

**FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND**

**A. SUMMARY**

The Department of Commerce (“Department”) has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (“CIT” or the “Court”) in Allied Pacific Food (Dalian) Co. Ltd., Allied Pacific (H.K.) Co. Ltd., King Royal Investments, Ltd., Allied Pacific Aquatic Products (Zhangjiang) Co. Ltd., Allied Pacific Aquatic Products (Zhongshan) Co. Ltd., and Yelin Enterprise Co., Hong Kong v. United States, Consol. Court No. 05-00056 (December 22, 2008) (“Remand Opinion and Order”). The Court remanded the following issues to the Department for further administrative proceedings consistent with the Court’s opinion and order: 1) the Department’s determination of the surrogate value for raw, head-on, shell-on shrimp; and 2) the valuation of the surrogate labor rate used in the Final Determination. See Notice of Final Determination of Sales at Less Than Fair Value for Certain Frozen and Canned Warmwater Shrimp from the People’s Republic of China, 69 FR 70997 (December 8, 2004) (“Final Determination”), as amended by, Notice of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from the People’s Republic of China, 70 FR 5149 (February 1, 2005) (“Shrimp from the PRC Amended Final and Order”). The antidumping duty order resulting from this investigation was issued on February 1, 2005. See id. The period of investigation (“POI”) is April 1, 2003, to September 30, 2003.

In accordance with the Court’s instructions, we have recalculated the surrogate value of raw shrimp, as well as the surrogate value for labor, and have provided additional explanation on

these issues. The revised surrogate value for raw shrimp is derived from the ranged data of Devi Seafoods, Ltd. (“Devi”) on a count-size specific basis. The revised surrogate U.S. dollar (“USD”) value for labor is \$0.05/hour.

## **Background**

On June 12, 2006, the Court remanded to the Department its final determination of sales at less than fair value in the investigation of Certain Frozen and Warmwater Shrimp from the People’s Republic of China (“PRC”). Specifically, the Court remanded to the Department the valuation of labor and the raw shrimp input to the Department for further consideration. See Allied Pacific Food (Dalian) Co. Ltd., Allied Pacific (H.K.) Co. Ltd., King Royal Investments, Ltd., Allied Pacific Aquatic Products (Zhangjiang) Co. Ltd., Allied Pacific Aquatic Products (Zhongshan) Co. Ltd., and Yelin Enterprise Co., Hong Kong v. United States, Consol. Court No. 05-00056 (June 12, 2006) (“Allied Pacific Food I et al. v. United States”). On October 27, 2006, the Department issued the final results of redetermination pursuant to the remand order of the Court where the Department recalculated the surrogate value for raw shrimp as well as the surrogate value for labor and provided additional explanations of these issues. See Final Results of Redetermination Pursuant to Court Remand (October 27, 2006) (“Remand I”).

On December 22, 2008, the Court again remanded to the Department its final determination of sales at less than fair value in the investigation of Certain Frozen and Warmwater Shrimp from the PRC. In its second remand order, the Court ordered the Department: 1) to redetermine the surrogate value for raw, head-on, shell-on shrimp, base the new surrogate value on findings of fact that are supported by substantial evidence on the record,

and explain its reasons for the choices it made among the various alternatives; 2) derive a surrogate value for raw, head-on, shell-on shrimp using data on the record other than the Nekkanti Seafoods, Ltd. (“Nekkanti”) financial statement data; 3) redetermine its surrogate value for labor in accordance with the requirements of 19 U.S.C. § 1677b(c) and in accordance with the Court’s Opinion and Order and without regard to 19 C.F.R. § 351.408(c)(3), which the Court determined to be contrary to 19 U.S.C. § 1677b(c) and therefore invalid; 4) base its new surrogate value labor rate on findings of fact that are supported by substantial evidence; and 5) reopen the administrative record of this proceeding for the purposes of collecting, and inviting submission of new information related to the redetermination of the surrogate labor rate. In accordance with the Court’s instructions, we have analyzed the information on the record of this investigation and the comments and information submitted by interested parties.

On April 10, 2009, the Department provided the draft remand redetermination (“Draft Remand”) to the interested parties. On April 24, 2009, Allied and Yelin submitted comments to the Draft Remand.

As discussed further below, the Department calculated a raw shrimp surrogate value using the Devi Seafoods, Ltd. (“Devi”) ranged data and provided an explanation for the Department’s selection of the raw shrimp surrogate value. With respect to the labor rate, the Department opened the record and invited parties to submit new information related to the labor rate. Based on an examination of all the labor rates available on the record, the Department recalculated the labor rate to arrive at a USD value of \$0.05/hour.

## **B. ANALYSIS**

### **1. The Department's Selection of the Raw Shrimp Surrogate Value**

On Remand, the Court ordered the Department to: 1) redetermine the surrogate value for raw, head-on, shell-on shrimp, base the new surrogate value on findings of fact that are supported by substantial evidence on the record, and explain its reasons for the choice it makes from among the various alternatives; and 2) derive a surrogate value for raw, head-on, shell-on shrimp using data on the record other than the Nekkanti financial statement data. Pursuant to the Court's Order, the Department has not relied on the Nekkanti financial statement data and instead is relying on the Devi ranged data as the basis for calculating the raw shrimp surrogate value. Moreover, the Department has provided an explanation for its selection from among the various sources.

#### *a. Potential Sources of Surrogate Value Data for Raw Shrimp Input*

Excluding the Nekkanti financial statement data, the administrative record contains several alternative sources that may serve as the basis for the calculation of the raw shrimp surrogate value: 1) data from the Seafood Exporters Association from India ("SEAI"); 2) data from Aquaculture Certification Council ("ACC"); or 3) ranged, public versions of data from two respondents in the companion Indian investigation Devi and Nekkanti.<sup>1</sup>

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<sup>1</sup> In preparing this remand redetermination, the Department did not consider the Nekkanti ranged data a viable source of calculating the raw shrimp surrogate value because as the Court concluded, "the Department's findings concerning the potential extent of inaccuracies from ranging are supported by substantial evidence only with respect to Nekkanti ranged data and not with respect to Devi ranged data. The Nekkanti ranged data, unlike Devi ranged data, do not include a unit price for each count size and are presented in a format indicating that the count sizes are ranged." See Remand Opinion and Order, at 30.

i. Devi Ranged Data

During the investigation, Allied and Yelin urged the Department to use the ranged data of two respondents in the companion Indian investigation, Devi and Nekkanti. See Allied and Yelin's Second Surrogate Value Submission at Atts. 1 and 2 (Nekkanti's July, 12, 2004, Supplemental Section D Response at Ex. SD-3; Devi's July 13, 2004, Supplemental Section D Response at Ex. SD-3). Allied and Yelin contended that the ranged data are contemporaneous with the period of investigation, specific to Allied's and Yelin's raw material inputs, represent prices of two processors, and are based on purchase information verified by the Department. See Allied's Br. In Supp. of Motion for J., dated April 4, 2005, at 33.

