

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND
Soc Trang Seafood Joint Stock Company et. al. v. United States
Court No. 16-00205, Slip Op. 18-75 (CIT June 21, 2018)

I. SUMMARY

The Department of Commerce (Commerce) has prepared these final results of redetermination pursuant to the remand order of the Court of International Trade (“Court or CIT”) in *Soc Trang Seafood Joint Stock Company and Ca Mau Seafood Joint Stock Company v. United States*, Consol Court No. 16-00205, Slip Op. 18-75 (June 21, 2018) (*Remand Opinion and Order*), related to *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2014– 2015*, 81 FR 62717 (September 12, 2016) (*Final Results*) and accompanying Issues and Decision Memorandum. In the *Remand Opinion and Order*, the Court ordered Commerce to reconsider or explain Commerce’s determination: 1) to rely on the Bangladeshi UN Comtrade surrogate value (SV) for frozen shrimp under Harmonized Tariff Code (HTS) 0306.13; and 2) to deny offsets to normal value for “excess/scrap packaging.”¹

As explained below, pursuant to the Court’s *Remand Opinion and Order*, we have reconsidered our selection of the SV for frozen shrimp and have further explained Commerce’s practice regarding offsets to normal value for byproducts.

¹ See *Remand Opinion and Order* at 40.

II. BACKGROUND

On April 3, 2015, Commerce initiated an administrative review of 195 producers and exporters of certain frozen warmwater shrimp from Vietnam for the period February 1, 2014, through January 31, 2015.² On April 29, 2015, Commerce determined to limit the number of respondents selected for individual examination to the two largest companies by U.S. import entry volume for which a review was requested.³ We issued the preliminary results of our review on March 10, 2016.⁴

In the *Preliminary Results*, Commerce 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 Tariff Act of 1930, as amended (the Act), any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce.⁵ Commerce further stated that in investigating imports from an NME country, section 773(c)(1) of the Act directs it to determine normal value, in most circumstances, using the NME respondent producer's factors of production (FOPs) in a surrogate market economy country or countries considered to be appropriate by Commerce.⁶ As a result, in accordance with section 773(c)(4) of the Act, in valuing the FOPs, Commerce uses, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) at a level of economic development comparable to

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 18202 (April 3, 2015) (*Initiation Notice*). While there were 195 individual names upon which we initiated an administrative review, the number of actual companies initiated is 99 due to variations of names requested by multiple interested parties and the groupings of companies that we have previously collapsed.

³ See Memorandum re; "Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Selection of Respondents for Individual Examination," dated April 29, 2015.

⁴ See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review; 2014–2015*, 81 FR 12702 (March 10, 2016) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum.

⁵ See Preliminary Decision Memorandum at 6.

⁶ *Id.* at 13.

that of the NME country; and (2) significant producers of comparable merchandise.⁷ Commerce determined that Bangladesh, Pakistan, India, Nicaragua, Nigeria, and the Philippines were at a level of economic development comparable to that of Vietnam,⁸ and evaluated the surrogate country selection criteria, including the availability of SV data on the record.⁹ We disqualified Nicaragua, Nigeria, Pakistan, and the Philippines because the record did not contain whole shrimp SV data or surrogate financial statements for these countries, which left only Bangladesh and India for consideration.¹⁰ We selected Bangladesh over India primarily due to data availability considerations.¹¹ No interested parties challenged our primary surrogate country selection with the Court.

With respect to the frozen shrimp input, Commerce determined that, consistent with our revised methodology in the immediately preceding administrative review, it would value respondents' fresh shrimp input separately from frozen shrimp input, which respondents purchased to supplement the quantity of fresh shrimp inputs needed for production of subject merchandise.¹² Accordingly, we valued purchased, frozen shrimp using a different SV from fresh shrimp, and selected a SV on the record from the surrogate country, Bangladesh.¹³ Additionally, consistent with our normal practice, we granted a byproduct offset for shrimp

⁷ See Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (*Policy Bulletin 4.1*) and Preliminary Decision Memorandum at 11-12.

⁸ See Preliminary Decision Memorandum at 13.

⁹ *Id.* at 14-17.

¹⁰ *Id.* at 15-16.

¹¹ *Id.* at 17.

¹² *Id.* at 22 (“Following our determination in VN Shrimp AR9 Final, the Department declined to excuse either company from reporting their frozen shrimp purchases/consumption and we declined to treat that quantity of purchased frozen shrimp as fresh shrimp.”).

¹³ *Id.* at 25.

waste that is generated from the production process.¹⁴ Commerce also denied a claimed byproduct offset for input material packing, stating that it:

has declined to grant a byproduct offset to packing materials from the direct material inputs, as requested by MPG. The Department's established practice is to grant byproduct offsets for products generated during the production of subject merchandise...In other words, cartons, for example, are not "generated" from producing subject merchandise from whole shrimp; it is the packing material in which the main input was purchased and stored until withdrawal for consumption, which does not qualify as a byproduct "produced directly as a result of the production process."¹⁵

While Commerce inadvertently did not repeat this language¹⁶ with respect to the other mandatory respondent, Stapimex, in the *Preliminary Results*, our intention was the same in not granting Stapimex a byproduct offset for the scrapped packing materials as demonstrated in the margin calculation programming.¹⁷

¹⁴ See, e.g., Memorandum re; "Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Analysis for the Preliminary Results for the Minh Phu Group," dated March 3, 2016 (MPG Prelim Analysis Memo); and Memorandum re; "Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Analysis for the Preliminary Results for Soc Trang Seafood Joint Stock Company ("Stapimex")," dated March 3, 2016 (Stapimex Prelim Analysis Memo).

¹⁵ See, e.g., MPG Prelim Analysis Memo at 8-9, citing to *First Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 27994 (May 13, 2011) (*Hangers ARI*) and accompanying Issues and Decision Memorandum at Comment 6 ("because it is the Department's practice to only grant offsets to byproducts generated in the production of subject merchandise, which generally does not include packing materials for a particular input, we continue to find that the scrap iron buckets are not generated during the production of subject merchandise, and thus, are not eligible as an offset to the NV"); and *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 61964 (November 20, 1997) (CTL Plate LTFV) and accompanying Issues and Decision Memorandum at Comment 64 ("it is the Department's general policy to only grant by-product credits for by-products actually produced directly as a result of the production process.").

¹⁶ We note that both mandatory respondents (MPG and Stapimex) reported scrapped packing materials as claimed byproducts. See, e.g., Stapimex's Section D Questionnaire Response (SDQR) dated July 6, 2015, at 27-28, and MPG's Section D Questionnaire Response dated June 29, 2015, at 33-35. The only claimed byproduct offset we granted for both respondents was shrimp-related.

