Amanda Foods (Vietnam) Ltd., et. al v. United States,
Consol. Court No. 09-00431, 807 F. Supp. 2d 1332 (CIT 2011)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

A. SUMMARY

The Department of Commerce ("Department") has prepared these final results of redetermination ("final remand results") pursuant to the remand order of the U.S. Court of International Trade ("CIT" or the "Court") in Amanda Foods (Vietnam) Ltd., et al. v. United States, Consol. Court No. 09-00431, 807 F. Supp. 2d 1332 (CIT 2011) ("Amanda 2011"). These final results concern Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 74 FR 47191 (September 15, 2009) ("Vietnam Shrimp AR3"). As set forth in detail below, in the draft results, we reopened the evidentiary record for the purpose of gathering additional data from the 22 plaintiff separate rate companies to determine whether there is substantial evidence of dumping on the record by these plaintiffs. Based on analysis of the data from the 16 plaintiffs that responded to our request for information, we determined that the record does not contain substantial evidence to support the continued assignment of the separate rate applied in Vietnam Shrimp AR3 to these 16 plaintiffs. The Court granted the request of the six companies that did not respond to our request for information to withdraw as plaintiffs from this lawsuit.[1] Upon review and analysis of interested parties' comments on the draft results, we have determined to continue to assign to the remaining 16 plaintiffs the weighted-average of the dumping margins determined for the three individually examined companies for the final remand results.

[1] On March 8, 2012, the Court signed a stipulation of dismissal with respect to Coastal Fishery Development aka Coastal Fisheries Development Corporation; Thuan Phuoc Seafoods and Trading Corporation aka frozen seafoods factory 32 aka seafoods and foodstuff factory aka Frozen Seafoods Factory No. 32 aka Frozen Seafoods Fty; Investment Commerce Fisheries Corporation; Nha Trang Fisheries Joint Stock Company; Viet Foods Co., Ltd.; and Vinh Loi Import Export Co. Ltd. As a result, these companies are no longer parties in this litigation, are not subject to this remand, and we have not changed the rate assigned to them in the final results of Vietnam Shrimp AR3.

B. BACKGROUND

(1) Separate Rate Calculation Methodology in Vietnam Shrimp AR3

The Department reviewed 111 companies in the third administrative review.[2] Of those 111 companies, three companies were selected for individual examination, 25 cooperative, non-individually examined respondents demonstrated eligibility for, and received, a separate rate, and 79 companies were properly considered part of the Vietnam-wide entity because they did not demonstrate eligibility for a separate rate. The Vietnam-wide entity was assigned a rate of 25.76 percent.

In the final results of Vietnam Shrimp AR3, the Department calculated de minimis margins for the three individually examined respondents.[3] In the final results, the Department explained that the statute and the Department's regulations do not directly address the establishment of a rate to be applied to cooperative companies not selected for individual examination where the Department has limited its examination in an administrative review, pursuant to section 777A(c)(2) of the Tariff Act of 1930, as amended ("the Act").[4] We further stated that the Department's practice in this regard, in cases involving limited 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 facts available. In this case, however, the Department calculated de minimis rates for each of the individually examined respondents.

With respect to the cooperative non-individually examined respondents, the Department determined that the circumstances regarding the separate rate calculation methodology were

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[2] See 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), unchanged in VN Shrimp AR3, 74 FR at 47196-7.

[3] The three mandatory respondents are: Minh Phu Seafood Export Import Corporation (and affiliated Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.), Minh Phu Seafood Corporation; Minh Phu Seafood Corp., Minh Qui Seafood Co., Ltd., Minh Qui Seafood, Minh Phat Seafood Co., Ltd., Minh Phat Seafood, (collectively, "Minh Phu Group"), Camau Frozen Seafood Processing Import Export Corporation ("Camimex"), and Phuong Nam Co. Ltd. ("Phuong Nam").

