

June 10, 2011

MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam
("Vietnam"): Issues and Decision Memorandum for the Final
Results of the Seventh Antidumping Duty New Shipper Reviews

SUMMARY

We have analyzed the case and rebuttal briefs received from Petitioners¹ and Respondents² for the seventh antidumping duty new shipper reviews ("NSR") of the antidumping duty order on certain frozen fish fillets ("fish fillets") from Vietnam. As a result of our analysis, we have made changes to the Preliminary Results.³ The period of review ("POR") is August 1, 2009, through February 15, 2010.

The Department of Commerce ("Department") conducted a farming factors of production ("FOP") verification of THIMACO from November 2, 2010, through November 5, 2010. Following the verification of THIMACO, the publication in the Federal Register of the Preliminary Results, and an analysis of the comments received, we made changes to the margin calculations. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues for which we received comments from interested parties.

¹ Catfish Farmers of America and the following individual U.S. catfish processors: America's Catch, Consolidated Catfish Companies, LLC dba Country Select Catfish, Delta Pride Catfish, Inc., Harvest Select Catfish, Inc., Heartland Catfish Company, Pride of the Pond, and Simmons Farm Raised Catfish, Inc. (collectively, "Petitioners").

² Thien Ma Seafood Company, Ltd. ("THIMACO") and International Development & Investment Corporation ("IDI"), collectively ("Respondents").

³ See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Notice of Preliminary of the Antidumping Duty New Shipper Reviews, 76 FR 4292 (January 25, 2011) ("Preliminary Results").

General Issues

- COMMENT I: SELECTION OF SURROGATE COUNTRY**
- A. Economic Comparability
 - B. Significant Producer of the Comparable Merchandise
 - C. Data Considerations
- COMMENT II: SURROGATE VALUES**
- A. **Financial Ratios**
 - i. **Whether to Reject Gemini's⁴ Financial Ratios due to the Subsidies Listed in the Financial Statement**
 - ii. **Which Financial Statements Represent the Best Source for Calculating Financial Ratios**
 - B. **Byproducts**
 - i. **Fish Waste**
 - ii. **Fish Skin**

Company-Specific Issues

- COMMENT III: ADJUSTMENTS TO THIMACO'S MARGIN CALCULATION**
- A. **Adjust "International Freight" from a Per Pound to Per Kilogram Basis**
 - B. **Adjust Calculation of "Insurance" to be Percentage Applied to Gross Unit Price**
 - C. **Application of Partial Adverse Facts Available ("AFA") to THIMACO's Reported Factors Based on Findings at Verification**
- COMMENT IV: ADJUSTMENTS TO IDI'S MARGIN CALCULATION**
- A. **Adjust "Other Discounts" and "International Freight" from Pound to Kilogram Basis**
 - B. **Adjust Calculation of Brokerage and Handling Expense**
 - C. **Adjust Calculation of IDI's Carton Boxes**

⁴ Gemini Sea Food Ltd. ("Gemini").

DISCUSSION OF THE ISSUES:

General Issues

COMMENT I: SELECTION OF SURROGATE COUNTRY

A. Economic Comparability

Petitioners' Arguments

- The Department found the Philippines economically comparable to Vietnam in the last three segments and in the Preliminary Results, as it properly found all countries on the Surrogate Country List⁵ to be equally economically comparable. The difference in GNI does not merit a reversal of that conclusion.
- There is no precedent for considering World Bank classifications in antidumping duty (“AD”) cases, and, if the Department chooses to consider doing so, the Department needs to reevaluate Bangladesh’s economic comparability under World Bank classifications.

Respondents' Arguments

- The large difference in gross national income (“GNI”) between the Philippines and Vietnam (+212 percent) does not support a conclusion that the Philippines is economically comparable to Vietnam.
- Differences in GNI alone cannot by themselves establish relative development levels.
- The Department’s analysis of World Bank data conflicts with the World Bank’s analysis, based on lending categories.

Department’s Position:

Because Vietnam is being treated as a non-market economy (“NME”), when calculating normal value (“NV”), section 773(c)(4) of the Tariff Act of 1930, as amended (“Act”) requires, to the extent possible, that the Department value the FOPs in a surrogate country that is: (A) at a level of economic development comparable to Vietnam and (B) a significant producer of comparable merchandise. Using 2007 GNI data, the Department provided parties with a list of potential surrogate countries found to be economically comparable to Vietnam which included Bangladesh, Pakistan, India, Sri Lanka, the Philippines, and Indonesia.

Respondents argue that given the large difference in GNI between the Philippines and Vietnam, the Philippines is not economically comparable to Vietnam. Section 773(c)(4)(A) of the Act is silent with respect to how the Department may determine that a country is economically comparable to the NME country. As such, the Department’s long standing practice has been to identify those countries which are at a level of economic development similar to Vietnam in terms of GNI data available in the World Development Report provided by the World Bank.⁶ In

⁵ See Memorandum from Carole Showers, Director, Office of Policy, to Alex Villanueva, Program Manager, China/NME Group, Office 9: Request for a List of Surrogate Countries for New Shipper Reviews of the Antidumping Duty Order on Certain Frozen Fish Fillets (“Fish Fillets”) from the Socialist Republic of Vietnam (“Vietnam”) (June 4, 2010) (“Surrogate Country List”).

⁶ See Pure Magnesium from the People’s Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review of the Antidumping Duty Order, 75 FR 80791 (December 23, 2010) and accompanying Issues and Decision Memorandum at Comment 4.

this case, the GNI available are based on data published in 2010. The GNI levels for the list of potential surrogate countries ranged from \$520 to \$2,010.⁷ The Department is satisfied that they are equally comparable in terms of economic development and serve as an adequate group to consider when gathering surrogate value (“SV”) data. Further, providing parties with a range of countries with varying GNIs is reasonable given that any alternative would require a complicated analysis of factors affecting the relative GNI differences between Vietnam and other countries which is not required by the statute. In contrast, by identifying countries that are economically comparable to Vietnam based on GNI, the Department provides parties with a predictable practice which is also reasonable and consistent with the statutory requirements. Identifying potential surrogate countries based on GNI data has been affirmed by the Court of International Trade (“CIT”).⁸

With respect to Respondents’ argument that the Department’s analysis of World Bank data conflicts with the World Bank’s analysis, based on lending categories, we disagree that lending categories is an appropriate factor to consider within the context of surrogate country selection. The Department has considered World Bank classifications in countervailing duty cases, but for the purposes of establishing an appropriate benchmark for interest rates,⁹ not for selecting surrogate countries based on economic comparability.