ii. SEAI Data

Allied and Yelin placed on the record of the investigation data from SEAI, an Indian association of shrimp exporters. See Letter from Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP to the Department, dated May 21, 2004 ("Allied and Yelin's First Surrogate Value Submission") at Exhibit 3. The data consisted of circulars with prices of raw shrimp from two Indian regions: Andhra Pradesh and Tamil Nadu. Specifically, the SEAI data included shrimp prices for four individual days during the period of investigation from the Andhra Pradesh region and one price for the entire period of investigation reflecting raw shrimp prices from the Tamil Nadu region. See id.

iii. ACC Data

During the investigation, Allied and Yelin submitted data from ACC, a council comprised of foreign shrimp farming producers and U.S. importers and distributors of foreign-

farmed shrimp. See Allied and Yelin’s Second Surrogate Value Submission at Exhibit 3. ACC was founded by the Global Aquacultural Alliance (“GAA”), which is comprised of large foreign shrimp growers, processors and U.S. entities that import and distribute foreign shrimp, some of which were subject to this investigation. See Letter from Dewey Ballantine LLP to the Department, dated September 20, 2004, at Ex. 2B at 1, 3, 4 (“Petitioner’s Surrogate Value Rebuttal”).

*b. Devi Ranged Data Are the Best Information Available for Determining the Respondents’ Raw Shrimp Surrogate Value*

In this case, the Court rejected the Department’s use of the Nekkanti financial statement data as the basis of calculating the raw shrimp surrogate value. See Remand Opinion and Order at 53. Therefore, consistent with the Court’s Order, the Department evaluated the remaining source of data and determined that the Devi ranged data were the best information available. The Department also determined that the prices from SEAI and ACC were unreliable as each suffered from fundamental problems that called into question the representativeness and reliability of its prices. Moreover, as detailed below and also explained within Remand I, the Department attempted to remedy the deficiencies in some of these data sources, where it could and to the extent that it could do so, to no avail. The Department also determined, but for a different reason, that the Nekkanti ranged data were potentially less accurate than the Devi ranged data. Thus, given the problems with the SEAI and ACC data and potential degree of inaccuracy in the Nekkanti ranged data, the Department determined that the Devi ranged data,

after creating a concordance of the respondent count-sizes to the Devi count-sizes, were the best available information on the record.

The Department prefers to use surrogate values that are publicly available, broad market averages, contemporaneous with the POI, specific to the input in question, and exclusive of taxes and exports. See Notice of Final Determination of Sales at Less Than Fair Value: Cut-to-Length carbon Steel Plate from the People’s Republic of China, 62 FR 61972 (November 20, 1997).

In Remand I, we explained that we did not find the Devi ranged data reliable because “in accordance with Section 351.304(c) of the Department’s regulations, Nekkanti and Devi may have chosen to range hundreds of data points either upward or downward by as much as ten percent.” However, although the Court sustained Commerce’s findings with respect to Nekkanti’s ranged data, the Court concluded that the Department’s findings regarding potential inaccuracies in the Devi ranged data were unfounded, because the Court did not “find support in the record for the Department’s finding that these ranged prices may “deviate substantially from the actual data by much more than 10 percent.” See Remand Opinion and Order at 30.

Apart from our initial concerns about the ranging of the data in the Final Determination and Remand I, which the Court rejected, the Devi ranged data are specific to the input in question, publicly available, a sufficiently broad market average given the number of Devi’s transactions during the purchasing period, partially contemporaneous with the POI and there is no evidence that Devi’s prices are not exclusive of taxes and duties.

Specific to the Input

The value of shrimp is highly dependent on the count-size (the larger shrimp is worth significantly more in the marketplace). See ITC Preliminary Determination at 1-3. Thus, it is critical to determine the count-size values accurately, and Devi ranged data is superior to SEAI and ACC in this regard. Although all remaining surrogate data sources contain prices for various count-sizes, the count-sizes in the other surrogate value sources do not match the count sizes reported by Allied and Yelin. Significantly, the Devi ranged data are the only source that provides single data points for the bottom and top ranges of each count size making the calculation of the surrogate value more accurate. For example, Allied's count size is 43/47, which means that the raw shrimp input had a lower range of 43 and an upper range of 47. The Devi data list per-unit prices for individual sizes such as 43, 44, 45, 46, and 47. Therefore, in calculating the surrogate value for Allied's 43/47 count size, the Department need only include prices for specific count-sizes between 43-47. The same methodology applies for Yelin's count sizes.

In contrast, the SEAI data only contain available count sizes 40 or 50, which do not correlate precisely to Allied count size of 43/47. Thus, in determining the surrogate value for count-size 43/47, the Department would have to make certain assumptions, and on the basis of such assumptions, devise a methodology for allocating the prices from these two SEAI count sizes to the specific Allied count size range. In other words, it is not clear whether the value for Allied's count-size 43-47 should be based upon the prices for only the 40 count-size, only the 50 count-size, or a simple average, or a weighted-average. The ACC data suffer from the same flaw as the SEAI data. Because SEAI and ACC data count-sizes do not precisely correlate to the



respondents' count-sizes, any allocation methodology designed to overcome this significant flaw in SEAI data would be predicated on certain assumptions. Thus, the surrogate value determined under such a methodology would be less accurate and reliable than that based upon the Devi data.

The value of shrimp also depends upon the species of shrimp used. This is significant because the shrimp size is determined by the species, and shrimp size impacts the number of shrimp sold per kilogram. Devi data is the only surrogate value source that contains prices that are specific to each particular species of shrimp used to produce the subject merchandise. During the October 1, 2002, through September 30, 2003, period, Devi purchased white and black tiger shrimp. See Allied and Yelin's Second Surrogate Value Submission at Attachment 1 (Devi's July 13, 2004, Supplemental Section D Response at Ex. SD-3). Allied and Yelin both reported using mostly raw, white shrimp to produce the (subject merchandise) frozen shrimp sold to the United States during the POI. See Allied and Yelin's Section D Questionnaire Responses. Therefore, the Devi data are based upon prices paid for the same species of shrimp that is used by Allied and Yelin. In contrast, neither the SEAI nor ACC data specify the species of shrimp used in determining prices. Thus, there is no record evidence demonstrating that SEAI or ACC data are based upon the same shrimp species used by the Chinese respondents. Accordingly, with respect to this criterion in the Department's analysis, the Devi data are overwhelmingly superior to SEAI and ACC data due to its specificity in species.