[4] See VN Shrimp AR3, 74 FR at 47195.

comparable to those of the preceding administrative review, in which the Department also calculated de minimis margins for each mandatory respondent. As a result, consistent with the methodology applied in the preceding administrative review, for Vietnam Shrimp AR3, the Department assigned a separate rate of 4.57 percent, which is the margin calculated for cooperative separate rate respondents in the underlying investigation, to those non-individually examined respondents in this administrative review that did not have their own prior or concurrently calculated margin.[5] Additionally, for those non-individually examined respondents for whom we calculated a rate in a more recent or contemporaneous segment, we assigned that calculated rate as the company's separate rate in this review. Specifically, for Viet Hai Seafoods Company Ltd. and Grobest & I-Mei Industrial (Vietnam) Co., Ltd., we assigned the rates most recently calculated for both companies (zero) as their separate rate in the instant review because these rates were more recent than the separate rate calculated in the underlying investigation and were based on the companies' own data. Additionally, for Minh Hai Joint-Stock Seafoods Processing Company, we assigned as a separate rate the most recent rate of 4.30 percent, which we calculated for it in the underlying investigation based on the company's own data.[6]

(2) History of Litigation for the Separate Rate Calculation Methodology

In Amanda Foods (Vietnam) Ltd., et al. v. United States, Consol. Court No. 08-00301, 647 F. Supp. 2d 1368 (CIT 2009) ("Amanda I"), in the context of a challenge to the separate rate assignment methodology applied in the final results of the second administrative review of shrimp from Vietnam, the Court remanded the separate rate assignment methodology to either assign to the plaintiffs the weighted-average rate of the mandatory respondents, or else provide justification, based on substantial evidence on the record, for using another rate. Consequently, in the Department's remand redetermination for Amanda I, we stated that "the Department

[5] See id.
[6] See id.

employed the correct analytical framework in its draft remand redetermination, in determining a reasonable method with which to assign a rate to non-individually examined respondents" in the second administrative review.[7] Specifically, we stated that, based on record evidence, selecting rates from prior segments to apply to the non-selected companies in this review implements the statute's preference to avoid zero/de minimis and facts available margins and reasonably reflects the existence of dumping under the order, specifically accounting for: 1) the positive transaction-specific margins that exist on the record of this review; 2) the evidence of dumping in this review that may be inferred based on the lack of cooperation of the Vietnam-wide entity, which includes the companies that did not allow the Department to determine whether or not they should be selected for examination; 3) the evidence of dumping by certain mandatory respondents in the first review; and 4) ongoing entries made under the Vietnam-wide rate for which either reviews were not requested, or responses to Department questions not received.

In Amanda Foods (Vietnam) Ltd., et al. v. United States, Consol. Court No. 08-00301, 714 F. Supp. 2d 1282 (CIT 2010) ("Amanda II"), the Court disagreed with the Department's justification for applying the selected separate rate assignment methodology in the Amanda I remand redetermination and remanded the issue back to the Department. The Court stated, inter alia, that certain record evidence "offered as evidence in support of the dumping margins assigned to Plaintiffs in this review, are all based on evidence of the existence of uncooperative respondents in the first and/or second reviews."[8]

On remand, the Court ordered the Department to employ a reasonable method {to assign a separate rate}, which may "'include{e} averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated,' 19 U.S.C. § 1673d(c)(5)(B) and...assign to Plaintiffs dumping margins for the second {period of review

[7] See Final Results of Redetermination Pursuant To Court Remand, dated March 3, 2010, at 21.
[8] See Amanda II, 714 F. Supp. 2d at 1293.

("POR")} which are reasonable considering the evidence on the record as a whole; to do so, Commerce may reopen the evidentiary record if need be."[9]

In the Department's remand redetermination for Amanda II, "under respectful protest, the Department determined that, in this instance, it was necessary to reopen the evidentiary record to gather additional information, specific to each of the 23 Plaintiffs, in order to comply with the Court's order."[10] The Department reopened the record to gather the quantity and value ("Q&V") of the plaintiffs' sales to the United States during the POR on a count-size specific basis. The Department considered this Q&V data as follows:

> In analyzing Plaintiffs' count-size specific Q&V data, the Department determined to compare the count-size specific data for each company to the count-size specific weighted-average normal value of the mandatory respondents in the second administrative review, Minh Phu Group and Camimex. The methods employed in making these comparisons included estimated adjustments such as: 1) calculating an average unit value ("AUV") of each count size from the Q&V data; 2) unit of measure conversions; 3) a matching of count sizes between the Q&V data and the weighted-average normal values ("NVs"), and; 4) gross price to net price conversions for each count-size specific AUV to approximate the gross to net price deductions made in a typical dumping margin analysis. This estimated gross price to net price adjustment was calculated using the average gross price to net price ratio of the mandatory respondents' sales data and then applying that ratio to the AUVs of the 23 Plaintiffs.[11]