Finally, the list of potential surrogate countries identified as economically comparable to Vietnam, “are also most likely to have good data availability and quality” for purposes of valuing the FOPs. *Id.* Selecting a surrogate country is not limited to those identified in the Surrogate Country List as we may consider “other countries on the case record if the record provides {us} adequate information to evaluate them.”¹⁰

Given the above, the Department will continue to consider both the Philippines and Bangladesh equally economically comparable to Vietnam for these final results.

B. Significant Producer of the Comparable Merchandise

Petitioners’ Arguments

- The Department found the Philippines to be a significant producer of comparable merchandise, defining comparable merchandise as frozen fish fillets in the last three segments and the Preliminary Results, and should continue to do so.
- How the Department chooses to define comparable merchandise and what constitutes significant production is determined on a case-by-case basis.
- The Department should not use *Pangasius* production to make the determination of significant producer of comparable merchandise. Furthermore, Respondents’ argument that under this designation, the Philippines would be excluded, as it is a net importer, is faulty, as the record does not include Bangladeshi import volumes.
- There is no requirement in the Policy Bulletin that the Department has to select the largest producer when selecting a surrogate country.

⁷ See Surrogate Country List.

⁸ See Fujian Lianfu Forestry Co., Ltd. v. United States, 638 F. Supp. 2d 1325 (Ct. Int’l Trade 2009).

⁹ See Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 72 FR 60645 (October 25, 2007) and accompanying Issues and Decision Memorandum at Comment 10.

¹⁰ See Surrogate Country List.

Respondents' Arguments

- To determine significant production the Department follows these steps: 1.) examining the potential surrogate countries' production of identical merchandise; 2) if no country produces identical merchandise, the Department identifies production of "comparable merchandise;" 3) after identifying identical or comparable merchandise, search for significant production. Using this methodology, the Department should look for significant production of *Pangasius* not the broader category of frozen fish fillets.
- While the Philippines does produce identical merchandise, it is a net importer of *Pangasius* fillets. As such, the Department should find that the Philippines is not a significant producer of identical merchandise. Similarly, the Philippines is not a significant producer of comparable merchandise, *Pangasius* fish.
- *Pangasius* production in the Philippines is in its infancy and is a small industry. Therefore, costs are still high, production/sales are limited and underdeveloped, and the government provides extensive support to the industry—distorting what little market there is.

Department's Position:

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department's regulations provide further guidance on what may be considered comparable merchandise. As such, Petitioners argue that the Department ought to consider the broad category of frozen fish fillets as the comparable merchandise, while Respondents argue that the Department should select identical merchandise of *Pangasius* fillets or whole *Pangasius* fish, the main input to producing subject merchandise, as comparable merchandise for purposes of selecting a surrogate country. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as the Policy Bulletin for guidance on defining comparable merchandise.

The Policy Bulletin states that "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."¹¹ In the Preliminary Results we explained the following:

As we stated in prior administrative review determinations, there is no world production data of *Pangasius* frozen fish fillets available on the record with which the Department can identify producers of identical merchandise. 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 significant producer.¹²

After the Preliminary Results, Respondents placed on the record several invoices from Bangladeshi companies that offer for sale "semi-IQF Pangas fillets."¹³ However, this limited number of invoices is not sufficient to establish the entire country of Bangladesh is a significant producer of identical merchandise, *i.e.*, *Pangas* frozen fish fillets. The Policy Bulletin provides

¹¹ See Policy Bulletin, at 2.

¹² See Preliminary Results.

¹³ See Respondents' April 12, 2011, submission at Exhibit 47.

additional guidance:

“In cases where the identical merchandise is not produced, the team must determine if other merchandise that is comparable is produced. How the team does this depends on the subject merchandise.” See Policy Bulletin, at 2. In this regard, the Department recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

In other cases, however, where there are major inputs, i.e., inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, e.g., processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.¹⁴

Also stated in the Policy Bulletin is the following:

The extent to which a country is a significant producer should not be judged against the NME country’s production level or the comparative production of the five or six countries on {the Office of Policy’s} surrogate country list. Instead, a judgment should be made consistent with the characteristics of world production of, and trade in, comparable merchandise (subject to the availability of data on these characteristics). Since these characteristics are specific to the merchandise in question, the standard for “significant producer” will vary from case to case. For example, if there are just three producers of comparable merchandise in the world, then arguably any commercially meaningful production is significant. Id.

In this case, we find that frozen fish fillets are a more suitable product to consider as comparable merchandise. Although frozen fish fillets are a broader category than *Pangasius* frozen fish fillets, it is nonetheless comparable and superior to consideration of the main input as comparable merchandise because it will allow for the selection of surrogate financial ratios from producers of similar products with similar capital structures.

Based on the 2007 U.N. Comtrade export data on the record, both the Philippines and Bangladesh are significant producers of frozen fish fillets as the data show the Philippines exported 1,965,192 kilograms and Bangladesh exported 801,648 kilograms of frozen fish fillets in 2007.¹⁵ For the reasons outlined above, we find it appropriate to consider frozen fish fillets as the category of comparable merchandise and thus find both the Philippines and Bangladesh to be significant producers of comparable merchandise.

¹⁴ See Policy Bulletin, at 3.

¹⁵ See Memorandum from Alan Ray, Case Analyst through Alex Villanueva, Program Manager, to the File Regarding Surrogate Values for the Preliminary Results, dated January 14, 2011, Attachment 7.

C. Data Considerations

FINANCIAL RATIOS AND OTHER INPUTS

Petitioners' Arguments

- The surrogate financial ratios companies on the record for Bangladesh are for less comparable shrimp processors, whereas the Philippine company on the record processes fish and is therefore more comparable.
- The SVs from the Philippines for financial ratios and other inputs are more contemporaneous than the data from Bangladesh.

Respondents' Arguments

- The Philippine fish processor (Bluefin's) financial statements do not meet the quality requirements necessary to calculate accurate financial ratios. Specifically, cost of sales details are limited to raw materials, direct labor, and factory overhead—which may include energy costs.

Department's Position:

First, we note that Petitioners' argument that there are no contemporaneous financial statements from which to calculate financial ratios is incorrect. Gemini's financial statement are contemporaneous with the POR, while Apex's financial statement represents a fiscal year ending only two months prior to the POR. We note that the CIT has ruled that "contemporaneity is not a compelling factor where the alternative data is {sic} only a year-and-a-half distant from the POI."¹⁶ Therefore, both sources provide useable financial statements from which to derive calculations for financial ratios. While these companies are not primarily fish processors, we note that the capital structure and facilities are similar to those of a processor of subject merchandise. We note that the Philippine data for the minor inputs (*i.e.*, besides whole fish) are more contemporaneous. However, there is only one surrogate financial company from the Philippines that matches the respondents' level of integration, and it may not be useable for other reasons (its overhead may be distorted by energy costs). For Bangladesh, there are two useable financial statements. Therefore, the Department determines that overall, these considerations do not indicate that one surrogate country is superior to the other, specifically within the context of data considerations of the financial ratios and other inputs.