#### Public Availability

The Devi ranged data were made available to the public by Devi as part of its participation in the companion Indian antidumping duty investigation. In contrast, SEAI data are not publicly available. Thus, under this criterion, the Devi ranged data and ACC data are superior to the SEAI data.

#### Broad Market Average

In general, the Department prefers to use broad market averages as opposed to data derived from a single producer. However, when other competing sources for surrogate value data are unreliable, such as in this case, the Department may resort to the use of company-specific data. See, e.g., Notice of Final Results of First Administrative Review: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam (“Fish Fillets Final”), 71 FR 14170 (March 21, 2006), and accompanying Issues and Decision Memorandum at Comment 3 (where the Department used a company’s financial statement to value a main raw material input).

Although from purely a geographic perspective ACC data claims to be the broadest source, followed by SEAI and the Devi data. SEAI and ACC data lack any information regarding the volume, value and per-unit price of transactions considered in determining average prices. Thus, the data could potentially be based upon a handful of transactions. This data deficiency is further exacerbated, as explained further below, the lack of experience and potential conflict of interest for ACC data and, by the absence of public availability of SEAI data.

In contrast, Devi data are based upon specific volume, value and per-unit prices that are clearly identified. Moreover, the volume, value and per-unit prices were verified by the Department in the companion investigation of shrimp from India. Although Devi represents

purchases by one company, it is sufficiently broad because it is based upon a large number and volume of transactions. The record shows that Devi had hundreds of purchases during the period of October 1, 2002, through September 30, 2003. Specifically, Devi purchased a total of 255,068.5 kilograms of raw white shrimp at a value of 38,974,776 Rupees. See Allied's Second Surrogate Value Submission, at Attachment 2 (Supplemental Section D Response at Ex. SD-3). With respect to this factor, and given the number and volume of underlying transactions, the Devi data represent a sufficiently broad market average, particularly in light of unreliability of SEAI and ACC data.

#### Contemporaneity

The POI of this investigation is April 1, 2003, through September 30, 2003. The Devi ranged data are from October 1, 2002, through September 30, 2003. Therefore, the Devi ranged data encompass the POI of this case making it fully contemporaneous.

#### Tax Exclusive

There is no evidence on the record that Devi's purchase prices included tax. Therefore, absent evidence that Devi's prices included taxes, we cannot assume that Devi purchase prices included tax.

#### *c. The SEAI and ACC Data Are Not the Best Information Available Because They Are Not Reliable*

The SEAI data are not the best information available. Unlike count-sizes in Devi ranged data, the count-size in the SEAI data does not precisely correlate to the count-sizes of the respondents in this investigation. Further, unlike the Devi data, SEIA data do not disaggregate

prices by the species of shrimp; thus, there is no evidence that SEAI prices are based upon the same species of shrimp used by the respondents. Furthermore, unlike the Devi and ACC data, SEAI data are not publicly available, nor do they contain any information regarding the volume, value and per-unit price of transactions considered. It is impossible to determine how SEAI prices were produced or calculated. As a result, the Department finds that the SEAI data are not the best information available on the record for valuing raw shrimp.

The ACC data are not the best information available. Unlike count-sizes in the Devi data, the count-size in the ACC data do not precisely correlate to the count-sizes of the respondents in this investigation. Further, unlike the Devi data, the ACC data do not disaggregate prices by the species of shrimp; thus, there is no evidence that the SEAI prices are based upon the same species of shrimp used by the respondents. The ACC data also do not contain any information regarding the volume, value and per-unit price of transactions considered. It is impossible to determine how the ACC prices were produced or calculated.

Additionally, the ACC data are not sufficiently insulated from potential conflicts of interest. In Remand I, the Department explained the reasons why the ACC data were not sufficiently insulated from potential conflicts of interest. The ACC was founded by members of the GAA, which is comprised of large foreign shrimp growers, processors and U.S. entities that import and distribute foreign shrimp, some of which were subject to this investigation. See Remand I, at 28. In addition, we explained that the timing of the posting of the ACC prices was suspect given that the ACC “never posted such prices before or again” since the investigation of this case. See id., at 29. In this case, the Court has ruled that “it is within the Department’s

discretion to give weight to these two findings in its evaluation of the various data sets.” See Remand Opinion and Order at 33. Here, we continue to place a significant amount of weight on the fact that the ACC was founded by members who had an interest in manipulating the prices posted by ACC and that the posting of these prices was a one-time event. As a result, the Department finds that the ACC data are not the best information available on the record for valuing raw shrimp.

2. The Department’s Selection of the Labor Rate

On remand, the Court ordered the Department to: 1) redetermine its surrogate value for labor in accordance with the requirements of 19 U.S.C. § 1677b(c) and in accordance with the Court’s Opinion and Order and without regard to 19 C.F.R. § 351.408(c)(3), which the Court determined to be contrary to 19 U.S.C. § 1677b(c) and therefore invalid; 2) base its new surrogate value for labor on findings of fact that are supported by substantial evidence; and 3) reopen the administrative record of this proceeding for the purposes of collecting, and inviting submission of new information related to the redetermination of the surrogate labor rate.

Although we respectfully disagree with the Court,<sup>2</sup> we have complied with the Court’s order.

Pursuant to the Court’s order, the Department has not relied on the labor rate calculated in accordance with 19 C.F.R. § 351.408(c)(3) and instead is relying on data from a study of the Indian fisheries industry that reports a labor rate of \$0.05 per hour.

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<sup>2</sup> Viraj Group Ltd. v. United States, 343 F.3d 1371, 1376 (Fed. Cir. 2003). The Court’s remand order expressly directs the Department to disregard 19 C.F.R. § 351.408(c)(3) and, thus, does not allow the Department to address various aspects of the Court’s analysis in the context of this remand determination and demonstrate that the regulation is consistent with the antidumping statute. See Remand Opinion and Order, at 57.

Upon the Court's remand to the Department on this issue, the Department opened the record and invited parties to submit surrogate values for the labor rate on January 12, 2009. On January 22, 2009, Allied Pacific Food (Dalian) Co. Ltd., ("Allied") requested an extension of the time to submit additional information regarding the labor rate. The Department granted the request and extended the deadline by an additional week. Allied submitted additional surrogate value information for the labor rate on January 30, 2009. In addition, the Department was unable to locate additional potential surrogate value sources for labor. The Department looked at the record of the India investigation to search for values for labor that could be used. No other party submitted data.

*a. Analysis of Potential Sources of Surrogate Value Data for the Labor Rate*

As noted above, all interested parties were provided the opportunity to submit additional surrogate value information for the labor rate. Based on the evidence of the administrative record, the Department has two sources of surrogate labor rate information: 1) country-wide labor rates published in Chapter 5B of the International Labour Organization's ("ILO's") Yearbook of Labour Statistics for multiple countries which reported data through 2002, and 2) surrogate wage rates from 2005 based on a report produced by Centre for Social Research ("CSR") in New Delhi, India in collaboration with the United Nations Conference on Trade and Development ("UNCTAD").

