sup> Labor, on the other hand, is a FOP largely and universally dependent on numerous factors, such as, but not limited to, labor rights, child and women’s rights, health care costs, costs of living, environmental conditions, pension and retirement laws, and political pressures, which, arguably, may not be as relevant in valuing other FOPs.<sup>34</sup> Accordingly, as reflected by the Court’s concerns in this case, it comes as no surprise that there is a natural tension between certain analyses which the Department normally applies to other FOPs and the application of those analyses specifically to a labor FOP.

As a general rule, when evaluating whether potential surrogate value data provide the “best available information” in accordance with section 773(c) of the Act, the Department

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<sup>32</sup> *Id.*

<sup>33</sup> See Memorandum to Catherine Bertrand, Program Manager, from Irene Gorelik, Analyst re: “Eighth Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results,” dated March 17, 2014, (Prelim SV Memo) at Exhibit 5 (containing the raw import statistics from UN Comtrade, which we frequently rely upon as public sources of global trade data in this proceeding and other NME proceedings.)

<sup>34</sup> See, e.g., the petitioner’s submission, re: “Comments on Surrogate Country Selection,” dated August 30, 2013, at Exhibit 2, the petitioner’s report from Verite’s “Research on Indicators of Forced Labor in the Supply Chain of Shrimp in Bangladesh,” where the report indicates: 1) that the Government of Bangladesh instituted numerous initiatives and “created several ad hoc governance institutions” to address regulatory gaps in labor rights, child labor, health and safety codes, compensation laws, and welfare; and 2) that working conditions are identified as factors in the study of labor practices. See also Exhibit 5 at Appendix B, the petitioner’s report from Accenture for Humanity United regarding “Exploitative Labor Practices in the Global Shrimp Industry,” which identified labor certification factors such as child labor, forced labor, safety, freedom of association and collective bargaining, working hours, remuneration, migrant workers, etc.



considers several factors, including whether the surrogate value is publicly available, contemporaneous with the POR, represents a broad-market average, from an approved surrogate country, tax and duty-exclusive, and specific to the input.<sup>35</sup> Furthermore, as the Department stated in the *Preamble*, in selecting surrogate values, “aberrational surrogate input values should be disregarded.”<sup>36</sup>

As we explained in *Remand I*, where a party alleges that potential surrogate value data are “aberrational,” the Department’s practice generally is to compare the surrogate value with prices from other countries found to be economically comparable to the NME country under review or with historical values from the potential surrogate country and evaluate other quantitative record evidence that inform the Department’s understanding of such a comparison.<sup>37</sup> There is no set standard for what constitutes “aberrational” data, although this Court has considered this question in the context of certain other surrogate values. For example, in *Xinjiaimei Furniture (Zhangzhou) Co. v. United States*, 2013 Ct. Int’l Trade LEXIS 34, \*20 (Mar. 11, 2013), this Court held that when the potential surrogate value is based on import data, “a very small relative quantity of imports triggers an obligation for Commerce to explain why the data is not aberrational.” Furthermore, this Court has held that input values cannot be greater than that of a primary or finished good.<sup>38</sup> In all of these cases, the issue before the Court was whether the quantitative analysis conducted by the Department to determine if a potential surrogate value was “aberrational” was reasonable.

The Court has ordered in this case that the Department articulate a reasonable method by which a petitioner can demonstrate aberration or unreliability where, as here, there is a claim of widespread, systematic labor abuse. The simple answer to this question is that the petitioner

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<sup>35</sup> See Preliminary Decision Memo at 13-14.

<sup>36</sup> See *Preamble*, 62 FR at 27366.

<sup>37</sup> See *Remand I* at 12-13, 18.

<sup>38</sup> See, e.g., *Blue Field (Sichuan) Food Indus. Co., Ltd. v. United States*, 949 F. Supp. 2d 1311, 1327 (CIT 2013); *Baroque Timber Indus. (Zhongshan) Co., Ltd. v. United States*, 925 F. Supp. 2d 1332, 1345 (CIT 2013).

cannot reasonably be expected to “demonstrate quantitatively” that potential surrogate labor values are aberrational when its claims stem from systemic labor abuses. For the reasons explained above, the valuation of labor, in particular, does not avail itself of a quantitative aberrational analysis.

In the *Remand II Opinion and Order*, the Court noted that “it appears that Commerce requires parties to demonstrate aberration in labor data by comparing historic wage rates within the same country. It is unclear...how aberration can be assessed where there is a claim of systematic labor abuses within a country and parties may only use historical wage rate data from that country.”<sup>39</sup> The Court further reasoned that “{t}here may be reasons to use a quantitative analysis in other cases. However, in the present case, it is not reasonable to require ‘measurable’ evidence that the dataset is unreliable.”<sup>40</sup> We agree. The quantitative evaluation normally conducted for commodity FOPs (*e.g.*, traded goods) is not possible for labor based on the evidence on this record and, for this reason, we conclude that quantitative cross-country comparisons for labor wage rate data cannot be made.