WHOLE FISH INPUT

Philippines

Petitioners' Arguments

- The record now contains published contemporary volume and value data for *Pangasius* fish from the FS 07-09,¹⁷ an official government publication. It is the best information on the record and the Department should use it in the final results.
- *Pangasius* data in the FS 07-09 are specific to input, as an affidavit and a UN FAO database search and the BAS survey form show *Pangasius Hypophthalmus* is the only species introduced to Philippines and that the BAS specifically requested data for

¹⁶ See Hebei Metals & Minerals Import & Export Corporation and Hebei Wuxin Metals & Minerals Trading Co., Ltd. v. United States, 366 F. Supp. 2d 1264, 1275 (CIT 2005).

¹⁷ Fisheries Statistics of the Philippines 2007-2009 ("FS 07-09"), an official publication of the Philippine Bureau of Agricultural Statistics ("BAS").

Pangasius.

- FS 07-09 satisfies each factor the Department considers in selecting SVs: 1) is publicly available; 2) is contemporaneous with the POR; 3) represents a broad-market average; 4) is from an approved surrogate country; 5) is specific to the input; and 6) is tax-exclusive.
- The certified Fish Pond Report¹⁸ was incorporated into FS 07-09, so it is reliable.
- The data in the FS 07-09 were collected using a statistically valid method.
- The price in FS 07-09 is for a volume of 47 MTs which is more than the six MT used in the third administrative review. Furthermore, so long as the Department finds the Philippines to be a significant producer of comparable merchandise, the relative size does not matter.
- Prices in the FS 07-09 are market prices irrespective of how high or variable they are.
- There is no evidence of countervailable subsidization in the Philippines.
- The Department has in past cases stated that official government publications are reliable for SV purposes.
- Contrary to Respondents' arguments, the Philippine government does not subsidize the *Pangasius* industry nor has the Department found a countervailable subsidy program from which the Philippine *Pangasius* industry benefited. Furthermore, there is no evidence that any of the survey participants whose data were included in FS 07-09 received subsidies or that the prices had somehow been distorted by subsidies.
- The Department must reject Respondents' arguments that the Department should not rely on Philippine prices to value whole fish because the prices are higher than pond-bank prices of whole catfish in the United States.
- With respect to Respondents' argument that the 38 articles placed on the record regarding the prices of *Pangasius* in the Philippines do not "contradict" or "massively undercut" the price in FS 07-09.
- No evidence that the *Pangasius* price in FS 07-09 includes "cut or cleaned" fish prices.
- The Philippine *Pangasius* industry does not have an aberrational cost structure.
- Respondents fail to cite to any case where the Department rejected a potential surrogate country, or any SVs derived from that country, because the industry is newer or less developed than the industry in the subject country.
- There is no evidence that any price fixing contracts were ever executed in the Philippines for *Pangasius*.
- Respondents have failed to tie any of techno-demo¹⁹ farms to any data in the FS 07-09.

Respondents' Arguments

- Philippine government farms, hatcheries, contract schemes and other official projects span the country and provide for the basis of the incipient industry. These government actions influence the industry to such an extent that the resulting costs and prices are not derived from the free market.
- Extensive record evidence demonstrates that the *Pangasius* industry in the Philippines benefits from extensive support from the government.
- The *Pangasius* price in FS 07-09 is not reliable because the production volume is low.

¹⁸ The Fish Pond Report from the BAS is a schedule showing quantities and values of different aquaculture products in different regions. This report forms part of the working papers containing the statistical data used to prepare the FS 07-09.

¹⁹ Startup farms run in partnership with private industry (e.g., processors) along with government assistance in technical areas and for the purchase of inputs.

- The Philippines *Pangasius* industry is so small that the country imports 400-600 MT of *Pangasius* from Vietnam every month. The Philippines industry cannot achieve economies of scale, because it is so small.
- Official letters from two high level Philippine government officials state that the Philippine *Pangasius* industry is an infant industry, with extensive government support, thus, leading to non-market prices.
- Costs of producing *Pangasius* in the Philippines is high due to insufficient supply of fry, high feed costs, initial start up-costs, etc., thus, leading to higher selling prices.
- *Pangasius* industry in Philippines is subsidized (i.e., techno-demo farms) in the two regions where FS 07-09 obtained most of its data, thus prices are non-market.
- These techno-demo farms have a buy-back scheme with partner processors for the buy-back of whole fish at fixed non-market prices.
- Only two out of five regions²⁰ in the FS 07-09 account for 98% of the data in the report; the data are inferior to the country-wide data from Bangladesh.
- The data in the FS 07-09 are from a sample and not a broad-market country-wide price.
- The price in the FS 07-09 may include “cut or cleaned fish” prices and not only farm-gate prices.
- FS 07-09 prices are contradicted and massively undercut by official data and other public information. No other record data supports a 112 Philippine Pesos or 83 Philippine Pesos price, such as FS 07-09 lists.
- The survey used to gather data in the FS 07-09 do not include *Pangasius* as one of the listed species, thus the data gathering is not structured to analyze *Pangasius*.
- The Philippines prices in the FS 07-09 are highly variable and higher than in the United States.
- The Department valued whole live fish in the recently completed sixth administrative review,²¹ the Department determined that the FS 07-09 did not represent the best data to value whole fish. There is no new record evidence that should lead the Department to depart from its determination that FS 07-09 continues to not represent the best data in this segment.
- New articles placed on the record shed further evidence that the *Pangasius* industry in the Philippines is nascent and provides unreliable data for the purposes of valuing fish.

Bangladesh

Respondents’ Arguments

- The Department used Bangladeshi Department of Agricultural Marketing (“DAM”) data²² to value whole live fish in the recently completed sixth administrative review, and the record evidence in this segment is the same. As such, the Department should continue to value whole live fish using DAM data.
- The record contains numerous sources of Bangladeshi price data. The DAM data represent the best information on the record to value whole live fish.

²⁰ 12 regions reported no volume and value data for *Pangasius*.

²¹ See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam (“Vietnam”): Issues and Decision Memorandum for the Final Results of the Sixth Antidumping Duty Administrative Review and New Shipper Review, 76 FR 15941, (March 22, 2011) and accompanying Issues and Decision Memorandum (“6th ARNSR Final Results”).