*i. ILO Country-Wide Labor Rates*

The list of potential surrogate countries identified on the record of the investigation were

India, Indonesia, Sri Lanka, Philippines, Ecuador, and Egypt. See Memorandum from Alex Villanueva, through James C. Doyle, Program Manager, and Edward C. Yang, Office Director, Office 9: Antidumping Duty Investigation of Certain Frozen and Canned Warmwater Shrimp from the People’s Republic of China: Selection of a Surrogate Country (“Surrogate Country Memo”), dated June 9, 2004. Of these countries that were determined to be economically comparable to China during the POI, Sri Lanka and Egypt were not producers of comparable merchandise, leaving Ecuador, India, Indonesia and Philippines as potential surrogate countries. See id. In the investigation, the Department selected India as the primary surrogate country because the record contained sufficient publicly available surrogate factor information on the record. See id. The record contains country-wide labor rates for comparable producers of subject merchandise, with the exception of Indonesia because the ILO did not publish data for Indonesia for the relevant period.

In Remand I, the Department explained its methodology for arriving at a country-wide labor rate for each of the countries reporting to ILO. See Remand I at 38-41. The country-wide labor rate available on the record for India is \$0.21/hour, Ecuador is \$1.43/hour, and the Philippines is \$0.81/hour.<sup>3</sup> These rates are based on 2002 wage data.

ii. CSR Report Labor Rates

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<sup>3</sup> We note that 19 U.S.C. § 1677b(c)(2) expressly allows Commerce to use data from more than one market economy country that satisfies the statutory criteria. In this case, the simple-average of the rates from these economically comparable countries, which are significant producers of merchandise comparable to the subject merchandise, is extremely close to the rate that Commerce determined through the regression analysis, which was \$0.85/hour.

The CSR report was generated to assess and analyze the trend and growth of the fisheries sector in India with particular attention given to how liberalization within the economy has affected the welfare of women in the fish industry. With this objective in view, the CSR performed studies in four districts of two states in India (Kerala and Gujarat). The CSR report indicates that the methodology used to collect the data was based on the following sources: 1) secondary information;<sup>4</sup> 2) interaction with selected stakeholders including interviews; and 3) focus group discussions.

*b. Selection of Source Labor Rate*

*i. CSR Report*

The Department normally determines surrogate labor-wage rates pursuant to 19 C.F.R. § 351.408(c)(3) using a transparent, objective and predictable regression methodology. See Torrington Co. v. United States, 82 F.3d 1039, 1049 (Fed. Cir. 1996) (explaining that the agency is bound by its regulations). In this case, however, the Court ordered that the Department shall redetermine the surrogate value for labor “in accordance with this Opinion and Order and shall do so without regard to 19 C.F.R. § 351.408(c)(3), which the court determines to be contrary to 19 U.S.C. § 1677b(c) and therefore invalid.” See Remand Opinion and Order at 57 (emphasis added). Although the Department respectfully disagrees with the Court that the regulation is contrary to 19 U.S.C. § 1677b(c), in the context of this litigation, we have recalculated the labor

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<sup>4</sup> The CSR Report identifies the secondary information as Government departments for statistical information and policy information, NGO (non-governmental organizations), industrial associations, specific to sector selected, workers organizations, research institutions, and international organizations. See Allied’s January 30, 2009 Submission at Exhibit 1, page 6.



wage rate for Allied and Yelin Enterprise Co., Hong Kong (“Yelin”) pursuant to the Court’s Order. In its opinion, the Court interpreted the antidumping statute to favor industry-specific data over country-wide data:

It is at least conceivable that a party to a proceeding might obtain, from one or more countries that are economically comparable to China and are significant producers of merchandise comparable to the subject merchandise, information on wage rates in the specific industry that produces the comparable merchandise or on wage rates for the specific type of labor used. Such information would seem to be ideal, according to the statutory criteria of 19 U.S.C. § 1677b(c)(1) and (c)(4), for the purpose of valuing the hours of labor required to produce the subject merchandise.

Remand Opinion and Order at 47-48 (emphasis added). Thus, we understand the Court to consider industry-specific information from economically comparable countries that are significant producers of comparable merchandise to be preferable for the purpose of valuing the hours of labor required to produce the subject merchandise. Although we recognize that the CSR report is specific to the seafood rather than shrimp industry, we also acknowledge that the alternative sources on the record in this proceeding are based upon an even broader set of data. Accordingly, while we continue to believe that the broader regression-based wage rate calculated pursuant to the Department’s regulations is preferable and consistent with the statute, based on the data available on the record and the Court’s Order, we have relied on the CSR report data for the surrogate labor rate.

ii. CSR Report Concerns and the Country-Wide Rates

We have reopened the record and selected the CSR report as the best available information on the record that can be used in accordance with the Court’s opinion. Although we

have selected the CSR report to comply with the Court's opinion, we have some concerns with the data. For example, the CSR report is based on data from only 305 respondents (275 female and 30 male) while the report indicates that the Indian fisheries industry employs over 11 million workers. See Allied Pacific's January 30, 2009, Submission of Surrogate Labor Rate Data of Remand, Exhibit I at page 11. Data from only 305 workers in an industry which employs over 11 million workers may not be representative or broad enough to draw robust industry-wide conclusions. For example, if one were to interview 305 unskilled employees or seasonal workers that perform the most basic tasks, when the industry employs over 11 million workers, the results may be skewed to lower-wage workers. Likewise, if one were to interview 305 employees at the company's headquarters, the results may be skewed towards highly compensated executives. For this CSR report, 305 workers represents less than 0.003 percent of the total workers in the fisheries industry in India and therefore, the labor wage rate discussed in the CSR report may not necessarily be representative of the average wage rate paid to fisheries workers.

Additionally, the CSR report indicates that there is a male to female ratio of employees of 1:3 in the industry; however, the pool of respondents (and the wage rate calculated by Allied) is not reflective of this relationship. The report clearly indicates that, of the 305 sample respondents, 275 were female and 30 were male representing a female to male ratio of 9:1. Thus, this small sample pool of sample respondents, which is less than 0.003 percent of the total number of industry workers, may not be representative of the actual relationship between male and female workers within the industry.