¹⁷ See, e.g., Stapimex Prelim Analysis Memo at 6 and Exhibit 1.

Commerce published its *Final Results* on September 12, 2016.¹⁸ In the *Final Results*, we made no changes regarding: 1) the SV used for frozen shrimp or 2) the denial of a byproduct offset for packing materials claimed as byproducts.¹⁹ With respect to the frozen shrimp SV, we explained that “{b}ecause our strong preference is to value all inputs from a single surrogate country, we valued frozen shrimp using the Bangladeshi UN Comtrade data.”²⁰ We further explained that “{a}lthough the Indian GTA {data} are contemporaneous, whereas Bangladeshi UN Comtrade data are not, this consideration does not outweigh our preference to remain within the primary surrogate country.”²¹ With respect to the byproducts issue, we reiterated our position that “packing for direct materials, which are discarded (or sold as scrap) prior to entering the production process for subject merchandise, do not qualify as ‘byproducts’” and demonstrated that our practice supports this conclusion.²²

III. REMAND OPINION AND ORDER

As noted above, in the *Remand Opinion and Order*, the Court ordered Commerce to reconsider or further explain: 1) its reliance on Bangladeshi UN Comtrade data to value purchased frozen shrimp using HTS 0306.13 from among the other frozen shrimp SV data on the record, namely the India GTA SV data under HTS 0306.17; and 2) its denial of a byproduct offset for the claimed byproduct related to packaging.

¹⁸ See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2014–2015*, 81 FR 62717 (September 12, 2016) (*Final Results*) and accompanying Issues and Decision Memorandum.

¹⁹ See *Final Results* at Comment 2 (“Fresh unprocessed shrimp is a different input from frozen semi-processed shrimp, which we consider to be an intermediate, processed input. Accordingly, these inputs must be reported separately and valued appropriately, which in this instance means applying different SVs to each... We continue to value frozen shrimp using Bangladeshi UN Comtrade data, as it satisfies our surrogate value selection criteria and is from the primary surrogate country”) and Comment 8 (“consistent with our established practice, packing for direct materials, which are discarded (or sold as scrap) prior to entering the production process for subject merchandise, do not qualify as “byproducts”).

²⁰ *Id.* at Comment 2B.

²¹ *Id.*

²² *Id.* at Comment 8.

With respect to the frozen shrimp SV, the Court held that “Commerce’s selection of the Bangladeshi data was not reasonable in light of evidence that it is from a far less specific category than the Indian data.”²³ Specifically, that Court noted that whereas 41 percent of shipments covered by the Bangladeshi data are from coldwater regions, even though coldwater shrimp is not used in the production of warmwater shrimp, the entirety of the Indian data is limited to warmwater shrimp. The Court reasoned that Commerce had not adequately addressed this evidence and that remand, therefore, was warranted.²⁴

With respect to the byproducts offset issue, the Court reasoned that, although Commerce does have a practice of granting offsets only for byproducts that are generated as a result of the production of subject merchandise, Commerce did not, and has not, offered an explanation for why this practice is reasonable.²⁵ The Court further reasoned that “{t}he statutory language does not exclude the possibility that scrap packaging would be utilized in the production of a good” and that “{p}resumably, the value of the factory of production at issue here includes its packaging.”²⁶

The Court ordered that both issues be remanded for reconsideration or further explanation consistent with the Court’s opinion.²⁷

IV. ANALYSIS

A. Commerce’s Reliance on Bangladeshi UN Comtrade SV Data to Value Purchased Frozen Shrimp

In accordance with section 773(c) of the Act, Commerce determines normal value

²³ See *Remand Opinion and Order* at 35.

²⁴ *Id.* at 35-36.

²⁵ *Id.* at 38.

²⁶ *Id.* at 39.

²⁷ *Id.* at 40.

for subject merchandise from an NME country by valuing each respondent's FOPs using the "best available information" for these factors from market economy countries.²⁸ In so doing, Commerce relies on market economy countries that are economically comparable to the NME country at issue and significant producers of the merchandise at issue.²⁹

Pursuant to 19 CFR 351.408(c)(2), Commerce "normally will value all factors in a single surrogate country," which the Court has acknowledged and supported.³⁰ As noted above, in this review, Commerce selected Bangladesh as the surrogate country because:

with respect to the main raw material input, fresh shrimp, {the Vietnamese Association of Shrimp Exporters and Producers} VASEP submitted fresh shrimp SV data for Bangladesh from a study conducted by the Network of Aquaculture Centers in Asia-Pacific ("NACA"), an intergovernmental organization affiliated with the United Nation's ("UN") Food and Agricultural Organization ("FAO") which provides prices for several shrimp count-sizes. This is also the only SV for fresh shrimp on the record. With respect to the non-shrimp SVs, we note that UN Comtrade provides SV data for the vast majority of the reported FOPs, apart from erythorbate (a chemical input) and steam (an energy source).³¹

As a general rule, when evaluating whether potential SV data provide the "best available information" in accordance with section 773(c) of the Act, Commerce considers several factors, including whether the SV 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.³² While Commerce is provided substantial discretion in its choice, "the {C}ourt must be satisfied that when viewing the record as a whole a reasonable mind could conclude the best available information was selected, and Commerce's selection must be supported by

²⁸ See section 773(c)(1)(B) of the Act.

²⁹ See section 773(c)(4)(A)-(B) of the Act; see also 19 CFR 351.408(b).

³⁰ See, e.g., *Jacobi Carbons Ab v. United States*, 992 F. Supp. 2d 1360, 1377 (CIT 2014) ("the court is mindful of Commerce's goal to minimize distortion by means of its strong preference to value factors of production within a single surrogate country..."); *Dorbest Ltd. v. United States*, 462 F. Supp. 2d 1262, 1269 (CIT 2006) ("Commerce will normally value all factors in a single surrogate country.")

³¹ See Preliminary Decision Memorandum at 16.

³² *Id.* at 14.

substantial evidence and in accordance with law.”³³

The record of this review contains two SVs for frozen shrimp: Bangladeshi data from UN Comtrade (2011) under Harmonized System Classification (HS) subheading 0306.13: “Shrimps & prawns, whether/not in shell, frozen,” and Indian GTA (2015) under HS subheading 0306.17: “Shrimps And Prawns, Frozen, Other Than Cold-Water.”³⁴ Upon further examination, Commerce acknowledges an issue regarding the HS codes from each source that was not addressed during the administrative review; this issue results in our reconsideration of the best available information on this record to value frozen shrimp.