²² The Bangladeshi Ministry of Agriculture 2008-2009 DAM data is compiled by the Department of Agricultural Marketing, a nodal agency responsible for collecting and disseminating the wholesale market price of various agricultural commodities, livestock and fisheries, including *Pangas*.

- The new DAM government statistics and the FAO Report²³ (which the Department used in prior proceedings) are both reliable sources for deriving a price for whole *Pangasius*.
- Concerns about contemporaneity should not be a basis for rejecting the FAO Report.
- Credible studies on the record support both the FAO Report's price and the DAM's price.

Petitioners' Arguments

- The Department has had trouble finding a reliable Bangladeshi source to value whole live fish throughout this proceeding.
- The DAM data are not reliable and may not be publicly available.
- The DAM information: 1) is not an official government publication as it is not published; 2) is for “*Pangas – Small*” and not *Pangasius*; 3) contains “#DIV0” errors in the worksheets; 4) is for wholesale prices and not farm-gate price; and 5) does not list any volumes.
- Excerpts from the DAM website: 1) provide no quantities; 2) refers only to “Pangash (small);” 3) lists only two observations; 4) come from two districts; 5) do not reflect prevailing farm-gate prices of whole pangas fish in Bangladesh in 2008, 2009, or 2010.
- The FAO Report fish price is not contemporaneous because it reflects 2005-2006 data versus the 2008-2009 fish price in the FS 07-09.
- The single region fish price in the FAO Report is not as broad a market average or a national level price as compared to the five regions in FS 07-09.
- The FAO Report is not a national level price as it was a survey of farms in one district.
- The FAO Report is an estimate of prices (collected by surveyors).
- All other Bangladeshi sources (conference papers, academic reports, *etc.*) are not reliable sources for reasons similar to those listed above for Bangladesh government statistics.

Department's Position:

Above, we have concluded for the final results that both the Philippines and Bangladesh are economically comparable and significant producers of comparable merchandise. We then examined the available data to determine whether the record, with respect to the Philippines or Bangladesh, contained the best available information for surrogate valuation purposes regarding the primary input to the subject merchandise, whole live fish.

Since the Preliminary Results, both Petitioners and Respondents placed significant additional data on the record with respect to these two countries. We now have an updated publication of the FS 07-09 which contains *Pangasius* prices for 2008 and 2009 and we also have weekly *Pangas* price data compiled in DAM data. With respect to Bangladesh, the DAM data are contemporaneous with the POR. As such, we find the DAM data to be superior to the FAO Report with respect to contemporaneity and, therefore, focus our analysis on the DAM 08-09 data for Bangladesh. Similarly, the record now contains the 2008 and 2009 pricing data for *Pangasius* in the FS 07-09; therefore, we will no longer consider the Fish Pond Report data in the Fisheries Statistics of the Philippines 2006 to 2008 data, as more recent information is available.

²³ See FAO Fisheries Technical Paper 505 – Economics of Aquaculture Feeding Practices in Selected Asian Countries (“FAO Report”).

Bangladesh DAM data vs. Philippines FS 07-09

In evaluating the two remaining sources of information, the DAM data and FS 07-09, we note that we are, as in the immediately preceding administrative review, in the unusual situation of having on the record two sources of information issued by two governments, both representing official statements of those governments as to the price of whole live fish relevant to our analysis. While we typically do not scrutinize official government statistics in such detail, the necessity to both respond to the comments raised by Petitioners and Respondents and to select one of the sources compels us to do so in this case.

We consider first the DAM data and Petitioners' objections raised to it. Petitioners argue that similar to the Department's rationale for rejecting the Fish Pond Report in the Fish AR5/NSR4 Final Results,²⁴ the DAM data should also be rejected because it is not an official, published government source. According to Petitioners, because it is not published, the DAM data cannot be considered a publicly available source. We disagree with Petitioners that the attributes of the DAM data are so similar to those of the Fish Pond Report that they would warrant rejecting it as a viable source to value the whole fish.

With respect to the Fish Pond Report in the Fish AR5/NSR4 Final Results, we agree we acknowledged that the report was not published. Our concerns with respect to publication, however, were rooted in the fact that Petitioners claimed the data *were* to be published. In the Fish AR5/NSR4 Final Results, we referred to the Fish Pond Report as "source data to be used in a yet-to-be determined manner for official publication in the Fisheries Situationer."²⁵ As such, the Department had legitimate concerns that the data may not have been finalized or was in draft form prior to publication. Moreover, in the Fish AR5/NSR4 Final Results, we emphasized that the Fish Report data were not accompanied by any official statements from the Government of the Philippines, but rather solely a personal affidavit by the statistician in charge of compiling the data. We emphasized that there was no mention in the affidavit as to whether the affiant was responsible for providing the data to the public, and we further noted our concerns with the partially hand-written title of the worksheet. In sum, we found that "the data may still not be finalized and therefore, not the best available information with which to value the fish input." Id.

In contrast, the DAM data are accompanied by a letter from Fahmida Akhter, the Deputy Director of Market Intelligence and Statistics of the Bangladesh Department of Agricultural Marketing, the agency in the Ministry of Agriculture in charge of "collecting and disseminating the wholesale market price of various agricultural commodities, livestock, and fisheries, including *Pangas*." See Respondents' April 12, 2011, SV Submission, at Exhibit 1. We find that this is a significant difference when compared to the lack of official government documentation accompanying the Fish Pond Report in the Fish AR5/NSR4 Final Results. Moreover, in that letter, the DAM official explains that "this data can be provided to any member of the public upon request, free of cost." Id. In addition, with respect to the completeness of the data, the DAM official states that the price data contained within are "country-wide data" representing "all months of years 2008 and 2009, covering all districts of Bangladesh." Id. Unlike the Fish Pond Report in the fifth review referenced by Petitioners, the DAM data do not

²⁴ 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 12726 (March 17, 2010) ("Fish AR5/NSR 4 Final Results").

²⁵ See Fish AR5/NSR4 Final Results, and accompanying Issues and Decision Memorandum at Comment 1.

appear to be incomplete or not finalized. Here, we have a Bangladeshi Government official certifying as to the nature and breadth of the DAM data, the completeness of the data, and the availability of the data to the public upon request. Moreover, we note that the Department has been consistent in applying the same criteria in evaluating the merits of the DAM data and the Fish Pond report. In conclusion, for purposes of these reviews we find that the DAM data constitute publicly available information.

