



May 3, 2012

MEMORANDUM TO: Ronald K. Loretnzen
Acting Assistant Secretary
for Import Administration

FROM: Gary Taverman 
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 New Shipper Review

SUMMARY

We have analyzed the case and rebuttal briefs received from Petitioners¹ and the respondent² for the new shipper review ("NSR") of the antidumping duty order on certain frozen fish fillets ("fish fillets") from Vietnam. The period of review ("POR") is August 1, 2010, through January 31, 2011. As a result of our analysis, we have made changes to the Preliminary Results.³ We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

COMMENT I: SELECTION OF SURROGATE COUNTRY

A. Surrogate Country: Economic Comparability

Petitioners

- Import Administration's Office of Policy determined that Bangladesh, Indonesia, India, Pakistan, Philippines, and Sri Lanka are equally comparable to Vietnam in terms of economic development.
- The Department found the Philippines economically comparable in the most recently completed segments and in the *Preliminary Results* and should continue to do so as all countries on the Surrogate Country List⁴ are equally economically comparable. The

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 Thuan An Production Trading & Services Co., Ltd. ("TAFISHCO").

³ See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results of the New Shipper Review, 76 FR 77485 (December 13, 2011) ("Preliminary Results").

⁴ See Memorandum from Carole Showers, Director, Office of Policy, to Alex Villanueva, Program Manager, AD/CVD Enforcement, Office 9: Request for a list of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Certain Frozen Fish Fillets ("Fish Fillets") from the Socialist Republic of Vietnam, dated May 9, 2011 ("Surrogate Country List").



difference in per capita gross national income (“GNI”) does not merit a reversal of the conclusion.

- The World Bank and United Nations list the Philippines/Indonesia and Vietnam in similar tiers of development and lending, while Bangladesh is listed among lower tiers.

TAFISHCO

- There is such a large difference in GNI between Vietnam and the Philippines/Indonesia (at +86%/+135%, respectively), that the Philippines/Indonesia cannot be considered economically comparable to Vietnam. Bangladesh’s GNI (at -42%) is more appropriately economically comparable to Vietnam.
- Based on gross domestic product (“GDP”), the Philippines and Indonesia (at +93%/+582%, respectively), cannot be considered economically comparable to Vietnam. Bangladesh (at -3%) is more appropriate.

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 factors of production (“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. In determining whether a country is a *level of economic development* comparable to the NME, the Department’s regulations, 19 CFR 351.408(b), state that the Department will place primary emphasis on per capita GDP.⁵ It is the Department’s long-standing practice to use per capita GNI, rather than per capita GDP, because while the two measures are very similar, per capita GNI is reported across almost all countries by an authoritative source (the World Bank), and because the Department finds that the per capita GNI represents the single best measure of a country’s level of total income and thus level of economic development.⁶ It is also the Department’s long-standing practice to use a range of per capita GNIs, in absolute terms, when determining economic comparability.⁷

Using 2008 per capita GNI data, the Department provided parties with a list of potential surrogate countries found to be economically comparable to Vietnam: Bangladesh, Indonesia, India, Pakistan, Philippines, and Sri Lanka, all with per capita incomes between \$520 to \$2,010.⁸ This income range of \$1,490 (in absolute dollar terms) is reasonably narrow given the entire worldwide range of per capita GNIs (which in the past has exceeded \$80,000).⁹ TAFISHCO has proposed the relative (percentage) difference in per capita incomes as a basis for determining economic comparability. However, the Department is concerned that the use of percentage differences would exaggerate the difference in economic comparability at low per capita income levels. Identifying potential surrogate countries on the basis of per capita GNI data has been affirmed by the Court of International Trade (“CIT”).¹⁰

⁵ Emphasis added.

⁶ See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results of Administrative Review, 77 FR 13547, 13549 (March 7, 2012).

⁷ See Wooden Bedroom Furniture From the People’s Republic of China: Final Results and Final Rescission in Part, 75 FR 50992 (August 18, 2010) (“WBF”), and accompanying Issues and Decision Memorandum at Comment 34.

⁸ See Surrogate Country List.

⁹ The per capita GNI data in the 2007 World Bank Development Report ranged from Burundi (USD 140) to Luxembourg (USD 81,600), a difference of over USD 80,000. See WBF at Comment 34.

¹⁰ See Fujian Lianfu Forestry Co., Ltd. v. United States, 638 F. Supp. 2d 1325 (CIT 2009).

The Department also disagrees with TAFISHCO that economic comparability should be determined on the basis of total economic output (GDP). Comparing countries on the basis of GDP might be appropriate if the statutory requirement in section 773(c)(4)(A) concerned the size of a country's economy. But it does not; it concerns a country's level of economic development. For that, a measure of income, adjusted or normalized for population size, is more appropriate. For example, two countries with equal GDPs but populations that differed by a factor of ten would normally be at vastly different levels of economic development, something that a comparison of per capita incomes would likely indicate, but a straight comparison of GDPs would not. Thus, relying solely on a straight comparison of GDP, as Respondents propose, would lead to the use of surrogate countries that in many cases are at levels of economic development significantly different from the NME country in question.