In consideration of the foregoing exercise, and acknowledging that this exercise by no means reflected the entirety of the data required to calculate a full dumping margin, the Department determined that the record, with the additional count-size specific Q&V data, did not show evidence of dumping by the 23 plaintiffs for that POR.[12] Consequently, in the Amanda II Remand Redetermination, we determined to assign, under protest, a separate rate to these 23

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[9] See Amanda II, 714 F. Supp. 2d at 1296.
[10] See Final Results Of Redetermination Pursuant To Court Remand, dated December 2, 2010 ("Amanda II Remand Redetermination") at 4.
[11] See id., at 5.
[12] See id., at 5-6.

plaintiffs equal to the simple average of the dumping margins calculated for the individually-examined companies, Minh Phu Group and Camimex.[13]

In Amanda Foods (Vietnam) Ltd., et al. v. United States, Consol. Court No. 08-00301, 774 F. Supp. 2d 1286 (CIT 2011) ("Amanda III"), the Court affirmed the Amanda II Remand Redetermination. In light of Amanda III, the Department requested a voluntary remand with respect to the separate rate calculation methodology applied in Vietnam Shrimp AR3.[14]

C. ANALYSIS

Separate Rate Determination

Given the court's decision in Amanda II on facts similar to those presented here, the Department determined to reopen the evidentiary record to gather additional information, specific to each of the 22 plaintiffs. Therefore, we reopened the record of the third administrative review of certain frozen warmwater shrimp from Vietnam to gather the Q&V data of the 22 plaintiffs' sales to the United States during the POR on a count-size specific basis.

On January 13, 2012, the Department sent questionnaires to the 22 plaintiffs requesting the Q&V data of POR sales on a shrimp count-size specific basis. On February 10, 2012, 16 out of the 22 plaintiffs provided the count-size quantity and value responses, as requested. Six of the plaintiffs did not submit the Q&V data as requested.[15] On February 14, 2012, counsel for the unresponsive six litigants confirmed that these six companies did not provide the data for submission to the Department.[16] Subsequently, the Court granted these parties' request to

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[13] See id., at 6.
[14] See Amanda 2011, 807 F. Supp. 2d at 1338.
[15] These companies are: Coastal Fishery Development aka Coastal Fisheries Development Corporation; Thuan Phuoc Seafoods and Trading Corporation aka frozen seafoods factory 32 aka seafoods and foodstuff factory aka Frozen Seafoods Factory No. 32 aka Frozen Seafoods Fty; Investment Commerce Fisheries Corporation; Nha Trang Fisheries Joint Stock Company; Viet Foods Co., Ltd.; and Vinh Loi Import Export Co. Ltd.
[16] See "Memorandum to the File from Irene Gorelik, Senior Analyst, re; Telephone call with Counsel for Litigants," dated February 14, 2012.

withdraw as plaintiffs from the litigation. Consequently, all references to "the plaintiffs" below include only the remaining 16 litigants.

In analyzing the plaintiffs' count-size specific Q&V data, the Department compared the count-size specific data for each company to the count-size specific weighted-average NV of the three mandatory respondents in the third administrative review, Minh Phu Group, Camimex, and Phuong Nam. The methods employed in making these comparisons included estimated adjustments such as: 1) calculating an AUV of each count size from the quantity and value data; 2) unit of measure conversions; 3) a matching of count sizes between the Q&V data and the weighted-average NVs; and, 4) gross price to net price conversions for each count-size specific AUV to approximate the gross to net price deductions made in a typical dumping margin analysis. This estimated gross price to net price adjustment was calculated using the average gross price to net price ratio of the mandatory respondents' sales data and then applying that ratio to the plaintiffs' AUVs.

After having conducted these analyses, the Department has determined that the record, with the additional count-size specific Q&V data, does not show evidence of dumping by the plaintiffs during this POR. However, the Department notes that these analyses were not full dumping margin calculations as conducted per the statute for the individually examined respondents, Minh Phu Group, Camimex, and Phuong Nam. Thus, because the record does not contain the plaintiffs' NV data, the results of our analysis pursuant to the remand do not reflect the entire scope of the plaintiffs' production experience and costs. Nevertheless, the Department has not found any evidence of dumping by the plaintiffs during this POR based on the information currently on the record.