We next consider Petitioners' argument that the DAM data are not specific to the species covered by the order and therefore not useable. They note that the DAM data in relevant part identify "*Pangas*" as the relevant species, not *Pangasius*. In prior reviews, the Department used whole fish SV data, proposed by Petitioners, that were identified as *Pangas* and found it to be comparable to the fish input used by Respondents.²⁶ In fact, from the original antidumping duty investigation through the third administrative review, the Department relied on the same source for purposes of valuing whole live fish: financial statements from Gachihata Aquaculture Farms, Ltd. In those segments, even though the Department expressly stated that there were prices on the record for varying species included in the *Pangasius* genus, we noted that there was no information on the record that would lead us to conclude that any difference between species names would necessarily generate a price difference. *Id.* Finally, and most importantly, the Department notes that the FAO Report makes clear that in Bangladesh "*Pangas*" refers to a species subject to the order.²⁷ We did not receive any information on the record that would lead us to a different conclusion for these final results.

Next, Petitioners argue that the DAM data contain the term, "#DIV0!" for some of the weekly prices of certain districts, and that the observation of the same term led the Department previously to reject the Fish Pond Report. While Petitioners' observation is correct in that we cited to this factor, among many, in rejecting the Fish Pond Report, there is a clear distinction in this case, as the term appears in the DAM data when there are no data for any given district of any given week for that month. In other words, if there were no *Pangas* pricing data available from the Jhineda district for any of the weeks in a month, the monthly average column will show the term "#DIV0!" In fact, in every instance where the term "#DIV0!" appears, there is no weekly price data for that district, thereby causing the monthly average column to generate the formulaic term "#DIV0!" Therefore, it is reasonable to conclude that this term is generated simply as a function of the mathematical formula trying to perform a calculation on cells with no data in them. As such, we do not find the appearance of this term of any significance such that it would question the DAM data's quality or reliability as Petitioners have argued. Furthermore, as stated above, the DAM data are country-wide data that accurately reflect the prevalent wholesale prices of pangas (small) during the years of 2008 and 2009. The DAM data themselves have been officially stamped, and next to the stamp appears the signature of Fahmida Akhter, the Deputy Director (Market Intelligence and Statistics). In contrast, the basis for rejecting the Fish Pond Report in the Fish AR5/NSR4 Final Results was the fact that the "#DIV0!" term appeared on charts with a hand-written title, without any official stamp or other official marking, and that the data were not yet finalized to the extent that they had yet to be presented in a normal

²⁶ See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission, 73 FR 15479 (March 24, 2008) ("Third Fish Fillets Final") and accompanying Issues and Decision Memorandum, at Comment 4.

²⁷ See FAO Report at page 33, where *Pangasianodon hypophthalmus*, one of the specific species listed in the scope of the order, is described as being "locally known as *Pangas*."

publication. The underlying concern was that the data may still not be finalized and therefore, not the best information with which to value the fish input.

Petitioners also argue that the DAM data are not the best available information with which to value the whole fish input because those prices are wholesale prices, rather than farm-gate level prices, and thus may include delivery costs, taxes and duties, and/or mark ups for wholesaler's profit. In Mr. Akhter's letter, he states that the DAM data are "wholesale prices data for *Pangas*."²⁸ Although it is unclear whether the DAM data wholesale prices necessarily include other costs as argued by Petitioners, the prices in FS 07-09 proposed by Petitioners do not contain *only* farm-gate prices. In a sworn statement from Ms. Virginia A. Vilorio, the Philippine Government statistician who provided the original Fish Pond Report and also addresses the prices in the FS 07-09 indicates that the prices "quoted by the aqua farm farmers/operators (or other Respondents, as the case may be)" are "farm-gate or first-point-of-sale" prices.²⁹ However, there is no record evidence to further clarify or corroborate Petitioners' statement at the hearing. Moreover, a plain reading of the statement in Ms. Vilorio's affidavit suggests that the prices in the FS 07-09 include prices other than strictly farm-gate, *i.e.*, prices for different channels of distribution. Given the above, the issue of whether the DAM data or the FS 07-09 data represent solely farm-gate prices sheds little, if any, light in our analysis because both sources can be considered equally to contain information which suggests the prices are not solely farm-gate prices.³⁰

Finally, Petitioners argue that the DAM data are not better than the prices in the FS 07-09 because they do not contain the quantities sold and, therefore, the Department cannot determine whether the prices are based on commercial sales of whole *Pangas*, or whether they are based on estimates or isolated spot prices. Although the data provided by Mr. Akhter do not list the volumes represented by the price, he stated that "all the price information therein are in Bangladeshi Taka on a per Quintal basis, *i.e.*, per 100 kg."³¹ Further, Mr. Akhter explained that the price data were

collected using a scientific method by the District Marketing Officers (DMO) posted in all districts. The DMOs collect the raw price data from each upazila (sub-districts) in the district using a structured questionnaire, by interacting with a network of all leading aqua farmers and wholesale traders as well as through direct market enquiry by visiting mandi (marketplace). These data are being collected each week and being forwarded to DAM and the monthly average price is based on such weekly price data points.³²

Although Petitioners appear to be ultimately concerned with the overall reliability of the DAM data due to the absence of volumes sold, this further explanation on the data collection methods provides additional information which, in part, addresses any concerns with respect to reliability. Moreover, while it is our preference to rely on data that contain volume and value information,

²⁸ See Respondents' April 12, 2011, SV Submission, at Exhibit 1.

²⁹ See Petitioners' September 10, 2010, SV Submission, at Exhibit 9B.

³⁰ Moreover, it is uncertain the extent to which prices clearly identified as being farm-gate prices or wholesale prices are relevant in the surrogate valuation analysis most importantly because surrogate valuation seeks to determine the price a respondent would pay for an input if it were to be producing in the surrogate country, not necessarily what producers of that input in the surrogate country receive.

³¹ See Respondents' April 12, 2011, SV Submission, at Exhibit 2.

³² See Respondents' April 12, 2011, SV Submission, at Exhibit 1.

we have also used sources for major inputs in other cases that do not contain specific volume or value data used to generate the prices. For example, in two recent antidumping duty investigations where wire rod is the main input used to produce the subject merchandise (steel wire garment hangers and steel nails), the Department relied on a source that did not contain volume data.³³ Both of these cases involve similar fact patterns, e.g., one relied on a publication the Department uses in cases involving chemical inputs and another involved frozen shrimp where the SV for the main input, raw shrimp, is derived from a source without quantity data.³⁴ In other words, all other factors being equal, we found these data sources to be the best available information with which to value the major inputs, even in the absence of volume information. Mr. Akhter's explanation on the data collection methods, albeit brief, when coupled with the fact that we have relied on SV data sources without volume information for major inputs in other cases renders the absence of volumes with respect to the DAM data to be of lesser concern.