The Indian GTA data on the record are from 2015 and, as noted in the *Remand Opinion and Order*, are more specific to the input than the Bangladeshi UN Comtrade data because the Indian GTA data cover only warmwater shrimp, whereas the Bangladeshi UN Comtrade data cover both warmwater and coldwater shrimp, the latter of which are not a FOP for subject merchandise.³⁵ We believe upon further consideration that the Bangladeshi UN Comtrade SV for frozen shrimp is not the best selection, because it is neither contemporaneous nor as specific to the input as the Indian GTA data on the record, notwithstanding that Bangladesh is the primary surrogate country. Therefore, because of these factors, we determine that, in the instant

³³ See *Clearon Corp. v. United States*, 2014 Ct. Intl. Trade LEXIS 88 (July 24, 2014); SLIP OP. 2014-88 (CIT July 24, 2014).

³⁴ For the UN Comtrade data, see Memorandum re; “Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results,” dated March 3, 2016 (Prelim SV Memo) at 5-7 and Exhibit 3; for the Indian GTA data, see VASEP Post-Preliminary Results SV Comments, dated March 11, 2016 at Exhibit 1 (VASEP Post-Prelim SV Comments) and Domestic Processors’ SV Comments dated August 10, 2015, at Exhibit 1.

³⁵ See VASEP Post-Prelim SV Comments at Exhibit 1 (where the HS codes are described as follows: “0306.13: Shrimps and Prawns, Including in Shell, Cooked by Steam or By Boiling in Water, Frozen,” “0306.16: Cold-Water Shrimps and Prawns (*Pandalus* spp., *Crangon Crangon*, Frozen,” and “0306.17: Shrimps and Prawns, Frozen, Other than Cold-Water”). See also Memorandum to the File, re: “Remand Redetermination—Revised Final Results Calculations,” dated August 6, 2018 (Remand Recalculation) at Attachment 3 identifying India GTA description of HS 0306.17 as “Commodity: 030617, Shrimps And Prawns, Frozen, Other Than Cold-Water.” See also Prelim SV Memo at Exhibit 3 identifying HS 0306.13 as “Shrimps & prawns, whether/not in shell, frozen.”

review, the Indian GTA data for frozen shrimp represent the “best available information” on the record. Consequently, on remand we employed the Indian GTA data on the record,³⁶ which we converted to U.S. dollars³⁷ using the Indian exchange rates on the record,³⁸ to recalculate Stapimex’s final margin, in accordance with section 773(c) of the Act.³⁹

B. Commerce’s Denial of Byproduct Offset for Packing Materials

As noted above, in the *Preliminary Results* and *Final Results* Commerce denied a byproduct offset for used or defective packing materials that Stapimex claimed as byproducts.⁴⁰ Commerce’s determination in denying these claimed byproducts was supported by past determinations where we found that input packing materials did not qualify as byproducts of the subject merchandise production process.⁴¹ Given the Court’s order for reconsideration or further explanation in the *Remand Opinion and Order*, we have provided further explanation regarding our practice in granting, or denying, byproduct offset claims.

Section 773(c)(1)(B) of the Act requires Commerce to calculate normal value in an NME proceeding based on “the value of the factors of production utilized in producing the merchandise and to which shall be added an amount for general expenses and profit plus the cost of containers, coverings, and other expenses.” The Act further provides that “the factors of production utilized in producing merchandise include, but are not limited to . . . (A) hours of labor required {}, (B) quantities of raw materials employed {}, (C) amounts of energy and other

³⁶ See VASEP Post-Prelim SV Comments at Exhibit 1.

³⁷ See Remand Recalculation.

³⁸ See Prelim SV Memo at 3 and Exhibit 5.

³⁹ See Remand Recalculation.

⁴⁰ See *Final Results* and accompanying Issues and Decision Memorandum at Comment 8.

⁴¹ See, e.g., *Prestressed Concrete Steel Wire Strand from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 28560 (May 21, 2010) and accompanying Issues and Decision Memorandum at Comment 1C, where the respondent, Xinhua Metal, argued for an offset for scrap tie wire used to tie purchased wire rod together. However, the Department determined that, “{b}ecause the scrap tie wire is not generated during the production of PC strand, the Department is not granting Xinhua Metal a by-product offset for scrap tie wire.”

utilities consumed {,} and (D) representative capital cost, including depreciation.”⁴² Thus, the statute is silent with respect to the treatment of byproducts. We find that Commerce’s treatment of byproducts as only materials derived from the process of manufacturing subject merchandise is a reasonable interpretation of an otherwise silent statute, consistent with the statutory gap-filling authority granted to Commerce and the deference recognized by the Court of Appeals for the Federal Circuit (CAFC) in cases such as *US Steel Corp.*⁴³ As the CAFC explained in *US Steel Corp.*, courts “defer to Commerce’s reasonable construction of its governing statute where Congress leaves a gap in the construction of the statute that the administrative agency is explicitly authorized to fill or implicitly delegates legislative authority, as evidenced by ‘the agency’s generally conferred authority and other statutory circumstances.’”⁴⁴

In this case, there are three types of packing materials for which the respondents have requested a byproduct offset: 1) packing materials from purchases of raw shrimp that are later sold as scrap; 2) packing materials originally purchased by respondent for packing subject merchandise that are later sold as scrap; and 3) re-used packing materials for packaging semi-finished merchandise.⁴⁵ Stapimex claims that its sales of each type of scrapped packing material should be captured as a byproduct offset to the cost of manufacturing (COM).⁴⁶ Commerce does not disagree that the NME methodology should reflect income generated from such items, but we disagree that a byproduct offset to the COM is warranted for these particular transactions. As reflected in *Dictionary of Accounting Terms, Second Edition*, it is generally understood that

⁴² See Section 773(c)(3) of the Act.

⁴³ See *United States Steel Corp. v. United States*, 621 F.3d 1351, 1357 (*US Steel Corp.*), citing to *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837 (1984) (*Chevron*).

⁴⁴ *Id.* (citations omitted).

⁴⁵ See SDQR at 27-28.

⁴⁶ *Id.*

revenue unrelated to production activity is not treated as cost of goods sold, but rather as miscellaneous income.⁴⁷ This miscellaneous income generally offsets the selling, general and administrative cost (SG&A) of the company at issue, rather than the COM.⁴⁸

This practice is evidenced in Stapimex's own reporting of items in its books and records in this case. The record demonstrates that Stapimex recorded the sales of packing scrap in a "trade receivables account," rather than the main sales revenue account,⁴⁹ *i.e.*, as in "miscellaneous income," which ties to the general operations of the company, and not to shrimp production/sales activity. Were this a market economy proceeding, depending on the circumstances, Commerce would make an offset to the respondent's reported SG&A expenses,

⁴⁷ See, e.g., Remand Recalculation at Attachment 4 (containing relevant excerpts of (1) Siegel, Joel G, PhD, CPA, and Shim, Jae K., PhD, *Dictionary of Accounting Terms, Second Edition*, Barron's, 1995; Hilton, Ronald W., *Managerial Accounting: Creating Value in a Dynamic Business Environment*, Sixth Edition, McGraw-Hill, 2005).

