

DATE: June 24, 2010

MEMORANDUM TO: Paul Piquado
Acting Deputy Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the Final Results of 5th New Shipper Review: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam (“Vietnam”)

SUMMARY

We have analyzed the case and rebuttal briefs submitted by Petitioners,¹ and NTSF Seafoods Joint Stock Company (“NTSF”) in the antidumping duty new shipper review of certain frozen fish fillets from Vietnam. The Department of Commerce (“Department”) published its preliminary results in these antidumping duty administrative and new shipper reviews on January 29, 2010. See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results of New Shipper Review, 75 FR 4350 (January 29, 2010) (“Preliminary Results”). The period of review (“POR”) is August 1, 2008, through January 31, 2009. Following the Preliminary Results and an analysis of the comments received, we made changes to the margin calculation. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is a complete list of issues for which we received comments by parties:

COMMENT 1: SURROGATE COUNTRY
COMMENT 2: SURROGATE VALUES
A. Whole Live Fish
B. Surrogate Ratios
COMMENT 3: OTHER LABOR
COMMENT 4: FACTORS OF PRODUCTION DENOMINATOR

¹ Catfish Farmers of America and individual U.S. catfish processors (collectively “Petitioners”).

DISCUSSION OF THE ISSUES

COMMENT 1: SURROGATE COUNTRY

- Petitioners argue that the Department should select the Philippines as the primary surrogate country because it meets the Department’s primary surrogate country selection criteria better than any other country.
- Petitioners maintain that the Department found the Philippines met the first three selection criteria in the Preliminary Results (i.e., economically comparable to Vietnam, producers of comparable merchandise, and significant producers of comparable merchandise).
- Petitioners contend that with regard to the last selection criteria, data considerations, the Philippine Fish Pond Report² is superior to the Bangladeshi FAO Report³ for valuing whole live fish because it meets the six surrogate value selection criteria and is more contemporaneous with the POR than the FAO Report.
- Petitioners argue that with regard to surrogate financial ratio companies, the three Philippine companies on the record are processors of fin fish, a product more comparable than the two Bangladeshi shrimp processors.
- Petitioners claim that with regard to other surrogate values, the record contains better quality data from the Philippines for the majority of the other lesser inputs.

- NTSF argues that the Department should continue to find Bangladesh as the primary surrogate country as it did in the Preliminary Results.
- NTSF maintains that the Philippines should not be selected as the primary country because of deficiencies the Department found in the Preliminary Results with regard to data considerations (i.e., Fish Pond Report).
- NTSF states that with regard to the surrogate financial ratios, the processing of frozen seafood products is more similar to the production of the subject merchandise than the production of canned tuna products in the Philippines (e.g., Alliance Tuna Intl. Inc. (“Alliance Tuna”)), so the Department should rely instead on the Bangladeshi frozen seafood producers’ financial statements.
- NTSF argues that with regard to other lesser surrogate values, the record contains valid Bangladeshi surrogate values.

Department’s Position:

Section 773(c)(4) of the Tariff Act of 1930, as amended (“Act”), states that the Department must value the factors of production (“FOP”) using, to the extent possible, the prices or costs of the FOPs in one or more market economy (“ME”) countries that are: (1) at a level of economic development comparable to the NME country under review; and (2) significant producers of the comparable merchandise. Moreover, if several countries meet these criteria, the Department will also determine which country has the best publicly available and reliable surrogate value

² See Fresh Water Fish pond, 2008 (“Fish Point Report”). This is a handwritten title on the document.