The CSR report identifies a monthly wage, but it does not identify the actual number of hours worked per day by each individual. In its calculations, Allied assumes an eight-hour work day, but the report also states that “the job involves long hours of drudgerous work in freezing conditions.” See id., at 27. Thus, the hourly wage rate may either overstate or understate the actual labor costs if there is no clear indication of the number of actual hours worked. In other words, an hourly rate can be understated if the number of hours worked is more or less than eight hours. Here, the CSR study does not definitely establish the number of actual hours worked. Finally, the data, from 2005, are not contemporaneous with the POI of April 1, 2003, to September 30, 2003.

Determining a labor rate, based upon an examination of reports, studies or other industry-specific rates, typically poses numerous practical problems. Here, for example, the Department evaluated the merits of, and information contained within, a single relatively straightforward study. In other cases, however, the Department may have more than one study, and will thus have to weigh one study against another, without knowledge of the intricacies of methodologies, or familiarity with the organization producing the data readily available. The Department’s limited resources may not permit such an exhaustive and complex analysis in every case. Furthermore, in other cases, parties may provide no studies containing industry-specific data. In such cases, if the Department were to abandon entirely its regression analysis, the agency would have no industry-specific labor-wage rates readily available to the agency as an alternative.

### **C. DRAFT REMAND CONCLUSION**

In accordance with the Court’s instructions, we have recalculated the surrogate value of

raw shrimp as well as the surrogate value for labor and have provided additional explanation on these issues. The revised surrogate value for raw shrimp is derived from the ranged data of Devi on a count-size specific basis and calculated a revised surrogate USD value for labor of \$0.05/hour.

**D. COMMENTS FROM INTERESTED PARTIES**

1. Appropriateness of Using Devi Ranged Data

As an initial matter, we note none of the parties submitted comments arguing that the Department should use the ACC data. However, Allied and Yelin submitted comments arguing that the Department should use SEAI data rather than Devi Ranged Data. These comments are addressed below.

*a. Specific to the Input*

Yelin and Allied do not dispute that Devi Ranged Data are specific to the input in question. However, Allied disagrees that the SEAI data do not list the species of shrimp. Allied notes that the Department's June 28, 2004, memo to the file regarding the Department's conversation with SEAI officials demonstrate that the SEAI prices are for white shrimp. See Memorandum to the File from James Doyle, Program Manager, Regarding Call to Seafood Exporters' Association of India, dated June 28, 2004 ("SEAI Memo"). Therefore, Allied argues that contrary to the Department's analysis in the Draft Remand, SEAI is specific to the input because the SEAI Memo identifies that the shrimp prices are for white shrimp.

**Department's Position:**

While we acknowledge that Mr. Raghuanath of SEAI made a statement to the

Department that SEAI prices are for white shrimp, we are not satisfied that Mr. Raghaunath's statement is supported by record evidence. None of the SEAI circulars on the record supports his statement. The circulars do not indicate the species type is white shrimp. To the contrary, at least some of the circulars use abbreviation "BT," which according to Mr. Raghaunath stands for "black tiger shrimp." Although Mr. Raghaunath asserted that the circulars were in error by indicating that the type of species is black tiger, he provided no documents substantiating his view. Moreover, if SEAI circulars indeed contain errors concerning such basic facts as the species of shrimp covered, this calls into question the overall reliability of the circulars, including the calculations.

Additionally, we have assessed Mr. Raghaunath's credibility on this issue by taking into account his actions that followed his statement. The SEAI Memo details the Department's conversation with Mr. Reddy Raghaunath, the Secretary General of SEAI at the time of the conversation. See id. The SEAI Memo discusses several items including: (1) pricing information; (2) public availability of pricing data, (3) expenses included in the prices; (4) species/type of shrimp; and (5) the location of SEAI member provinces. At the end of the SEAI Memo the Department noted that Mr. Raghaunath was to "call back" when he was able to provide all the price circulars during the POI. See id.

Despite Mr. Raghaunath's commitment to follow up with supporting documents, the Department never received the additional circulars, nor did we ever receive a return call from Mr. Raghaunath. Therefore, without the follow-up from Mr. Raghaunath as to the nature of the remaining circulars and supporting documents for the other items discussed in the SEAI Memo,

we are not satisfied that Mr. Raghaunath's statement regarding the specifics of shrimp considered in the circulars has been substantiated. For example, the circulars do not indicate the species type, except erroneously as "BT," nor do they state whether the prices are inclusive of freight expenses or taxes. Allied's argument with regard to specificity relies on information within the SEAI Memo, but Allied fails to recognize that in the end, the Department did not receive the supporting documents to corroborate Mr. Ranghuanath's statements; therefore, it is not possible to determine definitively whether the prices within the circulars are for white shrimp. As such, we continue to find that the SEAI price circulars do not identify what shrimp species were sold. In contrast, the Devi ranged data clearly indicate that the prices are based on Devi's purchases of white shrimp. See Allied and Yelin's Second Surrogate Value Submission at Attachment 1 (Devi's July 13, 3004, Supplemental Section D Response at Ex. SD-3). Thus, as Allied and Yelin overwhelmingly sold white shrimp to the United States during the POI, we continue to find that the Devi ranged data remains the superior source from which to calculate the raw shrimp surrogate value.

Even if we were to receive supporting documents from Mr. Ranghuanath and conclude that SEAI circular prices are based upon white shrimp, the Devi ranged data would still be more specific to the input to question for other reasons. As we explained in the Draft Remand, the Devi ranged data provide the ability to increase our calculation accuracy because the count-sizes better match those reported by Allied and Yelin due to the fact that Devi reported individual count size-specific volumes and values, as opposed to no volumes and values covering count-size ranges or broad categories like SEAI. See Draft Remand at 8. The count-sizes available in

the Devi ranged data can be perfectly matched to all of the count sizes reported by Allied and the great majority of the count-sizes reported by Yelin. Specifically, Yelin reported having a total of 33 count-sizes and of those, the Devi ranged data can accurately concord to 30 count-sizes without exception, leaving only three count-sizes on the extreme end of the count size array for which a reasonable estimation must be applied. See Memorandum to the File from Emeka Chukwudebe, Case Analyst: Yelin Analysis Memo (“Yelin Analysis Memo”), dated May 21, 2009, at Attachment I. Devi’s ranged data covers more than 90% of the reported Yelin count sizes. SEAI however, does not accurately match any of the Yelin or Allied count sizes because they are provided in groups of 10 (count size 20, 30, 40, etc.). See Letter from Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP to the Department, dated May 21, 2004 (“Allied and Yelin’s First Surrogate Value Submission”) at Exhibit 3. Therefore, an adjustment based on certain assumptions would be unavoidable. In addition, the SEAI count sizes are organized in count size intervals of 10, but only go up to count size 100. See id. This is problematic because Yelin and Allied both reported count sizes well beyond count sizes of 100 pieces per kilogram. See Yelin Analysis Memo at Attachment I and Memorandum to the File from Emeka Chukwudebe, Case Analyst: Allied Analysis Memo, dated May 21, 2009, at Attachment I. For Yelin, for example, this would mean that for a total of 13 of its 33 count sizes, or 39% of count sizes, there would be no matching count size from SEAI. See id. In contrast, Devi’s ranged data covers more than 90% of the reported Yelin’s count sizes and 100% of Allied’s count sizes. Therefore, we continue to find that the Devi ranged data is still a better surrogate value source than SEAI with respect to specificity of the input.

b. *Public Availability*

Allied argues that the SEAI data is as public as the Devi ranged data simply because both sources were made available to the public in the same manner (*i.e.*, placed on the record). Allied also argues that Devi's ranged data is not "information," but merely a proxy for Devi's actual purchase data and therefore, it is unreasonable for the Department to conclude that the Devi ranged data is "publically available information."