⁴⁸ See, e.g., *Silicon Metal From Norway: Affirmative Final Determination of Sales at Less Than Fair Value, Final Determination of No Sales, and Final Negative Determination of Critical Circumstances*, 83 FR 9829 (March 8, 2018) (*Silicon Metal from Norway*) and accompanying Issues and Decision Memorandum at Comment 1 (describing how certain miscellaneous income is appropriately included as an offset to SG&A expenses, not COM, where such income does not relate to production activity); *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Reviews*, 63 FR 12725 (March 16, 1998) and accompanying Issues and Decision Memorandum at Comment 11 (explaining that miscellaneous income "is traditionally defined as income received from secondary or auxiliary activities" (citing Kieso and Weygandt, *Intermediate Accounting*, 5th Ed. (1986) at 118 and noting that "Respondent cites *Saccharin from Korea* and *U.S. Steel Group v. United States* as cases in which 'miscellaneous income' was permitted as an offset to G&A because this income was related to production operations. However, in the instant case, remission of profits does not constitute miscellaneous income, which is traditionally defined as income received from secondary or auxiliary activities...").

⁴⁹ See Stapimex Section C Questionnaire Response (SCQR), dated June 22, 2018, at Exhibit C-6-Sheet 1, which identifies the main business revenue account (shrimp sales) and differs from the trade receivables account where the packing scrap sales are recorded; see also SDQR at Exhibit D-16B, which identifies the specific trade receivables account where the packing scrap sales are recorded. See also Stapimex Section A Questionnaire Response (SAQR), dated May 28, 2015, at Exhibit A-9 - "Chart of Accounts" - wherein the account where packing scrap sales are recorded is not the same revenue account where the main business revenue is recorded.

as part of the calculation of the company's G&A expenses.^{50,51} However, as this is an NME proceeding, we rely on surrogate financial statements from market economy producers of comparable or identical merchandise to approximate overhead, SG&A and profit, and, as such, miscellaneous income items are presumed to be reflected in the SG&A ratio derived from the surrogate producer data. Thus, no further adjustment is necessary.⁵² In contrast, we note that the byproduct offset that Commerce granted for sales of scrap shrimp heads and shells, which was generated during the production of subject merchandise, is recorded by Stapimex as part of its main business income, not miscellaneous income.⁵³

As noted above, the statute directs Commerce in the NME context to determine normal value on the basis of the value of the FOPs used to produce subject merchandise, with additional values added for SG&A and profit.⁵⁴ Here, whereas the introduction of the raw shrimp into the production process for subject merchandise produces the output of scrap shrimp heads and shells as a result of the production of the finished subject merchandise, frozen shrimp, the packing materials at issue are never introduced for consumption in the production of the subject merchandise and are not generated as a result of the production process. Commerce's long-

⁵⁰ See, e.g., *Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Argentina*, 60 FR 33539 (June 28, 1995) and accompanying Issues and Decision Memorandum at Comment 12 ("As the Department noted in *Saccharin from Korea*, miscellaneous income relating to production operations of the subject merchandise may be permitted as an offset to G&A. Intermediate products, sold in small quantities, are considered to be related to production operations. We have included in G&A the miscellaneous revenue from the sale of intermediate products"); *Final Determination of Sales at Not Less Than Fair Value: Saccharin from Korea*, 59 FR 58826 (November 15, 1994) and accompanying Issues and Decision Memorandum at Comment 2.

⁵¹ See *Silicon Metal from Norway* and accompanying Issues and Decision Memorandum at Comment 1. Section 773(a) of the Act governs the determination of normal value in ME cases, and includes various adjustments and offsets such as level of trade, adjustments to COM, CEP offsets, and cost of sale adjustments.

⁵² See, e.g., *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) and accompanying Issues and Decision Memorandum at Comment 18.B (where Commerce treated "other revenue" aka miscellaneous income, as part of the SGA ratio calculation).

⁵³ See SCQR at Exhibit C-6-Sheet 1; see also SDQR at Exhibit D-16B, and SAQR at Exhibit A-9.

⁵⁴ See, generally, Section 773(c)(3) of the Act.

standing practice of only providing a byproduct offset to the COM or normal value⁵⁵ where the claimed byproduct is generated during the production of the subject merchandise is based upon this rationale,⁵⁶ which is consistent with generally acceptable accounting practices, is reasonable, and is otherwise in accordance with the deference granted Commerce in interpreting, enforcing and administering the antidumping law.

V. INTERESTED PARTY COMMENTS ON DRAFT REMAND RESULTS

On August 6, 2018, Commerce released the draft remand results of redetermination to all interested parties (Draft Remand).⁵⁷ On August 9, 2018, Vietnam Association of Seafood Exporters and Producers (VASEP),⁵⁸ the petitioner,⁵⁹ and Mazzetta Company⁶⁰ filed timely comments, which we address below.

Issue 1: Surrogate Value Selection for Frozen Shrimp

The Petitioner's Comments:

- The Court specifically directed Commerce to reconsider the decision to utilize Bangladeshi UN Comtrade data based on an evaluation of the contents of the Bangladeshi UN Comtrade data for {HS} 0306.13 covering, “Shrimp & prawns, whether/not in shell, frozen.” Commerce did not evaluate the contents of the Bangladeshi dataset. Similarly, Commerce did not evaluate the Indian dataset upon which it now relies in the Draft Remand.
- Given the data on the record, it is not sufficient for Commerce to simply declare that the Indian GTA data are more specific to the input. Commerce must evaluate the two possible

⁵⁵ See, e.g., *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47191 (September 15, 2009) and accompanying Issues and Decision Memorandum at Comment 7A.

⁵⁶ See *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Final Affirmative Determination of Sales at Less than Fair Value*, 83 FR 16296 (April 16, 2018) and accompanying Issues and Decision Memorandum at Comment 3 (“It is Commerce’s practice to grant scrap offsets that reflect the actual sales value of the scrap generated during the production of the merchandise under consideration”).

⁵⁷ 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 August 6, 2018 (Draft Remand).

⁵⁸ See Letter from VASEP re: “Remand Redetermination in the Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Comments of Vietnam Association of Seafood Exporters and Producers (VASEP Comments),” dated August 9, 2018.