³ See NTSF December 30, 2010, submission at Exhibit 3 (Economics of Aquaculture Feeding Practices in Selected Asian Countries: FAO Fisheries Technical Paper 505 (Rome, 2007) (“FAO Report”).

information.⁴ Accordingly, the Department evaluated possible surrogate countries based on these considerations.⁵

Economic Comparability & Producers of Comparable Merchandise

In the Preliminary Results, the Department stated that:

Record evidence shows that Bangladesh, Pakistan, India, Sri Lanka, the Philippines, and Indonesia are all economically comparable to Vietnam. Thus, this factor is not dispositive. However, record evidence shows that only three of the countries, Bangladesh, the Philippines, and Indonesia, are producers of comparable merchandise.⁶

No party challenged that Bangladesh, the Philippines and Indonesia identified in the Surrogate Country Memo were economically comparable to Vietnam and producers of comparable merchandise (frozen fish fillets). Therefore, for these final results we continue to find that the Philippines, Bangladesh, and Indonesia are: (1) at a level of economic development comparable to Vietnam; and, (2) are producers of comparable merchandise.

Significant Producer of the Comparable Merchandise

As we stated in the Preliminary Results, there is no world production data of *Pangasius* frozen fish fillets available with which the Department can identify significant producers of identical merchandise. See Surrogate Country Memo at 6. Therefore, absent world production data, the Department's practice is to compare, wherever possible, data for comparable merchandise and establish whether any economically comparable country was: a) a significant net exporter; or b) a major exporter to the United States.⁷ In this case, we have determined, and no party has challenged, the use of the broader category of frozen fish fillets data as the basis for identifying significant producers of comparable merchandise. Therefore, consistent with cases that have similar circumstances, as are present here, we compared trade data for Bangladesh and the Philippines.⁸ However, absent import statistics for Bangladesh, which prevented us from fairly comparing the net exports (i.e., exports – imports) of Bangladesh and the Philippines for similar periods, we compared the exports of both countries.

In the Preliminary Results, we stated that:

When looking at the factor of being a significant producer of comparable merchandise, however, we see that only two countries, Bangladesh and the Philippines, meet this criterion. While we have record evidence showing that both Bangladesh and the Philippines are producers of frozen *Pangasius* fillet,

⁴ See also U.S. Department of Commerce, Import Administration Policy Bulletin 0.41 (Mar. 1, 2004) (“Policy Bulletin”).

⁵ See Memorandum to the File, Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Antidumping Duty Administrative Review: Selection of a Surrogate Country: Selection of a Surrogate Country, dated January 19, 2010 (“Surrogate Country Memo”) at 4.

⁶ See id. We note that parties have not challenged the first two criteria and no new information on the record exists that would make us overturn our conclusion in the Preliminary Results.

⁷ See *Yantai Oriental Juice Co. v. United States*, 27 C.I.T. 477, CIT 2003 (March 21, 2003).

⁸ We do not have information on the record regarding Indonesia's trade data of frozen fish fillets.

there is no country-wide production data of total *Pangasius* fillet production available for either country. However, we do have evidence on record showing that both Bangladesh and the Philippines are exporters of frozen fish fillets in general; thus, this factor is also not dispositive.

See Surrogate Country Memo at 7.

Since the Preliminary Results, we did not receive additional data regarding imports or exports trade statistics for any country. Thus, because both countries were significant exporters of the comparable merchandise, we continue to find that both Bangladesh and the Philippines are significant producers of the comparable merchandise.

Data Considerations

Because the facts are not dispositive with regard to the first three factors in determining the primary surrogate country, the Department then looks to the criterion of data considerations (i.e., the best publicly available and reliable surrogate value information).

In the Preliminary Results, the Department stated:

Thus, we look to the criterion of data considerations, which shows the Bangladeshi data sources, specifically for the main input of the subject merchandise (whole live fish) are more reliable and extensive than the Philippine sources. In addition, we have two surrogate financial companies from Bangladesh, giving a more broad market average for the surrogate financial ratios. Thus, because the Bangladeshi data sources are more reliable and representative than the Philippine data sources for this input, we preliminarily determine that Bangladesh is an appropriate primary surrogate country for the purposes of this new shipper review.

See Surrogate Country Memo at 7. However, Petitioners provided arguments and data claiming that information placed on the record after the Preliminary Results support selecting the Philippines as the primary surrogate country.