**Department's Position:**

First, we disagree with Allied that the Devi data do not qualify as publicly available information. All information placed on the record of an anti-dumping proceeding must be categorized as either business proprietary, a public version of the business proprietary version, or public information in accordance with section 351.304 of the Department's regulations. In this case, the Devi ranged data is a public version of business proprietary information. The CIT has previously characterized "ranged data" as publicly available data. See *Zhengzhou Harmoni Spice., Co., Ltd., et. al. v. United States*, Slip Op. 09-39, Court No. 06-00189 (May 13, 2009) at 46 ("Zhengzhou Harmoni Spice"). This information was placed on the record of this investigation by Allied in its surrogate value submission for the sole purpose of proposing it as a raw shrimp surrogate value. See Allied and Yelin's Second Surrogate Value Submission at Attachment 1 (Devi's July 13, 3004, Supplemental Section D Response at Ex. SD-3).

Devi ranged its own business proprietary data and made it available to the general public by placing this data on a public record in the companion Indian investigation. This data was subject to external checks and scrutiny, and was even verified by the Department. In other



words, the data was already made publicly available by Devi, the source of the information, by the time Allied subsequently placed it on the record of this investigation.

In contrast, the SEAI data were not published or made available to the general public by the SEAI. When the Department attempted to collect this data and supplement the circulars provided by Allied and Yelin so as to create a complete dataset, we were unable to obtain any circulars at all directly from the source, including copies of the circulars previously provided by Allied and Yelin. See SEAI Memo at 2. The SEAI data are closely held, and the SEAI Secretary General explained that SEAI does not make the data available to the general public. Thus, the data are not subject to any external scrutiny and checks.

The mere placement by Allied of these circulars on the record of an anti-dumping proceeding does not automatically make the data publicly available. Allied and Yelin argue, in essence, that SEAI data are publicly available data because they placed it on the administrative record of this investigation. However, the CIT has rejected identical arguments explaining that by such flawed logic virtually anything can be transformed into publicly available “information”. See Zhenghou Harmoni Spice, at 54, n. 39. If virtually anything became publicly available information by mere placement on the record of this investigation, then the Department’s public availability factor would be rendered meaningless. Public availability is an important criterion in the evaluation of surrogate values. The Department’s regulations recognize the significance of the public availability criterion with respect to the selection of surrogate values. Section 351.408(c)(1) of the Department’s regulation states, “the Secretary normally will use publicly available information to value factors.” The potential for external market checks on data sources

that are publicly available lends credibility and provides reliability to the data. In this case in particular, the Department has concerns about the completeness and accuracy of the SEAI data. Because we were unable to obtain the SEAI data ourselves, we cannot conclude that the circulars are publically available, much less conduct our own data integrity checks. The Devi ranged data however, contain the volume and value and we are satisfied with the integrity of the data because Devi was a participant in the Indian investigation, where we carefully verified the completeness and accuracy of its submissions. Given the thorough examination of the Devi data in the companion investigations, we have no reason to question that its data were ranged in accordance with our regulations. Therefore, we continue to find that Devi ranged data are superior to the SEAI data because SEAI data are not publicly available.

*c. Broad Market Average*

Allied argues that the SEAI data are a broader market average than the Devi ranged data because they are not data from a single Indian shrimp processing company. Moreover, Allied notes that Devi is a member of SEAI. Thus, if the Devi ranged data are sufficiently broad, then the Department must also acknowledge that the SEAI prices are an even broader based source.

**Department's Position:**

We recognize that the Department generally prefers to use broad market averages as opposed to data derived from a single producer. However, when other competing sources for surrogate value data are unreliable, such as in this case, the Department may resort to the use of company-specific data. See Fish Fillets Final, at Comment 3 (where the Department used a company's financial statement to value a main raw material input). In this case, the quantities of

sales underlying SEAI data are unknown and the price data could be based on a handful of unrepresentative transactions. In contrast, Devi data are based upon specific volume, value and per-unit prices that are clearly indentified. Moreover, the volume, value and per-unit prices were verified by the Department in the companion investigation of shrimp from India. Although Devi data represent purchases by one company, they are sufficiently broad because they are based upon a large number and volume of transactions. We articulated these specific data concerns regarding SEAI's data reliability and representativeness, but Allied and Yelin offered no information or argument to address these concerns. See id.

In the Draft Remand the Department explained that “from purely a geographic prospective ACC data claims to be the broadest source followed by SEAI and the Devi data.” See Draft Remand at 10-11. However, because the ultimate goal is to find the most representative and reliable surrogate value source, we do not believe that our analysis of this factor is limited to purely geographical considerations. Here, we are unable to determine how SEAI prices were averaged, how many transactions they encompassed, or whether the data were subject to any scrutiny or review. In contrast, with Devi's data, we can identify the total value and volume of purchases Devi made during the reporting period. A sample potentially based upon a handful of potentially unrepresentative transactions from two states<sup>5</sup> would not necessarily be superior to a verified sample, albeit from a large producer in a single state, that is based upon numerous and voluminous transactions. Therefore, given the circumstances in this

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<sup>5</sup> The price data for one of the two states is incomplete, and the Department has additional concerns about its reliability and representativeness, because SEAI data for that state are confined to only four days of the POI.

case (i.e., no other viable sources are available), we continue to find that Devi's ranged data are the most appropriate source for calculating the raw shrimp surrogate value.

d. *Contemporaneity*

Allied argues that the Devi ranged data which is from October 2002, through September 2003, is over-inclusive because the POI is from April 2003 through September 2003. In contrast, Allied argues, the SEAI source only contains data from the POI and that there is no concern of including non-contemporaneous data. In addition, Allied argues that there is no evidence that Devi's raw shrimp purchases were made inside the six-month period overlapping with the POI. Therefore, Allied argues that based on contemporaneity, the Department should rely on the SEAI data as the basis for the raw shrimp surrogate value.