⁵⁹ See Letter from Ad Hoc Shrimp Trade Action Committee (the petitioner) re: “Comments on Draft Remand Redetermination,” (Petitioner Comments) dated August 9, 2018.

⁶⁰ See Letter from Mazzetta Company re: “Comments on Draft Results of Redetermination,” (Mazzetta Comments) dated August 9, 2018.

datasets in a consistent manner and explain why the Indian GTA data are the best available information on the record of this administrative review proceeding when the Bangladeshi UN Comtrade data are also on the record. Once such an evaluation is completed, there is no basis upon which to conclude that the Indian GTA data represent a more relevant, specific, or reliable data source than the Bangladeshi UN Comtrade data.

- For these reasons, the petitioner requests that Commerce conduct a comparison of the Indian GTA data and the Bangladeshi UN Comtrade data for the final remand redetermination and conclude that the Bangladeshi UN Comtrade data are the best information available with which to construct an SV for frozen shrimp.
- A review of the Indian GTA data demonstrates that this is not the best available information on the record on which to base an SV for frozen shrimp:
 - (1) Shrimp from coldwater regions is an even larger proportion of the Indian GTA data than it is of the Bangladeshi UN Comtrade data;
 - a. Vietnamese respondents' assert that 41 percent of shipments covered by the Bangladeshi data are from coldwater regions, even though coldwater shrimp is not used in the production of warmwater shrimp in Vietnam.⁶¹
 - b. The Indian GTA data show that the United Kingdom, a coldwater shrimp producer as presumed by Vietnamese respondents, accounts for 39.6 percent of the volume and 72.1 percent of the value. Accepting this characterization of the Bangladeshi UN Comtrade data, Commerce has now elected to use Indian GTA data where 39.6 percent of the volume and 72.1 percent of the value is from shrimp imports from the United Kingdom.
 - c. The Draft Remand does not address this inconsistency or explain how it is possible to conclude that the United Kingdom must be assumed to be a supplier of coldwater shrimp because it is from a coldwater shrimp region for the purposes of the Bangladeshi UN Comtrade data if Commerce simultaneously is relying upon values of warmwater shrimp imports from the United Kingdom to construct the frozen shrimp SV based on the Indian GTA data.
 - d. If shrimp imports from a coldwater shrimp region in the Indian GTA data are determined to be warmwater shrimp and there is otherwise an absence of empirical support for the Vietnamese respondents' claims regarding coldwater shrimp, then no reasonable basis exists through which to conclude that shrimp imports from coldwater shrimp regions in the Bangladeshi UN Comtrade data reflect anything other than warmwater shrimp imports.
 - e. In the absence of any explanation for why it is more appropriate to utilize a dataset that is more heavily reliant on imports from "coldwater shrimp regions" than the dataset discarded, Commerce's determination to rely upon Indian GTA data is arbitrary and without justification.
 - (2) Any analysis of the per-unit values of the shrimp imports demonstrates that the Indian GTA data reflects far more dissimilar shrimp product forms than the Bangladeshi UN Comtrade data;
 - a. The Indian GTA data show variations in the per-unit values declared for each of the shipments, with the South African shrimp having a per-kilogram value of IND 63.30,

⁶¹ The petitioner cites to VASEP Post-Prelim SV Comments at Exhibit 2, which contains FAQs sheet from an importer of seafood regarding warmwater shrimp that does not include any discussion of coldwater shrimp.

- Pakistani shrimp having a per-kilogram value of IND 356.83, and the United Kingdom shrimp having a per-kilogram value of IND 928.50.
- b. Thus, the per-unit value of the South African shrimp is just 6.8% of the per-unit value of shrimp from the United Kingdom, indicating that these are dramatically different products imported into India under the same HS subheading.
 - c. In contrast, the per unit-values for each country comprising the Bangladeshi UN Comtrade data range from a low of US\$3.93 per kilogram (Mauritius) to a high of US\$14.87 per kilogram (United Kingdom), meaning that the lowest per-unit value is at least 26.4% of the highest per-unit value.
 - d. Accordingly, the record does not support the conclusion that the range of products encompassed within the Bangladeshi UN Comtrade HS subheading is broader than those within the Indian GTA data. Instead, the record demonstrates that the three singular data points that comprise the Indian GTA data reflect vastly different products.
- (3) The Indian GTA data are derived from three shipments of substantially different products that cannot be accurately characterized as a “broad-market average.”
- a. The variation in per-unit values between the three source countries involved in the Indian GTA data also indicate that this SV, in contrast to the Bangladeshi UN Comtrade SV, cannot represent a “broad-market average.” That conclusion is further supported by a review of the nature of the reporting of the Indian GTA data.
 - b. The Indian GTA data appear to be unreliable as there are only three data points and each of the three data points is grossly dissimilar to the others. In these circumstances, based on the evidence in this administrative review proceeding, Commerce’s reliance on Indian GTA data cannot be sustained.

No other interested parties provided comment on this issue, apart from Mazzetta’s agreement⁶² with Commerce’s draft remand redetermination to rely on the India GTA data to value purchased frozen shrimp.

Commerce’s Position:

Commerce agrees with the petitioner regarding Commerce’s preference to rely on a single surrogate country to value FOPs.⁶³ However, Commerce disagrees with the petitioner that the India GTA data under HS subheading 0306.17 are not more specific to the input than the Bangladeshi UN Comtrade data under HS subheading 0306.13. As an initial matter, Commerce

⁶² See Mazzetta Comments.

⁶³ See, however, *Tri Union Frozen Prods., Inc. v. United States*, 254 F. Supp. 3d 1290 (CIT August 8, 2017) or *Ad Hoc Shrimp Trade Action Comm. v. United States*, 234 F. Supp. 3d 1315 (CIT June 29, 2017) (in which petitioner took a different legal position on Commerce’s practice).

evaluated both the India GTA data and the Bangladeshi UN Comtrade data consistent with our practice. That is, when evaluating SV data, with respect to quality and availability, Commerce considers several factors including whether the SV data is publicly available, contemporaneous with the POR, representative of broad-market averages, tax and duty-exclusive, and specific to the input.⁶⁴ There is no hierarchy among these criteria. Commerce carefully considers the available evidence considering the industry specific circumstances when undertaking its analysis.⁶⁵ As discussed below, Commerce rests its determination on specificity. We have determined to rely on the India GTA data under HS 0306.17 because it is specific to the input: frozen warmwater shrimp. And, the record demonstrates that the Bangladeshi UN Comtrade data under HS 0306.13 is not as specific to the input because the HS subheading necessarily includes coldwater shrimp. As we noted in the Draft Remand, the Bangladeshi HS subheading 0306.13 became defunct in January 2012, when it was replaced by two distinct and separate HS subheadings: 0306.16 (for coldwater shrimp) and 0306.17 (for warmwater shrimp).⁶⁶ The only reason that HS subheading 0306.13 appears in the 2011 import statistics in UN Comtrade for Bangladesh is because the two distinct HS subheadings did not yet exist in 2011 (for the 2014-2015 POR, UN Comtrade's most recent import data was for 2011).⁶⁷