In determining what constitutes the best available information for valuing a factor of production, the Department normally considers whether each potential surrogate value: (1) is publicly available; (2) is contemporaneous with the POR; (3) represents a broad market average covering a range of prices; (4) is from an approved surrogate country; (5) is specific to the input in question; and (6) is tax exclusive.⁹

⁹ See, e.g., Fresh Garlic from the People's Republic of China: Final Results and Final Rescission, In Part, of New Shipper Reviews, 74 FR 50952 (October 2, 2009), and accompanying Issues and Decision Memorandum at Comment 5; see also Third Administrative Review of Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 46565 (September 10, 2009), and accompanying Issues and Decision Memorandum at Comment 3.

A. Whole Live Fish Input

As noted above, Petitioners argue that the Fish Pond Report is the best available information for valuing the whole live fish input. We examined the Fish Pond Report and the accompanying affidavits from Virginia Viloría,¹⁰ a BAS employee, and compared this source to the Bangladeshi surrogate value from the FAO Report.

We agree with Petitioners that the data within the Fish Pond Report is more contemporaneous with the POR than the FAO Report. According to Ms. Virginia Viloría, a BAS employee, the data within the Fish Pond Report is from March, June, September, and December 2008.¹¹ Since the POR is from August 2008-January 2009, the aggregate data in the Fish Pond Report overlaps with a portion of the POR, making it contemporaneous with the POR.

We agree that given the pool of farmers surveyed in this Fish Pond Report (a total of 34), from multiple provinces, we consider it to be an adequate broad market average.

It is clear that the data within the chart contains prices for *Pangasius* fish, which is specific to the input reported by NTSF. Finally, with respect to the price being tax and duty exclusive, the affidavit provided by Ms. Viloría states: “The price stated is also tax-exclusive.” Id.

Although the Fish Pond Report meets five of the surrogate value selection criteria (i.e., from approved surrogate country, contemporaneous, broad market average, specific to input, and tax & duty free), the Department still has other concerns with the Fish Pond Report that it recently expressed in the AR5/NSR4 Final Results.¹²

With regard to public availability, the Department notes that:

The requirement that surrogate value data be publicly available addresses two concerns in the analysis of data for valuing the factors of production. By requiring the data to be publicly available, parties, both domestic and foreign, can, in evaluating whether to petition for an investigation or request a review, find and make their evaluations on the same data. This promotes transparency and predictability in the dumping analyses in non-market economy cases. Second, the public availability requirement also provides a preliminary reliability check particularly when it concerns government sourced data. When governments compile statistics and publish them on a regular basis for purposes other than addressing antidumping proceedings, there is little if any concern that the data is skewed for dumping purposes. Moreover, because of the public release of such data, and the official imprimatur of government, it is reasonably presumed to have gone through some amount of internal checks and edits to ensure accuracy and

¹⁰ Ms. Viloría badge identifies her as a Statistician V, but she claims she is the “incumbent Chief of the Fisheries Division of the Bureau of Fisheries of Agricultural Statistics.” See Petitioners’ December 30, 2009 Submission at Exhibit 8.

¹¹ See id.

¹² See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews, 75 FR (March 17, 2010), and Accompanying Issues & Decision Memorandum (“AR5/NSR4 Final Results”).

reliability. That having been said, if there is record evidence that indicates the data collected by the government is flawed, the Department will of course take that evidence into consideration in its evaluation.¹³

We note that the Fish Pond Report and affidavit provided by Ms. Vilorio in this review is the exact one that the Department analyzed in the recently completed AR5/NSR 4 Final Results. Therein the Department stated:

In analyzing the Fish Pond Report, the Department has serious concerns about the public availability of the data. By Petitioners' own admission, the data are not published as the Fish Pond Report per se, but rather, the Fish Pond Report represents source data to be used in a yet-to-be-determined manner for official publication in the Fisheries Situationer. Therefore, the Fish Pond Report is not an official government publication in and of itself, nor is it even an interim government publication. Accordingly, we do not find the Fish Pond Report to be public information. Moreover, we find our concerns in this regard amplified by the observation that the affidavit is not made on behalf of the Philippine government, further underscoring our concerns about the public availability of this information....