Having examined the objections to the DAM data raised by Petitioners, we turn our attention to the objections raised by Respondents to the FS 07-09. First, we disagree with Respondents' arguments that the record evidence demonstrates that the *Pangasius* industry in the Philippines is unreliable or so gravely affected by non-market intervention or assistance from the Philippine government that the Philippines cannot be used as the primary surrogate country in this case. Respondents' evidence in this regard centers on the Philippine government's assistance in establishing techno-demo farms and buy-back schemes with partner processors for the buy-back of whole fish at fixed non-market prices. Moreover, Respondents argue that through the availability of fingerlings and other inputs supplied by the Philippine government, the *Pangasius* industry is not functioning in a proper, untainted market environment. In responding to these arguments, we note that it is the Department's practice to exclude data from consideration only when the record evidence demonstrates that the alleged subsidy programs constituted demonstrable countervailable subsidies.³⁵ In prior reviews of this order, the Department explained its practice with respect to disregarding subsidized valuations and was ultimately affirmed by the CIT.³⁶ In this case, there is no record evidence that the subsidies alleged by Respondents with respect to the Philippine *Pangas* industry constitute subsidies previously determined to be countervailable and, therefore, the threshold for excluding the prices in FS 07-09 is not met.

Next, Respondents challenge the survey format underlying the FS 07-09 data, essentially arguing that unlike the DAM data, which represent weekly data from a greater portion of the country and

³³ See Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 33977 (June 16, 2008) and accompanying Issues and Decision Memorandum, at Comment 10; see also Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 47587 (August 14, 2008) and accompanying Issues and Decision Memorandum, at Comment 4.

³⁴ See Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China, 72 FR 9508 (March 2, 2007) and accompanying Issues and Decision Memorandum, at Comment 18; see also 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 and Decision Memorandum, at Comment 1.

³⁵ See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results And Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 19174 (April 17, 2007) and accompanying Issues and Decision Memorandum at Comment 1, and Silicon Metal and accompanying Issues and Decision Memorandum at Comment 2.

³⁶ Third Fish Fillets Final, and accompanying Issues and Decision Memorandum at Comment 1.A, affirmed in Catfish Farmers of America v. United States, 641 F. Supp. 2d 1632 (Ct. Int'l Trade 2009).

covers the entire POR, the Philippine data were gathered only from certain companies in certain parts of the country and was gathered less frequently. Specifically, as opposed to the 1,076 data points from 63 of 68 reporting districts contained in the DAM data, the FS 07-09 survey methods, with respect to *Pangas*, generated only 12 data points from nine of the 81 provinces in the Philippines. Respondents also point out that the survey was sent only to certain aquaculture-related entities within those regions, excluding certain of the techno-demo farms noted above. Respondents also note that the survey reports *Pangasius* production of 47.14 MT during 2008 and 2009, which they contrast unfavorably to the 59,474 MT of *Pangas* production in Bangladesh from the same period, suggesting that the DAM data are based on a much larger volume of production, making that data a better surrogate for Vietnam than the Philippines. We believe these distinctions should be considered in the context of comparing these two competing data sources, particularly when we add our observation that while the survey size is of 47.14 MT for 2008 and 2009, another Philippine source, *Status of the Pangasius Industry in the Philippines*, reports a total production of 2,264 MT of *Pangasius* in the Philippines as of 2009.³⁷ Respondents argue that the FS 07-09 list highly volatile prices. The Department notes that similar volatility is not seen in the Bangladeshi data and, in particular, we note that the DAM data are corroborated to a large extent by the FAO Report. For example, for this POR, the fully inflated value for whole live fish based on the FAO Report and the resulting value from the DAM data are very much in line with each other.

In conclusion, we find that both sources are publicly available, from a potential surrogate country, contemporaneous with the POR, broad-market averages, and equally specific to the main input. Simultaneously, both can be considered equally to contain information which suggests the prices are not solely farm-gate prices. Given this degree of equivalence with respect to these factors, we examined the information upon which the Bangladeshi and Philippine potential surrogate whole live fish values were based, concluding that the Bangladeshi data represent a fuller set of data more appropriate for use as an SV. Therefore, as a result of the totality of the information considered above, we conclude that the DAM data represent the best available data on the record with which to value the whole live fish input. Given the significance of the whole live fish input in the calculation of NV, we therefore conclude that the choice of Bangladesh offers more reliable SV information and thus select Bangladesh as the primary surrogate country for purposes of these final results.

COMMENT II: SURROGATE VALUES

A. Financial Ratios

i. Whether to Reject Gemini's Financial Ratios due to the Subsidies Listed in the Financial Statement

Petitioners' Argument:

- The Department should not include Gemini's 2008-2009 financial statements because the company received countervailable subsidies.
- Specifically, Gemini received a 10 percent cash subsidy per Bangladesh Bank Circular No. FE-23. This program applies to exports of shrimp and other fish products.³⁸

³⁷ See Respondents' April 12, 2011, submission at Exhibit 16.

³⁸ See Petitioners' SV submission at Exhibits 5-8, dated April 12, 2011.

Respondents' Argument:

- The Department should use Gemini's 2008-2009 financial statements because evidence on the record is not sufficient to deem the subsidies countervailable.

Department's Position:

We disagree with Petitioners. One of the criteria to evaluate in determining what is the best available information in valuing the FOPs is whether there is a reason to believe or suspect that prices being used may be dumped or subsidized.³⁹ There is insufficient evidence on the record to conclude that Gemini's financial statement should be rejected due to it receiving an actionable subsidy. First, the line item in Gemini's financial statement does not list a subsidy program that the Department has already found to be countervailable.⁴⁰ While Petitioners did submit new record evidence purporting to show that this subsidy is actionable and would affect Gemini's ratios, a close examination of the evidence indicates that this is not the case. The line item in question from Gemini's financial statement reads "As per Bangladesh Bank circular no. FE-23 dated 12-12-2003 total cash subsidy assessed against export for the year is Tk. 9,99,79,199.00."⁴¹ We note that the Bangladesh Bank FE Circular no.: 23 Petitioners placed on the record is dated 12-12-2002 rather than 12-12-2003, as listed in Gemini's financial statement. Thus, the bank circular in question is missing from the record. Additionally, we note that the terms of the circular on the record provide a "cash advance {that} will be available for ready shipment from 01-JUL-2002 for three consecutive financial years that is till 30-JUN-2005."⁴² With respect to the WTO Trade Policy Review on Bangladesh, we note that it is dated 15 November 2006, and that its table listing cash incentives for exports was for the years 2000-2005.⁴³ Therefore, there is no reason to suspect that Gemini received a countervailable subsidy, as the record evidence does not provide information regarding any alleged subsidy that would have been applicable during fiscal year 2008-2009 for Gemini.

ii. Which Financial Statements Represent the Best Source for Calculating Financial Ratios

Philippines

Petitioners' Arguments

- The Department should select the Bluefin⁴⁴ 2009 and/or RDEX⁴⁵ 2008, financial statements because, like the Respondents they process fish, are publicly available, demonstrate that the company earned a profit, are more contemporaneous, come from an approved surrogate country, comes from a producer of similar merchandise, do not contain subsidies.
- Bluefin's overhead ("OH") should not be adjusted as it would only introduce

³⁹ See H.R. Conf. Rep. No. 100-576 at 590 (1988), reprinted in 1988 U.S.C.A.N. 1547, 1623 ("House Report").