The petitioner's argument regarding the inclusion of imports from a coldwater shrimp producing country, the United Kingdom, in both the Bangladeshi UN Comtrade import data and the India GTA import data is unpersuasive. The description for Indian HS subheading 0306.17

⁶⁴ See, e.g., *Certain Activated Carbon from the People's Republic of China; 2010-2011; Final Results of Antidumping Duty Administrative Review*, 77 FR 67337 (November 9, 2012) and accompanying Issues and Decision Memorandum at 8.

⁶⁵ See Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) available on Commerce's website at <http://enforcement.trade.gov/policy/bull04-1.html>.

⁶⁶ See, e.g., VASEP Post-Prelim SV Comments at Exhibit 1.

⁶⁷ See, e.g., Prelim SV Memo at 2.

makes clear that this category covers only warmwater shrimp.⁶⁸ While the petitioner claims that the inclusion of the United Kingdom in HS subheading 0306.17 requires further analysis, the petitioner fails to acknowledge that the category itself is specific to the input and the record contains no evidence that the data are incorrect. In the absence of such evidence, the petitioner's argument regarding the inclusion of the United Kingdom import statistics in the India GTA data is purely speculative.

Further, Commerce disagrees with the petitioner's allegation that the India GTA data are somehow skewed or encompass a broader product range because of allegedly disparate average unit values (AUVs). As an initial matter, we note that Commerce has found that the existence of high or low prices in an import dataset alone does not necessarily indicate that the prices are distorted or misrepresentative, and thus, this fact alone is not a sufficient basis upon which to exclude a particular SV.⁶⁹ In addition, any alleged inconsistencies of the AUVs within the dataset can be attributed to differences in the physical characteristics of the shrimp within the dataset given that shrimp count-size is not distinguished at the six-digit level of the HS subheading, and it is well known that larger count-sizes fetch higher prices than smaller count-sizes.⁷⁰ As the SV from both sources is at the six-digit level, this necessarily includes all the count-sizes within the datasets, from largest count-size (most expensive) to smallest count-size (least expensive).⁷¹ Thus, the petitioner's analysis of the AUVs of the India GTA data does not

⁶⁸ *Id.*; see also Remand Recalculation at Attachment 3, demonstrating the India GTA data under HS 0306.17 states "India Import Statistics Commodity: 030617, Shrimps and Prawns, Frozen, Other Than Cold-Water."

⁶⁹ See, e.g., *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review*; 2015-2016, 83 FR 16829 (April 17, 2018) and accompanying Issues and Decision Memorandum at Comment 3.

⁷⁰ See *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) and accompanying Issues and Decision Memorandum at Comment 1 ("...shrimp price depends on the size and seasonal crop, and has tended to increase rapidly... especially for bigger sizes...").

⁷¹ Commerce notes that the Bangladeshi UN Comtrade data at the six-digit level under HS 0306.13 are not broken out by count-size or any other physical characteristics.

reveal any inconsistency that cannot be explained by the variances in count-size or some other physical characteristics that are not differentiated in this HS subheading 0306.17 (or in HS 0306.13, for that matter). Simply put, it is possible that the India GTA data may contain a preponderance of shrimp in larger count-sizes which could in theory result in a high AUV. However, record evidence does not demonstrate that this is the case, and from its arguments, it is clear that the petitioner is unable to point to record evidence to support its contention. As the frozen shrimp data sources on the record do not contain the level of detail regarding count-sizes or other physical characteristics, the assertion that the India GTA AUVs are skewed is merely speculative and is not supported by record evidence.

Moreover, the petitioner has not provided, nor did Commerce evaluate, side-by-side differences in the AUV between the India and Bangladesh datasets (the datasets are not denominated in the same currency). However, upon the recalculation in the Draft Remand, the output results of the India GTA SV data for HS 0306.17, converted to U.S. dollars, demonstrate that there is no evidence that the India GTA SV is skewed in any significant manner; it is simply in the lower range of a range of prices.⁷² Specifically, the frozen shrimp SV, converted to U.S. dollars for Indian HS 0306.17, ranges from of \$8.02 per kilogram to \$8.65 per kilogram.⁷³ This converted range, as compared to the inflated Bangladeshi UN Comtrade AUV of \$12.66 per kilogram,⁷⁴ is simply that -- a range of prices that does not demonstrate that something is

⁷² See, e.g., *Camau Frozen Seafood Processing Import Export Corporation v. United States*, 929 F. Supp. 2d 1352, 1356 (CIT 2013)

⁷³ The converted values may differ slightly based on differences in the daily exchange rate from the exchange rate tables. See, e.g., Remand Recalculation SAS Output Table “NVALUES” under variable “FROZENSHRIMPSV_USD.”

⁷⁴ See Prelim SV Memo at 5 and Exhibit 1.

problematic about the India GTA data. Here, the converted India GTA data happen to be on the lower range of prices than the UN Comtrade Bangladeshi data, plain and simple.

Furthermore, the petitioner does not offer any factual basis to support its allegation that the India GTA data are skewed beyond the fact that the India GTA value is somewhat lower than the Bangladeshi UN Comtrade value. As we explained above, the Bangladeshi UN Comtrade data are a basket category that is less specific than the India GTA data, and the petitioner has pointed to nothing on the record which shows otherwise.

We also disagree with the petitioner's argument that the Indian GTA data are not a broad market average because they contain data points for only three countries with a combined quantity of 39,440 kilograms.⁷⁵ First, this quantity is not on its face insignificant in our judgment, and there is no record evidence of which we are aware to suggest otherwise. Second, that a given dataset includes imports from only three countries does not preclude a finding that such a dataset comprises a broad market average. Indeed, Commerce has repeatedly found that country-wide data represent broad market averages, regardless of the number of countries represented in that import data.⁷⁶ Moreover, in the *Preliminary Results*, unchanged in the *Final Results*, we relied on Bangladeshi UN Comtrade import statistics to value preservatives used in shrimp processing, using HS 2835.39, the data for which contained three countries with a total

⁷⁵ See, e.g., Remand Recalculation at Attachment 3.