Consequently, we determine to assign a separate rate to the plaintiffs equal to the weighted-average of the dumping margins calculated for the individually-examined companies, Minh Phu Group, Camimex, and Phuong Nam. The separate rate margins for the plaintiffs are as

follows, inclusive of the companies' names and trade names as they appeared in Vietnam Shrimp AR3:

Manufacturer/Exporter	Weighted-Average Margin (Percent)
Amanda Foods (Vietnam) Ltd.	0.26 % (de minimis)
Bac Lieu Fisheries Joint Stock Company	0.26 % (de minimis)
Cadovimex-Vietnam, aka Cadovimex Seafood Import-Export and Processing Joint Stock Company ("Cadovimex-Vietnam"),	0.26 % (de minimis)
Cafatex Fishery Joint Stock Corporation ("Cafatex Corp.") aka Cantho Animal Fisheries Product Processing Export Enterprise (Cafatex), aka Cafatex, aka Cafatex Vietnam, aka Xi Nghiep Che Bien Thuy Suc San Xuat Khau Can Tho, aka Cas, aka Cas Branch, aka Cafatex Saigon, aka Cafatex Fishery Joint Stock Corporation, aka Cafatex Corporation, aka Taydo Seafood Enterprise	0.26 % (de minimis)
Cam Ranh Seafoods Processing Enterprise Company ("Camranh Seafoods") aka Camranh Seafoods	0.26 % (de minimis)
Cuulong Seaproducts Company ("Cuu Long Seapro") aka Cuu Long Seaproducts Limited (Cuulong Seapro) aka Cuulong Seapro, aka Cuulong Seaproducts Company ("Cuulong Seapro") ("Cuu Long Seapro")	0.26 % (de minimis)
Danang Seaproducts Import Export Corporation ("Seaprodex Danang") aka Tho Quang Seafood Processing & Export Company, aka Seaprodex Danang, aka Tho Quang Seafood Processing And Export Company, aka Tho Quang, aka Tho Quang Co.	0.26 % (de minimis)
Minh Hai Export Frozen Seafood Processing Joint Stock Company, aka Minh Hai Jostoco, aka Minh Hai Export Frozen Seafood Processing Joint-Stock Company ("Minh Hai Jostoco"), aka Minh Hai Export Frozen Seafood Processing Joint-Stock Company, aka Minh Hai Joint Stock Seafood Processing Joint-Stock Company, aka Minh Hai Export Frozen Seafood Processing Joint-Stock Co., aka Minh Hai Export Frozen Seafood Processing Joint-Stock Company Minh Hai Jostoco	0.26 % (de minimis)
Minh Hai Joint-Stock Seafoods Processing Company ("Seaprodex Minh Hai") aka Sea Minh Hai, aka Minh Hai Joint-Stock Seafoods Processing Company	0.26 % (de minimis)
Minh Hai Sea Products Import Export Company (Seaprimex Co) , aka Ca Mau Seafood Joint Stock Company ("SEAPRIMEXCO") aka Seaprimexco Vietnam, aka Seaprimexco, aka Ca Mau Seafood Joint Stock Company (Seaprimexco)	0.26 % (de minimis)

Ngoc Sinh Private Enterprise, aka Ngoc Sinh Seafoods, aka Ngoc Sinh Seafoods Processing and Trading Enterprise	0.26 % (de minimis)
Nha Trang Seaproduct Company ('Nha Trang Seafoods")	0.26 % (de minimis)
Phu Cuong Seafood Processing and Import-Export Co., Ltd.	0.26 % (de minimis)
Sao Ta Foods Joint Stock Company ("Fimex VN"), aka Sao Ta Seafood Factory	0.26 % (de minimis)
Soc Trang Seafood Joint Stock Company	0.26 % (de minimis)
UTXI Aquatic Products Processing Corporation	0.26 % (de minimis)

As explained above, we find that, by opening the evidentiary record, requesting count-size specific quantity and value of POR sales from the 16 plaintiffs, and comparing that data to the weighted-average count-size specific NVs of the mandatory respondents, we determine that the record does not show any evidence of dumping by the plaintiffs, which has been reflected in the assigned separate margins.