Furthermore, the document has a hand written title and appears to be incomplete in some of the data fields as discussed below. There is no mention in the affidavit that the data is regularly disseminated in the Fish Pond Report format or whether the affiant is responsible for providing this data to the public. There is no explanation as to whether the affiant provides this data as a regular part of her government job, reducing the likelihood the data as released were subject to the ordinary review and analysis accompanying their inclusion in the Fisheries Situationer. Given these concerns, the Department does not find that this data is publicly available.

New to this record however, Petitioners have also provided an affidavit from a lawyer they retained in the Philippines, who stated that she obtained the Fish Pond Report directly from the Fisheries Statistics Division of the Bureau of Agriculture Statistics ("BAS").¹⁴ However, there is no discussion in the affidavit about the regular public dissemination of the report in its present form, and no explanation as to whether any working papers have actually been made public/provided to anyone in the general public in the present form. Therefore, absent sufficient new information that would address the Department's concerns, we continue to have the same serious concerns, as in the prior segment, as to the public availability of the Fish Pond Report (e.g., not an official government publication in and of itself, an affidavit not made on behalf of the Philippine government, no discussion of public dissemination, etc.).

Notwithstanding the Fish Pond Report's lack of public availability, the Department has additional concerns with the Fish Pond Report that it recently expressed in the AR5/NSR4 Final Results. Therein, the Department stated:

¹³ See id. at 8.

¹⁴ See Petitioners' December 30, 2009 Submission at Exhibit 8.

...the Department has concerns with the Fish Pond Report as it does not appear to be complete or finalized. As indicated above, the Fish Pond Report has a hand-written title and not a title in the same format as the rest of the data within the report. {Citation omitted}. Moreover, certain fields within the chart contain no numerical data. Also, certain fields contain the term, “#DIVO!” which is typical of spreadsheets that have formulas with no corresponding data or formulas. The fact that the *Pangasius* column contains fields with missing data or the “#DIVO!” notation, and that this chart only has a hand-written title, raises concern with the quality and reliability of the chart and the data contained within it.¹⁵

Given the Fish Pond Report for this proceeding is the exact same one that was on the record in the AR5/NSR4 Final Results, and absent new information, the Department still has concerns about the reliability of the Fish Pond report (e.g., handwritten titles, missing data, division errors, etc.). Moreover, subsequent to the date of Ms. Viloría’s affidavit, the Fisheries Situationer into which the Fish Pond Report was to be incorporated was placed on the record.¹⁶ We compared the *Pangasius* (Catfish) data in the Fish Pond Report to the data in the Fisheries Situationer, and found that the Fisheries Situationer contains data for at least six provinces (Bulacan, Iloilo, Pampanga, Davao City, Nueve Ecija, and Other Provinces),¹⁷ while the Fish Pond Report only lists data for three (Isabele, Nueva Vizcaya, and Pampanga). In addition, in the only instance for which the reported provinces match for the same period (Pampanga 2008), the Fish Pond Report list 4.167 MT of *Pangasius* (Catfish), while the Fisheries Situationer lists 317.50 MT of the same species.¹⁸ These differences further underscore the concerns the Department has regarding the completeness and reliability of the Fish Pond Report, as provinces appear to be missing in the Fish Pond Report and the figures in the report do not reconcile to those in the Fisheries Situationer. Therefore, we find that given the Fish Pond Report’s serious deficiencies, it is not the best available information with which to value the fish input.