⁷⁶ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2011-2012 Antidumping Duty Administrative Review and New Shipper Reviews*, 79 FR 4327 (January 27, 2014) and accompanying Issues and Decision Memorandum at Comment 7 ("...country-wide data represent broad market averages, regardless of the number of countries represented in that import data."); see also *High Pressure Steel Cylinders from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 26739 (May 7, 2012) and accompanying Decision Memorandum at Comment 1.

quantity of 48,438 kilograms.⁷⁷ However, no interested parties argued that the import quantity of this Bangladeshi HS category was not a broad-market average.

Third, although the petitioner asserts that the Indian GTA data include only three shipments, this assertion is unsupported by record evidence. While we agree that the record demonstrates that the Indian GTA data do include imports from three countries across three months, we do not find that it logically follows from this evidence, or any other evidence on the record, that the data are comprised of only three shipments.

Fourth, we find the fact that the Indian GTA data contain a lesser quantity than the Bangladeshi UN Comtrade data is to be expected insofar as the Bangladeshi UN Comtrade dataset contains import data for both coldwater and warmwater shrimp, while the India GTA data contains only warmwater shrimp import quantities.

Thus, for all of these reasons, we disagree with the petitioner's arguments that Commerce should have continued to use the Bangladeshi UN Comtrade data, rather than the Indian GTA data, to value purchased frozen shrimp on remand.

Issue 2: Commerce's Denial of Packing Waste as a Byproduct Offset

VASEP's Comments:

- The cited case law does not support Commerce's interpretation of the statute and identify factual errors in the results of redetermination.
- The draft results lack legal and factual support and therefore are not a reasoned explanation in accordance with the *Remand Opinion and Order*.
- Commerce's citation to judicial deference for agency determinations is not without limit.⁷⁸
- Like the *Final Results*, the Draft Remand does not adequately explain the rationale behind the cases cited in support of its denial of the packaging scrap offset.

⁷⁷ See Prelim SV Memo at Exhibit 3D.

⁷⁸ See VASEP Comments at 2, citing to *Thai Pineapple Canning Indus. Corp. v. United States*, 273 F.3d 1077, 1083 (Fed. Cir. 2001); *Timken U.S. Corp. v. United States*, 421 F.3d 1350, 1355 (Fed. Cir. 2005) (quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)) (“{I}f the Government's position is unreasonable, deference does the agency no good.” Furthermore, Commerce “must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts and the choice made.”)

- Commerce’s statements in the Draft Remand are no different than the explanation in the *Final Results* that the Court found inadequate. Waste that results from introduction of an input for consumption is no different from packaging waste that results from the introduction of the contents of that packaging for consumption: Neither would exist but for the production process for the subject merchandise.
- Commerce restates its prior conclusions to grant offsets for byproducts “generated during the production of the subject merchandise” without responding to the Court’s request for an explanation why the practice is reasonable or the origins of this practice. The Draft Remand does not address this finding and therefore is not responsive to the Court’s remand. Absent an adequate explanation, Commerce’s justification for denying the offset is not reasonable.
- The Draft Remand lacks factual support. Commerce asserts that “Stapimex recorded the sales of packing scrap in a ‘trade receivables account,’ rather than the main sales revenue account.”⁷⁹ Commerce misinterpreted these exhibits. Sheet 1 of Exhibit C-6 provided Stapimex’s sales reconciliation but does not otherwise indicate where Stapimex recorded revenues from sales of packaging scrap in its accounting records. Exhibit D-16B, which provided sample sales trace documentation for head/shell byproducts, is not relevant; it does not identify the “specific trade receivables account where the packing scrap sales are recorded.” Exhibit A-9 does provide a Chart of Accounts, but it supports Stapimex’s position not Commerce’s analysis.
- As reported in the SDQR “. . . Stapimex also sold to an unaffiliated party scrap cartons, PA bags, and PE Bags that were discarded in the production process...Any sales of these products are taken as direct offset to cost as shown in Exhibit 16A. In Exhibit D-16C we have provided a worksheet demonstrating the total quantity of each type of material sold and the FOP calculated for each.”⁸⁰
- The second table in Exhibit D-16a provided a listing of sales of scrap packaging during the POR, identifying the account number for recording the revenue. Stapimex’s Chart of Accounts described that same account number as a cost account and confirms the explanation in the SDQR that “{a}ny sales of these products are taken as direct offset to cost.”
- If Commerce “does not disagree that the NME methodology should reflect income generated from such items” (*i.e.*, packaging scrap), then Commerce should reflect the income from sales of these byproducts consistent with Stapimex’s normal books and records, absent record evidence that the income was treated differently in the surrogate financial statements.
- Recitation of standard accounting principles for one alternative method of recording such income does not overcome the record evidence of how Stapimex actually recorded the revenue.
- Furthermore, presuming that miscellaneous income was reflected in the SG&A from the surrogate financial statements is not adequate justification for denying this byproduct offset. A presumption is not substantial evidence. Rather, the evidence on the record demonstrates that Stapimex offsets production cost with revenue from packaging scrap, and there is no indication from the Apex or Gemini financial statements of how such revenue was captured.
- Granting the offset would better reflect the commercial reality of Stapimex’s operations. Commerce should revise the Draft Remand and grant the requested offset.

⁷⁹ See VASEP Comments citing to SCQR at Exhibit C-6-Sheet 1 and SDQR at Exhibit D-16B.

⁸⁰ Commerce notes that Exhibit 16 of the SDQR (filed under ACCESS Barcodes 3288686-18, 3288686-19, 3288686-20) has only two subparts: D-16A and D-16B. There is no reference to D-16C in the Exhibits or the Exhibit List at page 33 of the SDQR.

The Petitioner's Comments:

- The Vietnamese respondents seek to have miscellaneous income items act as an offset both within the surrogate financial statement (or statements) for the miscellaneous income recorded by the surrogate company and as an offset to Stapimex's COM for the miscellaneous income booked by Stapimex.
- Vietnamese respondents have provided no explanation for why it is reasonable for Stapimex to simultaneously receive offsets both for the miscellaneous income experienced by the surrogate company and Stapimex.
- Commerce's denial of a byproduct offset for packing materials is supported by the evidentiary record in this administrative review proceeding, is consistent with its statutory obligations, and, through further explanation in the Draft Remand, the agency has provided a rationale that is reasonably discernable.
- Domestic Producers support this portion of the Draft Remand and request that Commerce maintain this position in the final remand redetermination.