COMMENTS FROM INTERESTED PARTIES[17]

The 16 litigants agree with the Department draft remand results, where the Department calculated a separate rate based on a weighted-average of the individually calculated de minimis margins of the mandatory respondents in Vietnam Shrimp AR3.

Petitioner[18] and Domestic Processors object to the abbreviated methodology employed in the draft results to determine whether there is evidence of dumping on the record, as a method to assign a de minimis separate margin to the 16 remaining Plaintiffs. Specifically, Petitioner is concerned that the Department's abbreviated methodology employed in the draft results does not adjust the NVs to reflect the differing experiences of the Plaintiffs and the mandatory respondents, thus, is not in accordance with the statute. Petitioner contends that, absent any

[17] The Department released its draft remand results to parties on March 9, 2012. Interested Parties filed comments on March 16, 2012. On March 22, 2012, the American Shrimp Processors Association and the Louisiana Shrimp Association (hereinafter referred to as "Domestic Processors") notified the Department that it was not among the distribution list for the draft remand results including the release business proprietary abbreviated calculations. On March 22, 2012, the Department released the draft remand results to Domestic Processors and on March 23, 2012, the Department released the business proprietary abbreviated calculations through the administrative protective order. The Department allowed Domestic Processors to submit comments on March 26, 2012.

[18] Petitioner is the Ad Hoc Shrimp Trade Action Committee.

established relevance between the abbreviated methodology employed in the draft results and the individual experience of the Plaintiffs, the abbreviated methodology used to assign separate rates is not more reasonable than simply asking the Plaintiffs whether they sold merchandise at less than fair value.

Additionally, Domestic Processors argue that a comparison of the submitted Q&V data with pre-existing record evidence (i.e., CBP data) shows differences in quantity that were not addressed by the Department. As such, Domestic Processors argue that, without reconciling these discrepancies, the Q&V data are not reliable, such that the abbreviated methodology should not be used.[19] Domestic Processors also argue that the Department should have taken further steps to ensure the accuracy of the Q&V data, e.g., requesting audited financial statements. Finally, Domestic Processors argue that the abbreviated comparison methodology is inaccurate because it fails to include certain adjustments and conversions to the 16 Plaintiffs' data prior to comparison with the mandatory respondents' weighted-average NV.

Petitioner also requests that the Department address the fact that six of the litigants were unresponsive to the Department's request for count-size Q&V data upon re-opening the administrative record. Specifically, Petitioner requests that, if the Department intends to continue using the abbreviated methodology employed in the draft remand results in the future, the Department ought to articulate how it intends to assign margins to non-individually examined respondents who have previously cooperated in the review, yet do not respond to the Q&V questionnaires. Further, Petitioner argues that the Department should recognize that respondents who do not submit data likely have an economic incentive for not cooperating, as manifested in the statute authorizing the use of adverse facts available.

[19] Further, Domestic Processors argue that the abbreviated methodology calculations contain ministerial errors, but that correction of these alleged ministerial errors "do not appear to raise the margins enough to be considered significant." See Domestic Processors' Comments dated March 26, 2012, at 7.

Domestic Processors also argue that it is a more reasonable method to assign one of the 16 companies, Seaprodex Minh Hai, its own individually calculated rate from a prior review rather than the de minimis margin assigned in the draft remand results. Lastly, Domestic Processors note that they reserve the right to comment on the abbreviated calculations in comments to the Court because "of the short time provided to review and comment on these underlying calculations."[20]

DEPARTMENT'S POSITION

First, as recognized by Petitioner, in this remand, the Department has relied on the methodology upheld by the Court in Amanda III. This methodology does not purport to calculate a dumping margin for each respondent. Rather, the Department assigned the 16 Plaintiffs the weighted-average of the rates calculated for individually investigated respondents because we determined that there is no evidence of dumping on the record by these 16 companies.[21] As the Court held in Amanda III, the Department used a reasonable method to assign a separate rate, i.e., assigning the weighted-average of the rates calculated for the individually investigated companies, which "comports with a permissible reading of the AD statute, and is therefore not contrary to law."[22] The abbreviated comparative exercise using the litigants' count-size Q&V data and the mandatory respondents' weighted-average NVs, as the Court recognized in Amanda III, was a supplementary method by which the Department "was testing whether it was appropriate to apply the statutorily permitted methodology."[23] Thus, regardless of Petitioner's and Domestic Processors' concerns about the abbreviated comparison exercise, the Court has affirmed that the methodology used to calculate the separate rate for the 16 Plaintiffs is a reasonable method to assign a separate rate.