In contrast, the FAO Report, while not contemporaneous with the POR, satisfies the other surrogate value selection criteria. Petitioners do not challenge the public availability or specificity to the input of the price contained within the FAO Report, or that the report comes from an approved surrogate country. Petitioners argue that the FAO Report price does not represent as broad a market average as the Fish Pond Report, as the data contained within the FAO Report is based on only one region in Bangladesh as opposed to the Fish Pond Report data that is based on three provinces. While Petitioners are correct that the FAO Report is not based on multiple provinces, we note that the data in the FAO Report is based on more fish farmers (60) than the Fish Pond Report (34). Moreover, it is not clear that other provinces in Bangladesh have any meaningful production of *Pangas* fish. However, the FAO Report does state why this particular region was selected (i.e., importance of this region in *Pangas* farming, the availability of hatchery produced fry, availability of ponds, warm climate, cheap and abundant labor). See FAO Report at 38. In addition, there is no evidence on the record that the FAO Report’s “farm gate price” is inclusive of any taxes and especially duties. Finally, even though the FAO Report

¹⁵ See AR5/NSR4 Final Results at 9.

¹⁶ See NTSF submission dated January 11, 2010, at Exhibit 3.

¹⁷ See Fisheries Situationer at 16.

¹⁸ In the Fisheries Situationer only quantities are provided, values are not provided. See id. at 7 and 16.

is not contemporaneous with the POR, given our serious concerns with the Fish Pond Report stated above, when taken as a whole, the FAO Report remains the best information available to value the fish input.

B. Surrogate Financial Ratios

With regard to the Philippine proposed surrogate companies, Alliance Tuna, RDEX Food Intl. Phils., Inc. (“RDEX”), and Bluefin Seafood Export, Inc. (“Bluefin”), we note that parties have not contested that three of the four criteria are satisfied¹⁹ (i.e., the financial reports are from an appropriate surrogate country, contemporaneous with the POR, and publicly available). However, our examination of information placed on the record by Petitioners shows that RDEX is less suitable as a surrogate financial ratios company, than the Bangladeshi surrogate shrimp/fish processors the Department used in the Preliminary Results, because it has shrimp and fish farms, fish sea cages, and a fish hatchery (i.e., it is vertically integrated).²⁰ NTSF in this case does not have ponds growing their own fish, but instead, purchases fish from fish farms. Similar to RDEX, we agree with NTSF that Alliance Tuna’s production experience is very dissimilar to that of NTSF in this review in that it mainly produces canned products. More importantly, we note that it lacks the critical capital equipment (e.g., freezing machines) to produce frozen seafood products. Therefore, we consider Alliance Tuna a less suitable surrogate company given the differences in capital structure. Therefore, the only potential suitable Philippine surrogate company is Bluefin, as it processes frozen seafood products and there is no indication that it is vertically integrated, i.e. has farms or hatcheries.

Unlike the Alliance Tuna and RDEX, the Bangladeshi companies are both processors of fish and shrimp and there is no indication that they have farms or ponds. In addition, given that there are two financial statements from Bangladeshi companies that produce similar merchandise, we find that these two averaged together, gives a better match with regard to production processes and a broader market average for surrogate valuation purposes than the single Philippine company (Bluefin).

Therefore, with respect to data considerations, we find that these two factors (whole live fish input and surrogate financial ratios) render Bangladesh the better primary surrogate country than the Philippines. As such, we will continue to use Bangladesh as the primary surrogate country for these final results.

¹⁹ See, e.g., Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 72 FR 71355 (December 17, 2007), and accompanying Issues and Decision Memorandum at Comment 1(c).

²⁰ See Petitioner’s December 30, 2009, submission at Exhibit 17.

COMMENT 2: SURROGATE VALUES

A. Whole Live Fish²¹

- Petitioners argue that the Philippine Fish Pond Report should be used because it is a broad-market average, publicly available, specific to the input in question, contemporaneous with the POR, and otherwise reliable.
- In the alternative, Petitioners maintain that if Bangladesh were selected as the primary surrogate country, then the Department should use a weighted-average price of the 2000-2001 Gachihata Aquaculture Farms Ltd. (“00-01 Gachihata”) and the 2008-2009 Fine Foods Ltd. (“Fine Foods”) annual reports, because the 00-01 Gachihata price has been used in prior reviews and the Fine Foods price shares the same positive attributes as the 00-01 Gachihata price.
- NTSF argues that the Department should continue to use the FAO Report as it meets the Department’s six surrogate value selection criteria and is a credible source.
- NTSF contends that with regard to the Fish Pond Report, no new material information has been placed on the record to support or corroborate it, and therefore, should continue to be rejected.
- NTSF states that with regard to 00-01 Gachihata, the Department recently rejected this source, and that Fine Food’s report is not legible.