The Court noted that “{a}lthough Commerce refers to the need to perform a quantitative analysis, it is not clear what that entails in this case or when such analysis would lead Commerce to find labor data aberrational or unreliable.”<sup>41</sup> In fact, a quantitative comparison of wage rates between countries, or within a single country, does little to address whether or not a labor value is “aberrational,” as wages among economically comparable countries and across industries often vary considerably. Furthermore, the Department does not have subject-matter expertise with respect to labor markets and the diverse factors which can affect labor values. Moreover, neither the statute, nor the Department’s regulations, require the Department to conduct an exhaustive analysis of the operation of labor law, policies, and practices in Bangladesh and other

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<sup>39</sup> See *Remand II Opinion and Order* at 16.

<sup>40</sup> *Id.*, at 17, fn.17.

<sup>41</sup> *Id.*, at 18.

comparable ME countries in its administrative proceedings. Accordingly, we recognize that the Department's normal practice of determining if a surrogate value is "aberrational" using a quantitative analysis cannot, and does not, provide a path by which the petitioner can demonstrate that the Bangladeshi wage rate data are aberrational, given its claim of systemic labor abuses.

However, given the Court's concerns with respect to Bangladeshi labor practices, the Department has determined to re-evaluate whether or not the Bangladeshi wage rate is the "best available information," for valuing labor in accordance with section 773(c) of the Act, as we explain below.

**B. Whether the Bangladeshi Wage Rate Is Aberrational or Otherwise Not the Best Available Information for Valuing Labor**

In light of the Court's *Remand II Opinion and Order*, we have evaluated the record evidence and reconsidered our determination that the Bangladeshi data are the best available information. Although the Department's practice with respect to claims of aberration does not enable the petitioner to demonstrate quantitatively that the Bangladeshi data are aberrational in light of its claim, we acknowledge that additional considerations may affect a determination as to whether potential surrogate value data constitute the best available information. Given the Court's concerns with respect to the evidence of labor abuses in Bangladesh provided by the petitioner,<sup>42</sup> and given that there is no affirmative evidence of systemic labor abuses specific to the shrimp processing industries in certain other potential surrogate countries on the record, we have elected to conclude that the Bangladeshi wage rate is not the best available information on the record with which to value the respondents' labor FOPs.

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<sup>42</sup> See the petitioner's submission re: "Comments on Surrogate Country Selection," dated August 30, 2013, and the petitioner's submission re: "Post-Prelim Evidentiary Submission Regarding Surrogate Country and Value Selection," dated April 28, 2014 (April 28, 2014 SV submission).

In doing so, we evaluated the alternative wage rates on the record and determined that Indian wage rate data are the best available information for valuing labor. In the *Preliminary Results*, the Department evaluated the suitability of the countries on the Surrogate Country list (Bangladesh, Bolivia, India, Nicaragua, Pakistan, and the Philippines) to obtain surrogate values.<sup>43</sup> Through our analysis, we disqualified Bolivia because we determined it was not a significant producer of comparable merchandise.<sup>44</sup> We then disqualified Nicaragua, Pakistan, and the Philippines because there were no data or financial statements from those countries on the record.<sup>45</sup> We then compared data availability between India and Bangladesh, the only countries from the Surrogate Country list that had not been disqualified through the criteria analysis. The Department determined to select Bangladesh as the primary surrogate country because we found that “the record contains shrimp values for Bangladesh that better meet our selection criteria than the Indian source.”<sup>46</sup> However, we note that we disqualified India only due to its comparatively inferior raw shrimp surrogate value data, and not because of any other factor. In fact, in subsequent reviews, we relied on Indian sources for non-raw shrimp surrogate values.<sup>47</sup> Thus, here, we find that, while we did not select India as the primary surrogate country, India was determined to be at the same level of economic development as Vietnam, was a producer of comparable merchandise, and, with the exception of raw shrimp, met the criteria for data availability. Consequently, we find that, in consideration of the Court’s concern with the Bangladeshi labor surrogate value for shrimp processing, and the fact that there is no affirmative evidence on the record of systemic labor abuses in the Indian shrimp processing industry, the

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<sup>43</sup> See Preliminary Decision Memo at 12.

<sup>44</sup> *Id.*, at 12-13.

<sup>45</sup> *Id.*, at 13-14.

<sup>46</sup> *Id.*, at 15.

<sup>47</sup> See, e.g., *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review*; 2013–2014, 80 FR 12441 (March 9, 2015) and accompanying Preliminary Decision Memorandum at 25-26, unchanged in *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review*, 2013– 2014, 80 FR 55328 (September 15, 2015).

most appropriate and the best available alternative information on the record to value labor is the Indian ILO data.<sup>48</sup>