⁴⁰ See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results And Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 19174 (May 17, 2007) and accompanying Issues and Decision Memorandum at Comment 1 (where the Department excluded a financial statement that listed a subsidy program that the Department had previously found to be countervailable).

⁴¹ See Respondents' September 10, 2010, submission at Exhibit 7-C.

⁴² See Petitioners' April 12, 2011, submission at Exhibit 7.

⁴³ See Petitioners' April 12, 2011, submission at Exhibit 5.

⁴⁴ Bluefin Seafood Export Inc. ("Bluefin-2009").

⁴⁵ RDEX Food International Phils. Inc ("RDEX-2008").

inaccuracies.

Respondents' Arguments

- The 2008 and 2009 Bluefin financial statements lack detail for OH, so OH is over-inclusive (double-counting) of some costs.

Bangladesh

Petitioners' Arguments

- APEX⁴⁶ and Gemini⁴⁷ should not be used as they process frozen shrimp and not fish fillets.

Respondents' Arguments

- APEX and Gemini are the most appropriate companies on the record as they process fish and shrimp and are contemporaneous.

Department's Position:

As noted above in Comment I, for the final results of these reviews, we have selected Bangladesh as the primary surrogate country. It is the Department's practice to rely upon the primary surrogate country for all SVs whenever possible.⁴⁸ The record of these reviews contains two suitable financial statements from producers of comparable merchandise in Bangladesh (see below). Therefore, we find it unnecessary to look outside Bangladesh, i.e., to the Philippines, for purposes of calculating surrogate financial ratios.

2008-2009 Apex Foods Ltd.

2008-2009 Gemini Seafood Ltd.

With respect to the public availability and contemporaneity of Apex's and Gemini's financial statements, we note that, for the purposes of calculating financial ratios, these factors are satisfied. With regard to the merchandise produced and sold by these companies, we note that both companies state they process fish and shrimp;⁴⁹ the production processes (capital structure) of which are similar in terms of: cold processing area, freezing machines, and cold storage. Thus, we find Apex's and Gemini's production experiences to be similar to that of the Respondents. As a result, for these final results, we will rely on Apex's and Gemini's 2008-2009 financial statements for the calculation of surrogate financial ratios.

⁴⁶ Apex Foods Ltd. ("Apex").

⁴⁷ Gemini Sea Food Ltd. ("Gemini").

⁴⁸ See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Fifth New Shipper Review, 75 FR 38985 (July 7, 2010) and accompanying Issues and Decision Memorandum at Comment 2B; See also 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 and Decision Memorandum at Comment 3 ("Furniture from China").

⁴⁹ See Petitioner's April 8, 2010, submission at: Exhibit 26-A (Notes 4 and 20 to Apex's Financial Statements and page 5: Condition 1.3); and Exhibit 26-B (Gemini's Company Profile – 02. Business of the Company).

B. Byproducts

i. Fish Waste

Petitioners' Arguments

- For the final results, the Department should use Philippine price quotes from Vitarich Corporation (“Vitarich”) to value fish waste because it is more reliable and specific to the by-product produced during the POR.

Respondents' Arguments

- The Department has already evaluated and rejected the Vitarich price quotes in the 6th ARNSR Final Results at comment 4.

Department's Position:

We disagree with Petitioners and will continue to value fish waste using Philippine U.N. Comtrade import statistics under HTS 0304.90 (Fish Meat Nes, Minced Or Not, Frozen), as we find it to be the best available information on the record. The record contains three sources from which to derive a SV for fish waste: 1) Vitarich price quotes; 2) Philippine U.N. Comtrade import statistics under HTS 0304.90 from during the POR; and (3) Bangladeshi U.N. Comtrade import statistics under HTS 0304.90 from 2003. It is the Department's preference to value all FOPs utilizing data from the primary surrogate country and to consider alternative sources only when a suitable value from the primary surrogate country does not exist on the record.⁵⁰ However, in this instance, the Bangladeshi import data are from 2003. While we could inflate that figure to make it contemporaneous with the POR, we find the Philippine import data to be the best available information as the data are contemporaneous with the POR, from an approved surrogate country, publicly available, represent broad-market averages, tax- and duty-exclusive, and equally specific to the fish waste. Furthermore, no party argued that the Department should use the Bangladesh import data to value the fish waste.

With regard to the Vitarich price quote, we note that the quote contains no official company stamp, was obtained outside the context of an actual business transaction, lists no terms of payment, does not list the person who provided the price, and was obtained after the POR. As a result, the price quote does not represent an actual transaction or a price representative of a broad market average. Furthermore, the Department has concerns as to whether this price quote is truly publicly available, to the extent that anyone from the public could duplicate it. Moreover, it is the Department's general practice not to use price quotes for valuation purposes if other suitable, publicly available data are on the record.⁵¹ We acknowledge that we have valued by-products using price quotes in prior segments of this proceeding, when it has represented the best information on the record.⁵² However, we note that in Fish Final AR 3, with respect to valuing fish oil, we stated:

⁵⁰ See NSR5 Final Results at Comment 2B; see also Furniture from China.

⁵¹ See, e.g., TRB and Drill Pipe.

⁵² See Memorandum to the File through Alex Villanueva, Program Manager, Office 9, from Javier Barrientos, Senior Case Analyst, Office 9, regarding 5th New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results, dated January 19, 2010.

In the past, the Department has overlooked product specificity as a criterion for selecting an FOP surrogate value from an unreliable source in favor of a more reliable source that satisfies a wider range (excluding specificity) of the Department's surrogate value selection criteria.⁵³

We recognize that the Vitarich quote may be more specific to fish waste, however, no single factor is dispositive. When considering all other criteria, the Philippines import data are superior. The Vitarich price quote is not contemporaneous, does not represent a broad market average, and it not publicly available. In contrast, the Philippine U.N. Comtrade import statistics satisfy all of the criteria the Department considers, with the exception of level of specificity. Therefore, the Department has determined not to rely on the Vitarich price quote for purposes of valuing fish waste for these final results.