The Department further disagrees with Petitioners that Bangladesh should be rejected as a potential surrogate country simply because it lies below the World Bank thresholds. In determining the economic comparability of countries for the purposes of factor valuation, the Department does not rely on the World Bank's reported upper-middle or lower-middle income "thresholds."¹¹ Simply because a small subset of the band lies above or below the World Bank's "threshold" is not a basis to reject it as a country that is not economically comparable.

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.¹² Given the above, the Department will continue to consider all countries on the list, including Bangladesh, Indonesia, and the Philippines, equally economically comparable to Vietnam for these final results.

B. Surrogate Country: Significant Producer of the Comparable Merchandise

Petitioners

- The Department found Indonesia and the Philippines significant producers of comparable merchandise (based on a broader category of frozen fish fillets) in previous segments and in the Preliminary Results and should continue to do so.
- The broader category frozen fish fillets is more comparable to the subject merchandise than whole live *Pangasius Hypophthalmus* production.
- There is no requirement in the Surrogate Country Selection Policy Bulletin¹³ that the Department has to select the *most* significant producer when selecting surrogate country.

TAFISHCO

- When determining what constitutes "comparable merchandise," the Department should not use "frozen fish fillets" as this category is inclusive of thousands of non-scope species. Instead, it should rely on species-specific in-scope (*i.e.*, *Pangasius Hypophthalmus*) whole fish production, as the Department has a preference in selecting a country that produces identical merchandise. In this regard, Bangladesh is the largest producer (124,760 metric ton ("MT")) of the countries on the Surrogate Country List.

¹¹ See WBF Comment 34.

¹² 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 ("CSFP from China").

¹³ See Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) ("Policy Bulletin").

- There is no record evidence on the size of the *Pangasius Hypophthalmus* industry in Indonesia. In addition, the production figure that is given in the United Nations Food and Agriculture Organization's Fisheries Global Information System ("FIGIS") data:¹⁴ 1) is not contemporaneous; and, 2) lacks specificity, *i.e.*, includes many non-scope species.
- The Philippines production figures also lack specificity and are commercially negligible. In addition, the *Pangasius* industry in the Philippines is nascent, undeveloped and distorted by government intervention.

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 TAFISHCO argues that the Department should select identical merchandise of *Pangasius Hypophthalmus* 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."¹⁵ In the Preliminary Results we explained the following:

As we have 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.¹⁶

The Policy Bulletin provides 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."¹⁷ 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.¹⁸

¹⁴ See Memorandum to the File, from Alexis Polovina, Case Analyst: Placing Indonesian FAO Data and Related Information on the Record, dated July 15, 201, at Attachment 1: United Nations Food and Agriculture Organization's Fisheries Global Information System.

¹⁵ See Policy Bulletin, at 2.

¹⁶ See Preliminary Results.

¹⁷ See Policy Bulletin, at 2.

¹⁸ See Policy Bulletin, at 3.

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.¹⁹

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 in-scope *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.²⁰ Therefore, given the above, based on 2008 export data of frozen fish fillets from the FAO, Bangladesh, Indonesia, India, Pakistan, Philippines, and Sri Lanka are exporters of frozen fish fillets and, thus, significant producers of the comparable merchandise.

C. Surrogate Country: Data Considerations

i. Data Considerations: Whole Fish Input

Petitioners

- Since the Preliminary Results, Petitioners placed on the record a whole fish price from the *Fisheries Statistics of the Philippines 2008-2010* ("FSP 08-10").
- In the Preliminary Results, the Department did not find that the source from the Philippines did not represent a "broad-market average," but instead found that the Indonesian price derived from FIGIS represented a more significant volume.
- The data from the FSP 08-10 are publicly available, are tax and duty-exclusive, and for unprocessed, whole live fish.
- The data from the FSP 08-10 are contemporaneous with the POR, while the FIGIS data are not.
- The data from the FSP 08-10 represent a broad-market average. The 2009-2010 data were based on a sample of 117.29 MT across seven regions and fourteen provinces.
- Questions regarding sales beyond the first point of sale have been resolved and that the FS 08-10 data are for whole live fish.
- The FIGIS data represent only a single price.
- In prior segments of this review, the Department valued whole live fish using data with volumes less than the FS 08-10.
- The data from the Philippines represent the most contemporaneous and reliable remaining material, energy, byproduct, and packing material sources for valuing FOPs.

¹⁹ See *id.*

²⁰ See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results and Partial Rescission of the Seventh Antidumping Duty Administrative Review, 77 FR 15039 (March 14, 2012) ("AR7 Final Results"), and accompanying Issues and Decision Memorandum at Comment I.B.