With respect to the other wage data on the record under consideration, we find that the petitioner's ILO data from Guyana and Indonesia are not appropriate, because they were not among the potential surrogate countries identified on the Surrogate Country list for consideration in this review.<sup>49</sup> While we departed from Bangladesh for a shrimp byproduct surrogate value (we relied on an Indonesian source), we also stated that "the record shows that non-shrimp FOPs are comparatively negligible (compared to shrimp, financial ratios, and labor) in the calculation of the {normal value}."<sup>50</sup> We also stated that "while labor is not an extremely large component of the NV, as compared to raw shrimp or the financial ratios, it contributes more to NV than most of the remaining non-shrimp FOPs,"<sup>51</sup> such as shrimp scrap. With respect to the ILO labor data from Nicaragua and the Philippines, we find that these countries are not appropriate sources for a labor surrogate value because, as noted above, we disqualified them due to the lack of data availability on the record.<sup>52</sup> Because only India and Bangladesh survived the criteria analysis for surrogate country selection, with the raw shrimp data availability for Bangladesh serving as the determining factor in selecting Bangladesh, we find that India is an appropriate secondary surrogate country source from which to obtain the labor surrogate value. Consequently, we employed the Indian (International Labor Organization) ILO labor surrogate value, the inflator data, and Indian currency conversion data that are on the record<sup>53</sup> to inflate and convert the non-

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<sup>48</sup> See the petitioner's April 28, 2014 SV submission at Exhibit 8.

<sup>49</sup> See *Remand I* at 7; see also *AR8 Final Results* and accompanying Issues and Decision Memorandum at Comment 1 ("Notwithstanding the above analysis, regardless of which data are superior, the fact that we are unable to determine, on this record, whether Indonesia is or is not at the same level of economic comparability to Vietnam weighs heavily against{sic} not considering Indonesia as a candidate for primary surrogate country.").

<sup>50</sup> See *AR8 Final Results* and accompanying Issues and Decision Memorandum at Comment 1.

<sup>51</sup> *Id.*

<sup>52</sup> See Preliminary Decision Memo at 13-14

<sup>53</sup> See the petitioner's April 28, 2014 SV submission, at Exhibit 8.

contemporaneous Indian ILO data to replace the BBS labor surrogate value in the respondents' margin calculations.<sup>54</sup>

#### **IV. INTERESTED PARTY COMMENTS ON DRAFT REMAND RESULTS**

On July 5, 2017, the Department released the draft remand results of redetermination to all interested parties.<sup>55</sup> We invited interested parties to comment on the draft remand results by July 12, 2017. On July 12, 2017, the petitioner filed timely comments supporting the Department's draft remand results and urged the Department to "adopt the Draft Remand without alteration as the agency's Remand Results and submit these Remand Results to the CIT in compliance with the Court's remand order."<sup>56</sup> No other party commented.

#### **V. FINAL RESULTS OF REDETERMINATION**

Consistent with the *Remand II Opinion and Order*, we have clarified that our practice of determining whether or not a potential surrogate value is "aberrational" based upon a quantitative analysis does not apply to labor FOPs. However, given the allegations and accompanying information placed on the record by the petitioner in support of its claim of systemic labor abuses in the Bangladeshi shrimp processing industry, we have reconsidered our determination in the *AR8 Final Results* that the Bangladeshi data are the best available information on the record to value labor, and instead used Indian data on the record.

In the *AR8 Final Results*, we calculated a 9.75 percent weighted-average margin for Stapimex, unchanged in *AR8 Amended Final Results*.<sup>57</sup> Based on our change of the labor surrogate value, we calculated a 10.48 percent weighted-average margin for Stapimex.<sup>58</sup> We

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<sup>54</sup> See Memorandum to the File, re: "Draft Remand II Redetermination—Draft Remand II Recalculations," dated July 5, 2017 (Draft Remand Recalculations).

<sup>55</sup> See Letter to All Interested Parties, re: "Remand Redetermination in the Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam," dated July 5, 2017 (draft remand results).

<sup>56</sup> See Letter from the petitioner, re: "Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Comments on Draft Remand Redetermination," dated July 12, 2017, at 6.

<sup>57</sup> See *AR8 Final Results*, 79 FR at 57049; see also *AR8 Amended Final Results*, 79 FR at 65378.

<sup>58</sup> See Draft Remand Recalculations at Attachment 3 and 4.

intend to liquidate Stapimex's enjoined entries of subject merchandise at the importer-specific assessment rates revised pursuant to this final remand redetermination and identified within the Draft Remand Recalculations at the completion of this litigation.

Further, we adjusted the Minh Phu Group's final margin from 4.98 percent<sup>59</sup> to 5.48 percent,<sup>60</sup> for the sole purpose of re-calculating the separate rate for the non-individually examined companies that received a separate rate and are parties to this litigation. The Department re-calculated the separate rate resulting in a weighted-average dumping margin of 6.94 percent for the non-individually examined companies that qualified for a separate rate and are subject to this litigation.<sup>61</sup> We intend to liquidate these companies' enjoined entries of subject merchandise at this revised rate of 6.94 percent at the completion of this litigation.

7/25/2017

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Signed by: GARY TAVERMAN

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Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance

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<sup>59</sup> See *AR8 Final Results*, 79 FR at 57049; see also *AR8 Amended Final Results*, 79 FR at 65378.

<sup>60</sup> See Draft Remand Recalculations at Attachments 1 and 2.

<sup>61</sup> *Id.*, at 3-7, where we provided the separate rate methodology and re-calculation and the list of the separate rate companies that are subject to this litigation.