**Department's Position:**

The Devi data are from October 2002, through September 2003, and this period overlaps with the POI. It is undisputed that the period covered by Devi data encompasses the entire POI, but Allied argues that the Devi ranged data also contain information from several months immediately preceding the POI. Although we acknowledge that the data potentially may include some sales during the six-month period immediately preceding the POI, it is not so far removed from the POI that we would disregard it on this basis. See Hebei Metals & Minerals Import & Export Corporation v. United States, 366 F. Supp 2d 1264, 1275 (CIT 2005) (upholding the Department's use of data from a period 1.5 years prior to the period of investigation as sufficiently close in time to the POI to serve as an accurate basis for calculating a dumping margin even though a more contemporaneous data set was available).

Moreover, we find that SEAI data's lack of coverage for 39% of Yelin's count-sizes and inherent distortions resulting from the mismatch between SEAI ranges and the respondents' ranges of count-sizes would outweigh any perceived concerns about over-inclusiveness in Devi's ranged data. Therefore, because Devi data covers the entire POI, we continue to find that the Devi ranged data are contemporaneous with the POI and reliable because it is a complete data set (i.e., all of Devi's raw shrimp purchases).

Although we agree with Allied that the SEAI source only contains data points from the POI, we are still concerned that the entirety of the data set (all circulars produced by SEAI during the POI) are not available and therefore, make this source incomplete, under-inclusive, and unuseable for the purposes of calculating the raw shrimp surrogate value. See Remand I at 26-28. For example, SEAI circulars from Andhra Pradesh region contain data from only four, non-consecutive, irregularly-spaced days of the POI. Although we recognize that the Court has found that the prices from these four non-consecutive daily circulars are comparable with prices from Tamil Nadu region that cover the entire period of investigation,<sup>6</sup> this finding does not alleviate our concern that the missing SEAI circulars from Andhra Pradesh region could contain prices different from those in Tamil Nadu region. See P.R. 510 at 2 ("Mr. Raghuanath indicated that there were likely more such circulars from the period of investigation available from the two offices that prepare them."). Prices of a product could vary from region to region; thus, prices in one region are not necessarily indicative of the prices in another region.

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<sup>6</sup> See Remand Opinion and Order, at 32.

Moreover, because shrimp perish quickly, daily prices could fluctuate significantly even when monthly prices are relatively stable. See Yelin’s Comments on the First Remand, at 16 (“Raw shrimp begins to deteriorate the moment it is pulled from the water.”). Under the basic laws of supply and demand, if there is a high supply on a particular day (because of a big catch or other factors), the prices could plummet. The converse is also true: if the supply is small, the prices could increase significantly. Over a long period of time, these daily price fluctuations would most likely offset each other. Accordingly, the four daily SEAI circulars, which are non-consecutive and are irregularly spaced, may not be assumed to be representative of the average prices in Andhra Pradesh region over a long period, even though they may roughly correspond to average prices in another region. Even, if we were to exclude the four Andhra Pradesh circulars from the SEAI data completely, this would weaken the remaining SEAI data with respect to other factors. The remaining circulars would only contain average prices from a single state based upon an unknown number of sales and quantities from potentially a single company.

e. *Tax Exclusive*

Allied argues that the Department incorrectly stated in the Draft Remand that Devi’s ranged data was tax exclusive. According to Allied, in its April 14, 2004, questionnaire response, Devi stated that its raw shrimp inputs are among the purchased inputs that are subject to tax programs. See Allied’s September 8, 2004 Surrogate Value Submission at Exhibit 3, Attachment 2 (Devi’s April 14, 2004 Section D Response at D-7). Therefore, Allied argues that Devi’s ranged data is inclusive of taxes, while there is no evidence that the SEAI data was subject to taxes.

## **Department's Position:**

We agree with Allied that Devi's ranged data are not exclusive of taxes. Devi explained that the "inputs that are subject to taxes are raw shrimp, packing materials and consumables listed above" and also that the Andhra Pradesh tax rate for raw shrimp was 0.5%. See id., see also, Exhibit D-9. Therefore, the Department has adjusted Devi's ranged data downward by 0.5%, the tax rate identified by Devi, and recalculated the raw shrimp surrogate value used in the margin calculation program. Thus, the Devi ranged data, as adjusted by the Department, are tax exclusive. In contrast, with respect to SEAI, the SEAI circulars do not state that the prices are tax-exclusive. Therefore, with respect to this factor, Devi ranged data are superior to SEAI data because, at best, is unclear whether the SEAI prices would need to be revised to account for taxes. Moreover, given that Devi specifically listed the tax rate for Andhra Pradesh as 0.5%, it is possible that Tamil Nadu region may have a different tax rate. Thus, while we are able to make an adjustment to prices in the four SEAI circulars from Andhra Pradesh state, we are unable to make a similar adjustment to SEAI circulars from Tamil Nadu region, because that the record does not contain information as to the appropriate tax rate in Tamil Nadu.

### **2. Adjusting Devi Ranged Data**

Allied and Yelin argue that Devi's ranged data are not a better source than the SEAI data because the record shows that Devi ranged the price, quantity and the per-unit price. For example, for count-size 22, Devi reported a value of Rs 7,775 for a quantity of 19.1 kilograms. Using these figures, the per-unit price is Rs 407. However, when ranged upwards by 10%, the per-unit price is Rs 447, which Devi reported in the public version of its questionnaire responses.

Therefore, Allied and Yelin argue that instead of relying on a per-unit price that is clearly ranged, the Department should rely on the price and quantity to arrive at a non-ranged per-unit figure as the basis for the raw shrimp surrogate value.

**Department's Position:**

In accordance with section 351.304 of the Department's regulations, Devi is permitted to range its data up or down by +/- 10%. Allied and Yelin claim that Devi ranged its volume, value and per-unit figures. In the Draft Remand we only relied on the ranged per-unit numbers to calculate the raw shrimp surrogate value. These per-unit numbers could have been ranged up or down by +/-10% from the business proprietary per-unit numbers. See 19 C.F.R. 351.304. Thus, in the worst case "doomsday" scenario, any ranged per-unit number could differ from the business proprietary number by no more than 10%.<sup>7</sup> In fact, the actual difference from a business proprietary number could be much smaller because 10% represents the maximum limit of the potential range. We also find that the lack of specificity to input in the SEAI data combined with other factors discussed above far outweigh any potential effects of ranging that is clearly permitted by the Department's regulations.