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[20] The Department notes that this is a legal matter for the Court's consideration, rather than as an argument for the Department to address within these final remand results.
[21] Neither the Petitioner nor Domestic Processors provided any additional record information during the remand proceeding of evidence of dumping by the 16 Plaintiffs.
[22] See Amanda III, 774 F. Supp. 2d 1286 at 1291.
[23] See id., at note 11 (emphasis added).

Second, the Department disagrees with Domestic Processors regarding their argument that the count-size specific Q&V data that we requested are unreliable in this case due to differences with pre-existing data on the record, such as CBP data. Domestic Processors have only noted that the CBP data and the Q&V data contain different values without providing any substantive evidentiary support that the Q&V data are in some way inaccurate. The Department notes that Q&V data and CBP data are not required to be reconciled because the data are different data sets collected differently, using different parameters. Further, although Domestic Processors appear to suggest the use of the pre-existing CBP data for the abbreviated comparison exercise, they do not demonstrate that using it would result in evidence of dumping, which is the limited and unusual purpose at the center of the abbreviated comparison exercise that we have employed in these final remand results.

Additionally, as Domestic Processors have noted in their comments[24], there is no indication that any of the calculation revisions they mention would yield evidence of dumping on the record during the POR. Moreover, Domestic Processors did not provide any other relevant evidence or practicable methodology that resulted in a showing that dumping occurred during the POR by the Plaintiffs. As such, the Department used the same abbreviated comparison exercise, as acknowledged by the Court in Amanda III,[25] as an adjunct means of determining whether to apply the same method as in Amanda III to assign separate rates to the Plaintiffs.

Third, we also disagree with Petitioner's request[26] to consider how to treat respondents that have previously cooperated but do not provide responsive data in the event that the abbreviated methodology is used in future proceedings. We do not believe it would be appropriate to speculate about hypothetical future cases in these final remand results. We note

[24] See Domestic Processors' Comments dated March 26, 2012, at 7.
[25] See Amanda III, 774 F. Supp. 2d at 1291, at note 11.
[26] See Petitioner's comments dated March 16, 2012, at 4.

that Petitioner does not challenge the Department's treatment of the six companies that withdrew their litigation prior to the draft remand results.

Fourth, the Department disagrees with Domestic Processors regarding their argument that it is more reasonable to assign Seaprodex Minh Hai, one of the 16 Plaintiffs, its own individually calculated rate from a prior proceeding[27] than the de minimis margin assigned in the draft remand results. In Amanda II, the Court simply stated that the Department is to employ a reasonable method in assigning a separate rate to cooperative non-individually examined respondents.[28] Faced with the same issues as in Amanda II, the Department sought this voluntary remand to continue compliance with the Court's instruction.

CONCLUSION

In accordance with Amanda 2011 and citing to Amanda III, we have reconsidered the separate rate assignment methodology applied in Vietnam Shrimp AR3. As a result, we have assigned to the above-named 16 Plaintiffs, the weighted-average of the dumping margins determined for the three individually examined companies.

Paul Piquado
Assistant Secretary
for Import Administration

29 MARCH 2012
Date

[27] The Department calculated an individual rate of 4.30 percent for Seaprodex Minh Hai in the underlying investigation. In the Amanda II litigation, the Court rejected the Department's determination to assign this previously calculated rate to Seaprodex Minh Hai as a separate rate in a subsequent review. See Amanda II, 714 F. Supp. 2d at 1295-1296, where the Court stated that "Commerce's argument that 'selecting rates from prior segments to apply to the nonselected companies in this review implements the statute's preference to avoid zero/de minimis and facts available margins,' is based on an unreasonable interpretation of the statute, and that the agency's finding that doing so 'reasonably reflects the existence of dumping under the order {by Plaintiffs during the POR},' is not supported by substantial evidence on the record. Accordingly, the 4.57 percent and 4.30 percent rates assigned to Plaintiffs are unsupported." Consequently, the Department requested a voluntary remand for its separate rate assignment methodology for Vietnam Shrimp AR3.

[28] See Amanda II, 714 F. Supp. 2d at 1296