Commerce's Position:

Consistent with Commerce's response to the interested parties' arguments, in addition to our explanation in the Draft Remand, Commerce continues to find it appropriate to deny Stapimex an offset to COM or normal value for its packing scrap sales. In the Draft Remand, we provided an explanation of why we do not consider packing scrap as a byproduct offset, relying on widely accepted accounting practices and the manner in which Stapimex's packing scrap sales are recorded as a cash receivable, rather than the main business revenue.⁸¹ Thus, Commerce disagrees with VASEP's allegation that Commerce has not provided a response to the *Remand Opinion and Order* that adds to our initial finding.

In the Draft Remand, Commerce further explained its view as to why its well-established practice with regard to byproduct offsets is reasonable and that its determination in this case regarding the denial of offsets claimed by Stapimex as byproducts is based on the nature of

⁸¹ See Memorandum to the File, re: "Business Proprietary Memorandum Accompanying the Final Remand Redetermination," dated September 19, 2018 (BPI Memo). See also SDQR at Exhibit D-16B at .pdf page 699 which is a general ledger for cost that identifies the cash receivable account where the sale of packing scrap is recorded.

Stapimex’s own sales and cost reconciliations on the record, as well as the documentation pertaining to the packing scrap sales.⁸² Contrary to VASEP’s argument, Commerce has not misunderstood the nature of the accounting documents on the record. Stapimex’s sales reconciliation clearly excludes the packing scrap sales, which demonstrates that packing scrap sales are not a part of the main revenue account (the account used to reconcile sales).⁸³ The sales reconciliation, as provided to Commerce, demonstrates that the main business revenue account (*i.e.*, shrimp sales) includes both shrimp and shrimp byproduct sales, but does not include packing scrap sales.⁸⁴ The general ledger for a cost account in Exhibit D-16B of the SDQR also specifically identifies that the packing scrap sales are recorded in a cash receivables account, not a main business revenue account, signifying that packing scrap is not considered part of the main business income (*i.e.*, the income earned from selling shrimp). This can, depending on the company, be considered “other income” or “miscellaneous income.” As we stated in the Draft Remand and in proceedings cited in the Draft Remand, miscellaneous income, as income from an auxiliary channel, generally offsets the selling, general and administrative cost (SG&A) of the company at issue, rather than the COM.⁸⁵

Moreover, while VASEP argues that there are no line items in the surrogate financial statements on the record specifying packing scrap sales or miscellaneous income earned from auxiliary channels, those same surrogate financial statements also do not have any line items specific to shrimp byproducts.⁸⁶ Despite this, Commerce still granted shrimp byproducts as an offset to normal value, because Stapimex fulfilled the criteria for entitlement to the shrimp

⁸² See SDQR at Exhibit D-16B at .pdf pages 699-701.

⁸³ See BPI Memo. See also SDQR at Exhibit D-16B at .pdf page 766, which identifies the main business revenue account (also identified as such in the sales reconciliation in the SCQR at Exhibit C-6 and in the Chart of Accounts in the SAQR at Exhibit A-9) where the shrimp byproduct sales are recorded, along with subject merchandise sales.

⁸⁴ See BPI Memo.

⁸⁵ See, *e.g.*, *Silicon Metal from Norway* at Comment 1.

⁸⁶ See VASEP Comments re: “Surrogate Value Submission,” dated August 10, 2015, at Exhibit SV-8.

byproduct offset by providing both production and sales data for the shrimp byproduct. Further, despite the lack of a byproduct line item in the surrogate financial statements, it is reasonable to conclude that the surrogate companies, both Bangladeshi shrimp processors and exporters, generate shrimp scrap in their production processes.

Consistent with its practice, Commerce does not attempt to adjust the surrogate producer's financial statement line items to account for potential cost differences between the surrogate companies and the respondent.⁸⁷ Specifically, Commerce has explained that its practice is "to not make adjustments to the financial statements data, as doing so may introduce unintended distortions into the data rather than achieving greater accuracy...In calculating factory overhead and SG&A, it is the Department's practice to accept data from the surrogate producer's financial statements in toto, rather than performing a line-by-line analysis of the types of expenses included in each category."⁸⁸ Further, as it is not our practice to go behind the surrogate financial statements,⁸⁹ and no interested parties have argued that these surrogate financial statements are unusable or otherwise unreliable, we continue to rely on the calculated SG&A ratio to account for general operations that are not specific to subject merchandise production and sales. These ratios are based on data from two surrogate producers of identical merchandise, and are, thus, reflective of the overall production experience of the mandatory respondent.⁹⁰

⁸⁷ See *Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium from the Russian Federation*, 66 FR 49347 (September 27, 2001) and accompanying Issues and Decision Memorandum at Comment 2.

⁸⁸ See *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) and accompanying Issues and Decision Memorandum at Comment 15 (internal citations omitted).

⁸⁹ See, e.g., *Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) and accompanying Issues and Decision Memorandum at Comment 2.

⁹⁰ *Id.* at Comment 1.

VI. FINAL RESULTS OF REDETERMINATION

Consistent with the *Remand Opinion and Order*, we have reconsidered the SV used to value frozen shrimp and recalculated Stapimex's margin accordingly. Further, as directed by the Court, we have further explained our denial of Stapimex's request for an offset of packing materials claimed as byproducts to the COM in determining Stapimex's normal value.

Based on our remand recalculations, the final margin for Stapimex in this administrative review changes from 4.78 percent to 0.71 percent.⁹¹ We intend to issue instructions to U.S. Customs and Border Protection liquidating suspended, enjoined entries of Stapimex's exports on an importer-specific basis, as recalculated for this remand redetermination,⁹² at the completion of this litigation.

⁹¹ See Remand Recalculation.

⁹² See Memorandum to the File, re: "Draft U.S. Customs and Border Protection (CBP) Importer Specific Liquidation Instructions," dated August 8, 2018 (ACCESS Barcode: 3741107-01).

As the rate assigned to companies that qualified for a separate rate in this review was based on Stapimex's margin,⁹³ we have accordingly applied Stapimex's revised margin as the separate rate applicable to the 27 separate rate recipients which are parties to this litigation. These separate rate companies are identified in the calculation memorandum accompanying the draft results of remand redetermination.⁹⁴ We intend to liquidate these companies' enjoined entries of subject merchandise at this revised rate of 0.71 percent at the completion of this litigation.⁹⁵

9/18/2018

X 

Signed by: JAMES MAEDER
James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

⁹³ See *Final Results* and accompanying Issues and Decision Memorandum at Comment 7, as affirmed in *Remand Opinion and Order*.

⁹⁴ See Remand Recalculation.

⁹⁵ See Memorandum to the File, re: "Draft U.S. Customs and Border Protection (CBP) Importer Specific Liquidation Instructions," dated August 8, 2018 (ACCESS Barcode: 3741109-01).