Allied and Yelin argue that we should calculate a new per-unit value number that is nowhere to be found on Devi's ranged data and use this to value the raw shrimp input. Specifically, Allied and Yelin propose that the Department calculate a new per-unit value using the ranged value and ranged volume on the assumption that the per-unit figure is actually a 10%

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<sup>7</sup> There is no evidence on the record that the Department found any errors with respect to Devi's ranged data in the companion Indian investigation.



increase from the ranged value and volume. However, Allied and Yelin are essentially proposing that the Department rely on two ranged numbers to calculate a raw shrimp surrogate value, while at the same time making a baseless assumption that Devi ranged all of its data the same way rather than relying on one ranged number, i.e., Devi's ranged per-unit value, which is not more accurate. The ranged per-unit value is more accurate because Devi ranged its per-unit from its business proprietary value. We prefer to rely on a single existing ranged number derived by Devi from its business the proprietary data rather than constructing a value on the basis of two ranged numbers that Allied and Yelin propose. Therefore, we continue to find that the Devi ranged per-unit price is more accurate and appropriate to use for valuing the raw shrimp surrogate value.

3. Applying Devi Ranged Data to Investigation Surrogate Value Calculation Methodology

Yelin argues that the Department should apply the Devi ranged data to the multi-step methodology the Department used in the investigation which relies on data from Urner Barry<sup>®</sup> and creates standard count-sizes to derive a raw shrimp surrogate value.

**Department's Position:**

We disagree with Yelin that the Department should apply the Devi ranged data to the complex methodology used in the original investigation, because it is not necessary given that Devi's ranged data are count-size specific and because the Court rejected this methodology.

In Remand I we explained that we adopted a multi-step methodology which relied on information from multiple sources including "standard count sizes" from Urner Barry<sup>®</sup> because

the Nekkanti purchase data was not count-size specific and we were attempting to derive an average count size using Allied's and Yelin's count sizes as a proxy. See Remand I at 23-24. However, the Court rejected this methodology because other sources on the record provide data with respect to cost and quantity of unprocessed shrimp. Specifically, the Court stated that "without resorting to the complex methodology employed by Commerce, the Nekkanti and Devi ranged data can be grouped into any number of count size ranges and analyzed so as to correspond to the ranged provided by Allied Pacific and Yelin."<sup>8</sup> The Court rejected that methodology because it was a methodology that relied on an assumption as to the Nekkanti count sizes. Here, the Devi ranged data are already count size specific so there would be no need to apply the Devi ranged data to that methodology. In other words, the use of the Devi ranged data is an alternative to the complex methodology used in the investigation and the Remand I. Therefore, we find, as the Court did in Remand Opinion and Order, that without resorting to the complex methodology, which Allied and Yelin advocate now, the Devi ranged data can be grouped into any number of count size ranges and analyzed so as to correspond to the ranges reported by Allied and Yelin.

4. Averaging Devi Ranged Data with SEAI Data or Nekkanti Data

Allied argues that the Department should average the Devi Ranged Data with the SEAI data in order to achieve a broader market average or alternatively, average the Devi Ranged Data

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<sup>8</sup> Even though the Court states here that the Nekkanti ranged data can be used as a surrogate value for raw shrimp in this statement, it later acknowledges that "the Department's findings concerning the potential extent of inaccuracies from ranging are supported by substantial record evidence with respect to the Nekkanti ranged data and not with respect to the Devi ranged data." See Remand Opinion and Order at 28 and 30.

and the Nekkanti Ranged Data. Allied also argues that the Department should adjust the Nekkanti data as they propose for Devi above in (2).

**Department's Position:**

First, for the reasons listed above with respect to SEAI, we do not find it to be a source that is specific to the input, publically available, or tax-exclusive; therefore, we do not consider it a reliable source for calculating the raw shrimp surrogate value. Accordingly, we will not average Davi ranged data with inferior and less reliable SEIA data. With respect to the Nekkanti ranged data, we continue to find that the Nekkanti ranged data are also not suitable because, as the Court previously found in this litigation, “the Nekkanti ranged data, unlike the Devi ranged data, do not include a unit price for each count size and are presented in a format indicating that the count sizes are ranged.” See Remand Opinion and Order at 30. Moreover, Congress has vested the Department with considerable discretion in selecting the best available information for use in valuing factors of production. See Nation Ford Chem. Co. v. United States, 166 F.3d 1373, 1377 (Fed. Cir. 1999). In exercising this discretion, the Department prefers to select the single best surrogate value source and not average multiple surrogate value sources as Allied and Yelin request. See Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China, 72 FR 19690 (April 19, 2007), and accompanying Issue Decision Memorandum at Comment 9.

5. Eliminating Zeroing

Allied and Yelin argue that the Department should eliminate its zeroing practice in this

remand in accordance with the Department's practice of conducting average-to-average comparisons for investigations pending as of February 22, 2007, and recent World Trade Organization ("WTO") reports involving countries other than China.

**Department's Position:**

Allied and Yelin did not challenge the Department's methodology for calculating dumping margins in court. Thus, the treatment of non-dumped sales in the margin calculation is not an issue within the scope of this litigation and this remand redetermination. The Court remanded to the Department two specific issues that were challenged by Allied and Yelin—the surrogate value for shrimp and surrogate value for labor. The Department's determination in the Draft Remand did not involve any changes with respect to the methodology for calculating dumping margins. See Final Determination at Comment 5. Accordingly, it is unnecessary and inappropriate to address the merits of Allied and Yelin's arguments on this issue in the context of this remand or this litigation.

6. Unit of Measure Conversion for Yelin Margin

Yelin argues that in the Draft Remand margin calculation, the Department failed to properly convert its count-size to a kilogram basis prior to assigning the appropriate \$/kg raw shrimp surrogate value. Yelin argues that the Department should convert the raw shrimp count-sizes to a pieces/kg basis and also convert the surrogate value to a \$/kg basis in the margin calculation program so that all units are on the same kilogram basis.

**Department's Position:**

We agree that the Department should convert Yelin's reported count-sizes to a pieces/kg basis, but we disagree that we should convert the surrogate value to a kilogram basis. The surrogate value is already on a \$/kg basis and, thus, requires no further conversion. See Yelin Analysis Memo at Attachment I.

7. Surrogate Value for Labor

None of the parties submitted comments regarding the surrogate value for labor used in the Draft Remand. Therefore, we are not revising our labor surrogate value calculation used in the margin programs.

**FINAL REMAND CONCLUSION**

In accordance with the Court's instructions, we have recalculated the surrogate value of raw shrimp as well as the surrogate value for labor and have provided additional explanation on these issues. The revised surrogate value for raw shrimp is derived from the ranged data of Devi on a count-size specific basis, we used a revised surrogate value for labor of \$0.05/hour. Consequently, the antidumping duty margins for Allied and Yelin have been recalculated as follows: Allied's margin is 5.07 percent, and Yelin's margin is 8.45 percent.

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Ronald K. Lorentzen  
Acting Assistant Secretary  
for Import Administration

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Date