With respect to the Philippine import statistics under HTS 0304.90, the Department finds this source to be from the secondary surrogate country, publicly available, a broad-market average, contemporaneous with the POR, and tax and duty free. While this HTS category does include the particular byproduct generated by Respondents, the Department acknowledges that it also includes products other than unprocessed fish waste. However, this alone does not outweigh deficiencies in the Vitarich price quote. Given the lack of preferable alternatives, we find that the Philippine import statistics for HTS 0304.90 are the most suitable source on the record for valuing fish waste. While these statistics may include products other than fish waste and are not from the primary surrogate country, these concerns are secondary to the concerns that we have regarding the Vitarich price quote and the lack of contemporaneity with respect to the Bangladeshi import data. Thus, the Department will value fish waste using Philippine import statistics for the HTS 0304.90.

ii. Fish Skin

Petitioners' Arguments

- The Department should not use HTS subheading 0304.90 to value fish skin because the subheading pertains to a different by-product and is less reliable than the Vitarich price quote.

Respondents' Arguments

- The Department has already evaluated and rejected the Vitarich prices quotes in the 6th ARNSR Final Results at comment 4.

Department's Position:

We agree with Respondents and will value fish skin using Bangladesh import data under HTS category 2301.20 (Flours, Meals And Pellets, Of Fish Or Of Crustaceans). In selecting a SV, the Department considers if the source is contemporaneous with the POR, from an approved surrogate country, publicly available, represents broad market averages, is tax and duty exclusive, and specific to the input. Bangladesh import data under HTS 2301.20 comes from the primary surrogate country, is publicly available, represents a broad market average, and is tax and duty exclusive. Petitioners make a similar argument about import data under HTS category

⁵³ See Third Fish Fillets Final, and accompanying Issues and Decision Memorandum at Comment 8E.

2301.20 and as they did with broken meat and fish waste (that the HTS categories are too broad and instead propose the use of the Vitarich price quote).

In prior segments of this proceeding, we have valued fish skin using import data under HTS 2301.20.⁵⁴ Based on the descriptions of the HTS numbers 2301.20, we find that this HTS category does not specifically reflect *Pangasius* fish skin. However, it is the Department's preference to value all FOPs utilizing data from the primary surrogate country, and to consider alternative sources only when a suitable value from the primary surrogate country does not exist on the record.⁵⁵ Therefore, for these final results, we will rely on Bangladesh import statistics under HTS 2301.20, because, even though these values pre-date the POR, they are from 2007, and may include products other than *Pangasius* fish skin, these concerns are secondary to the concerns that we have regarding the Vitarich price quotes, which we discussed above in Comment II i. The HTS data represent broad-market averages, are from the primary surrogate country, are publicly available, and are tax and duty exclusive. Thus, the Department will value fish skin using Bangladesh import statistics for HTS 2301.20.

Company-Specific Issues

COMMENT III: ADJUSTMENTS TO THIMACO'S MARGIN CALCULATION

A. Adjust "International Freight" from a Per Pound to Per Kilogram Basis

Petitioners' Arguments

- The Department should convert THIMACO's international freight from a per pound basis to a per kilograms basis.

Respondents did not comment on this issue.

Department's Position:

We agree with Petitioners that in order to calculate international freight expenses, we should convert from a per pound to a per kilogram basis because the SV source provides prices on a per kilogram basis.

B. Adjust Calculation of "Insurance" to be Percentage Applied to Gross Unit Price

Petitioners' Arguments

- The Department should correct THIMACO's insurance expense calculation to reflect the actual terms provided in the SV source.

Respondents did not comment on this issue.

Department's Position:

We agree with Petitioners that we should correct THIMACO's insurance expense to reflect the actual terms provided in the SV source. Accordingly, we have made this correction.

⁵⁴ See Fish AR5/NSR4 Final Results.

⁵⁵ See id.

C. Should the Department Alter Its Preliminary Decision to Use the Intermediate Input Methodology (“IIM”) and Instead Accept THIMACO’s Farming Factors, the Department Should Apply Adverse Facts Available (“AFA”) to THIMACO’s Farming Labor and Medicine FOPs

Petitioners’ Arguments

- At verification the Department found that THIMACO had not reported contract labor at the fish farms. The Department also found that THIMACO had not reported all medicines.
- If the Department chooses to accept THIMACO’s farming factors, the Department should apply AFA to THIMACO’s labor and medicine factors.

Respondents Arguments

- In the Preliminary Results, the Department stated that it would not accept or use THIMACO’s farming factors. Therefore, this point is moot.

Department’s Position:

THIMACO provided farming factors in their FOP database, however, in the Preliminary Results, the Department decided not to use farming factors because the team found certain key factors had not been accounted for in the FOP database. Instead the Department calculated NV starting with whole live fish, employing the intermediate input methodology (“IIM”). No party argued that the Department should reconsider its decision to use the IIM. Therefore, the Department will continue to use the IIM and not use THIMACO’s farming factors.

COMMENT IV: ADJUSTMENTS TO IDI’S MARGIN CALCULATION

A. Adjust “Other Discounts” and “International Freight” from Pound to Kilogram Basis

Petitioners’ Arguments

- The Department should convert IDI’s other discounts and international freight from a per pound basis to a per kilogram basis.

Respondents did not comment on this issue.

Department’s Position:

We agree with Petitioners that we should convert IDI’s other discounts and international freight from a per pound to a per kilogram basis because they were entered in the FOP database on a per pound basis but should be calculated on a per kilogram basis.

B. Adjust Calculation of Brokerage and Handling Expense

Petitioners’ Arguments

- The Department should revise the calculation of IDI’s brokerage and handling surrogate value to reflect the terms specified by Philippine Tariff Commission.

Respondents did not comment on this issue.

Department's Position:

We agree with Petitioners that we should revise the calculation of IDI's brokerage and handling surrogate value to reflect the terms specified by the Philippine Tariff Commission.

C. Adjust Calculation of IDI's Carton Boxes

Petitioners' Arguments

- The Department should not have hard-coded IDI's carton boxes usage factor but should have instead used the number in the FOP database.

Respondents Arguments:

- The Department was correct to hard-code IDI's carton boxes factor because the number had in fact been mis-entered in the FOP database.

Department's Position:

We agree with Respondents and will continue to use the hard-coded number used at the Preliminary Results, as it correctly reflects IDI's carton box usage factor. The number in the FOP database is only the weight of the box for a certain amount of fish fillets. The number the Department used is the weight of the box divided by the weight of the fish fillets in the box, and thus represents the actual usage ratio for carton boxes.

RECOMMENDATION

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

AGREE _____ DISAGREE _____

Ronald K. Lorentzen
Acting Deputy Assistant Secretary
for Import Administration

Date