Department’s Position:

To value the whole live fish input, the Department has available on the record the 00-01 Gachihata price, the Fine Foods price, and the FAO Report.

Section 773(c)(1)(B) of the Act, instructs the Department to value the FOP based upon the best available information from an appropriate ME country. When considering what constitutes the best available information, the Department considers several criteria, including whether the surrogate value is: publicly available; contemporaneous with the POR; represents a broad market average; from an approved surrogate country; tax and duty exclusive; and specific to the input.

Gachihata Price

This price source from *Gachihata* was considered in prior administrative and new shipper reviews. In the recently completed AR5/NSR4 Final Results, the Department rejected the 00-01 Gachihata price, relying on reasoning articulated in a prior segment of this proceeding on why it was not suitable for valuing the whole live fish input (*i.e.*, significant lack of contemporaneity). See AR5/NSR4 Final Results citing Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Third New Shipper Reviews, 74 FR 29473 (June 22, 2009) and accompanying Issues and Decision Memorandum at Comment 2. No party in this review

²¹ Petitioners argue that the Department should use the Fish Pond Report to value whole live fish. However, as discussed in Comment 1, the Department continues to select Bangladesh as the primary surrogate country. Therefore, only Bangladeshi sources of surrogate value data to value whole live fish are considered for these final results, as consistent with the Department’s practice to rely on surrogate values from the primary surrogate country.

presented any additional information on the record that would lead the Department to a different conclusion in this proceeding. Therefore, absent such information, we continue to find that this source is less suitable for valuing the whole live fish input than the FAO Report.

Fine Foods Price

We first note that with regard to NTSF's claim that the annual report is not legible, we believe it is sufficiently legible, with regard to the relevant information, to analyze the report. With respect to the *Fine Food* price being publicly available, contemporaneous with the POR, coming from an approved surrogate country, and being tax and duty free we note that no party is challenging these criteria and we believe it satisfies these five criteria. With regard to broad market average, we note that the price in the financial statement is representative of the experience of just one company. Therefore, we do not find that the price in *Fine Food*'s financial statement represents a broad market average. With regard to being specific to the input, although the price is for the specific subject species, it is unclear if the value in *Fine Food*'s annual report represents an input (i.e., whole live fish) price. For example, in *Fine Foods*'s annual report (notes to the accounts 1.3), the company states that its principal activities and nature of operations include: "Production of fish, fish product, fish spawn breeding, fingerling growing; production of fish meal & oil, processing fish and marketing the same products in local and foreign market; Plantations of good quality timber trees."²² Therefore it is unclear if the *Panggas* price listed in the turnover sections of the annual report refers to whole live or processed fish or for *Panggas* at some other stage or a combination thereof. Therefore, we find that this source is less suitable for valuing the whole live fish input than the FAO Report.

FAO Report

With respect to the FAO Report being publicly available, coming from an approved surrogate country, and being specific to the input, we note that no party challenged our evaluation of these criteria in the Preliminary Results, and thus, we continue to consider that the FAO Report satisfies them. With regard to the whole live fish prices in the FAO Report being tax and duty exclusive, while Petitioners contend that this criterion is unclear, they have not provided evidence that the farm-gate prices in the FAO Report contain taxes, much less duties, or any indication that taxes or duties are common with regard to farm gate prices.

With regard to broad market average, as stated above in Comment 1 above, the data in the FAO Report is based on multiple fish farmers (60) and the report details why the particular region studied was selected. Therefore, we continue to find the FAO Report represents a superior broad market average particularly as compared to the other sources available on the record.

With regard to being contemporaneous with the POR, we note that the FAO Report is not contemporaneous and, thus, does not satisfy this surrogate value criterion as well as other fully contemporaneous sources.

While the FAO Report is not contemporaneous with the POR, when considered in light of the other surrogate value criteria, we find that it is the best available information on the record. It is specific to the input, is publicly available, is from the primary surrogate country (Bangladesh), represents a broad market average and is the most reliable source on the record. Furthermore,

²² See Petitioners' February 23, 2010, submission at Exhibit 3.

the exact farm gate price of *Pangasius* fish is directly stated in the FAO Report²³ and, as noted above, there is no indication that it includes taxes or duties. For these reasons, we will continue to use the FAO Report to value the fish input in the margin calculation for these final results.

B. Surrogate Financial Ratios

- Petitioners argue that regardless of the primary surrogate country selected, the Philippine financial statements from fish processors Alliance Tuna, Bluefin and RDEX Food Intl. Phils., Inc. (“RDEX”) should be used, because they satisfy the selection criteria and are more specific to the input in question.
- Petitioners state that in the alternative, average the Philippine financial statements with the more contemporaneous 2008-2009 Bangladeshi financial statements, as this would provide a broader market average.
- NTSF argues that mixing financial data from companies in different countries with completely different financial issues would be “mixing apples and oranges.”
- NTSF notes that one of the Philippine surrogate companies is a processor of canned tuna, and thus does not process frozen sea foods as does NTSF.

Department’s Position:

Petitioners argue that the Department should use the Philippines surrogate companies regardless of which primary country is selected. However, as discussed in Comment 1 above, the Department continues to select Bangladesh as the primary surrogate country. Moreover, it is not the Department’s practice to use sources outside the primary surrogate country unless the record lacks a particular value from the primary surrogate country or the value on the record from the primary surrogate country is not suitable or viable:

We find that we have no reason to look to Indonesia for surrogate financial statements unless reliable financial statements from India are not available. The Department selected India as the surrogate country for the Preliminary Determination and has continued to use India for the final determination. See Surrogate Country Selection Memo. As demonstrated by the fact that we have used nine Indian surrogate companies to calculate the financial ratios, we had no reason to look outside the surrogate country because the record contained a wealth of Indian financial statements that we received from the respondents and the Petitioners. Therefore, we have not used the financial statements of Goldfindo, CIPTA, and SIMA.²⁴

In the instant review, as in Furniture from China, the Department has suitable and viable surrogate companies from the primary surrogate company, Bangladesh. Therefore, we find it

²³ See FAO Report at 48 and 53.

²⁴ See Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China, 69 FR 67313 (November 17, 2004) and Accompanying Issues & Decision Memorandum at Comment 3 (“Furniture from China”).

unnecessary to look outside Bangladesh for surrogate companies. Therefore, we will not use the financial statements of Alliance Tuna, RDEX, or Bluefin.²⁵

2008-2009 Fine Foods

The Department notes that no party is arguing for using Fine Food's financial statements for surrogate financial ratio purposes in the final results. However, as it is a seafood processor, we will consider it as a potential source of financial ratio information for the final results. With regard to the surrogate company selection criteria, we find Fine Food's financial statements are publicly available, contemporaneous with the POR, from an approved surrogate country, and producers of similar merchandise. In addition, as explained in Comment 1 above, it is fully integrated, from fish spawn breeding to processing, while NTSF is not fully integrated and instead purchases the whole live fish input, so Fine Foods is a less suitable match for NTSF than other companies' financial statements from the primary surrogate country contained on the record. Therefore, we find Fine Foods' financial statements are not the most appropriate, in this instance, for surrogate ratio purposes.

2007-2008 Apex Foods Ltd.

2008-2009 Apex Foods Ltd.

With respect to Apex's financial statements being publicly available and from an approved surrogate country, we note that no party challenged our preliminary conclusions regarding these criteria, which we continue to find are satisfied. With regard to producing similar merchandise, we note that the company processes fish and shrimp, and therefore find it produces similar merchandise. With regard to being contemporaneous with the POR, we find that only the 2008-2009 report is contemporaneous as it fully overlaps the POR. Thus, we will use Apex's 2008-2009 financial statement, instead of Apex's 2007-2008 financial statement, for the final results as it meets all of the surrogate company selection criteria.

2007-2008 Gemini Seafood Ltd.

2008-2009 Gemini Seafood Ltd.

With respect to Gemini's financial statements being publicly available and from an approved surrogate country, we note that no party challenged our preliminary conclusions regarding these criteria, which we continue to find are satisfied. With regard to producing similar merchandise, we note that the company processes fish and shrimp, and therefore find it produces similar merchandise. With regard to being contemporaneous with the POR, we note that both annual reports overlap the POR (2007-2008 (two months) and 2008-2009 (four months)). However, when faced with multiple financial statements from a single company that overlap the POR, it is the Department's practice to use only the one set of financial statements that overlaps the most months of the appropriate POR.²⁶ Therefore, we will use Gemini's 2008-2009 financial statement, instead of Gemini's 2007-2008 financial statement, for the final results as it meets all of the surrogate company selection criteria and overlaps most of the POR.

²⁵ The Department notes that it has already found the financial statements of *Alliance Tuna* and *RDEX* not suitable in Comment 1.

²⁶ See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review, 72 FR 52052 (September 12, 2007) and Accompanying Issues & Decision Memorandum at Comment 2A.

COMMENT 3: OTHER LABOR

- NTSF argues that the labor for cleaning, security, laundry and canteen personnel should not be included as indirect labor, and that it properly did not report this labor as it is part of overhead.
- NTSF maintains that partial AFA is unwarranted as the Department and parties knew that it listed this labor under “Other Labor” in a questionnaire response six months before verification.
- Petitioners argue that the Department has found these labor categories to be indirect labor in previous cases.
- Petitioners argue that like in another case, the Department properly assigned partial AFA to NTSF as NTSF failed to report these labor categories in its indirect labor.

Department’s Position:

First, we reviewed the record and now agree with NTSF that it timely notified the Department that these labor categories were not being reported as indirect labor because NTSF considered them factory overhead expenses. Therefore, it is inappropriate to apply an adverse inference in this case. More importantly, however, we find that there is insufficient evidence to classify these workers as reportable labor given the limited descriptions on the record on this issue. Therefore, for the final results we are treating these labor categories as overhead items that would typically be covered by the surrogate financial ratios.

COMMENT 4: FACTORS OF PRODUCTION DENOMINATOR

- Petitioners argue that the Department should adjust NTSF’s FOP denominator downward because the product the company sold to the United States (and the denominator in the U.S. sales database) did not include phosphates, which adds weight to finished goods.
- Petitioners state that in contrast, the denominator for the FOPs is inclusive of phosphates, thereby understating the FOP usage rate.
- Petitioners argue that the Department should use, as facts available for the phosphate usage, the difference between the usage rates of whole fish input and the sum of the by-products.
- NTSF argues that the Department fully verified its FOPs and that according to NTSF, the Department did not express any concern on this topic.
- NTSF maintains that Petitioners do not provide sufficient detail on how they calculated their proposed facts available solution.

Department’s Position:

We agree with Petitioners. NTSF’s reported its FOP denominator inclusive of weight gain additives, while the denominator of its U.S. sales database is subject merchandise weight without additives. Therefore, in order to properly compare normal value to U.S. price we will adjust the denominator of the FOPs downward to be exclusive of additives. See Analysis of the Final

Results of the Antidumping Duty New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam (“Vietnam”): NTSF Seafoods Joint Stock Company (“NTSF”), dated June 24, 2010. The Department calculated this adjustment by applying the fish output to fish input ratio (from information gathered at verification)²⁷ to NTSF’s FOPs. See id.

RECOMMENDATION:

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

AGREE_____

DISAGREE_____

Paul Piquado
Acting Deputy Assistant Secretary
for Import Administration

Date

²⁷ See Verification of the Sales and Factors of Production Responses of NTSF Seafoods Joint Stock Company, in the Antidumping Duty New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, dated January 19, 2010.