- Unlike the Bangladeshi DAM,²¹ the Philippine BAS²² provided a complete response to the Department's request for further information, supporting the completeness and accuracy of its *Pangasius* data.
- If the Department does not value whole live fish using FSP 08-10 data, the Department should use the Indonesian FIGIS data, as they are more suitable than the DAM data.
- The FIGIS data are not based on the IAS²³ data as TAFISHCO contends.
- There are no countervailable duties provided in the form of direct financial contributions to the Indonesian *Pangasius* industry.
- The Bangladeshi online DAM data are incomplete, not covering all the districts of Bangladesh; may include further processed fish, may be for wholesale sales prices, do not list any quantities, may not be specific to the input, and contain discrepancies between the worksheets and the website data.
- The Department should reject TAFISHCO's claim that the DAM price has been corroborated by other sources.

TAFISHCO

- The FIGIS data are aggregated value and volume data without supporting detail or documentation, and as such are not specific, reliable, or accurate to value whole live fish.
- FIGIS data prices are not farm-gate prices, nor are they entirely for whole live fish.
- The FIGIS data represent pricing for multiple aquaculture environments.
- The FIGIS data do not specify the size of the fish.
- The FIGIS and IAS data are not specific to the input and are not otherwise outside-corroborated prices, use an incorrect exchange rate, and, most importantly, do not cover the POR at all.
- The Philippine data are based on outdated fisheries statistics that were not intended to compile price data by species.
- The Philippine data demonstrate large price variations.
- In the AR7 Final Results,²⁴ the Department selected the Bangladesh over the Philippines for valuing whole live fish and selecting the primary surrogate country, stating the data are publicly available, are contemporaneous with the POR, represent a broad-market average, come from an approved surrogate country, are tax and duty exclusive, and specific to the input.
- The record contains hard copies of weekly wholesale price data of *Pangasius* (small) reported from all of the districts of Bangladesh for the last five months of the POR.
- The DAM website now provides the most direct and specific growers (farmgate) price data for *Pangasius* (small), which should be applied as a surrogate value for whole fish.
- The IAS data indicate that the FIGIS data exchange rate cannot be accurate, as it contains either inaccurate data or clerical errors.
- The DAM data are corroborated by outside sources and are publicly available.
- The *Pangasius* industry in the Philippines and Indonesia are heavily subsidized by government intervention making both countries inappropriate as a surrogate country.
- Indonesian prices are distorted by countervailable subsidies.

²¹ Bangladeshi Department of Agriculture Marketing ("DAM").

²² Philippines Bureau of Agricultural Statistics ("BAS").

²³ Indonesian Aquaculture Survey 2009 ("IAS").

²⁴ See AR7 Final Results.

- The Indonesian *Pasarikan* data do not have the necessary underlying data to use it for corroborating purposes.
- FS 08-10 does not distinguish between the different species that may appear in the *Pangasius* category.
- The Philippine *Pangasius* industry is nascent.
- There is variance in month-to-month prices reported for the same region and month in the Philippine data, undercutting its reliability.

Department's Position: We have concluded for the final results that Bangladesh, Indonesia, India, Pakistan, Philippines, and Sri Lanka are economically comparable and significant producers of comparable merchandise. We then examined the available data on the record, with respect to these countries to determine which contained the best available information for valuing the primary input to the subject merchandise, whole live fish. We note that no party is arguing for, and the record does not contain a suitable value for whole fish from, India, Sri Lanka, or Pakistan. Therefore, we determine that these countries are not suitable as the primary surrogate country. However, the record does contain whole fish values from Bangladesh, Indonesia, and the Philippines.

Since the Preliminary Results, both Petitioners and TAFISHCO placed significant additional data on the record with respect to these three countries. For the Philippines, we now have an updated publication of the FS 08-10 which contains *Pangasius* prices for 2008 – 2010.²⁵ For Bangladesh, we now have monthly *Pangas* price data reported by the DAM on its website covering a portion of Bangladesh's districts.²⁶ Finally, the Department notes that the Indonesia FIGIS data are the same as in the Preliminary Results. However, they have been supplemented by additional information by parties.

In evaluating the remaining sources of information, the Bangladesh DAM data, Philippines FS 08-10, and Indonesia FIGIS 2009 data, we note that we have on the record: 1) two sources of information issued by two governments, the Bangladesh DAM data and the Philippine FS 08-10, both representing official statements of those governments as to the price of whole live fish relevant to our analysis; and 2) a source of information published by an internationally recognized organization, the Indonesia FIGIS data, with a statement attesting to the integrity measures of the underlying data. While we typically do not scrutinize official government or internationally recognized organization statistics in such detail, the necessity to both respond to the comments raised by Petitioners and TAFISHCO, and to select one of the sources, compelled us to do so in this case.

As an initial matter, we note that both Petitioners and TAFISHCO claim that Indonesia, Bangladesh, and the Philippines' *Pangasius* industries receive government assistance, and should therefore, be disregarded as surrogate countries. However, the Department's practice is to exclude data from consideration only when the record evidence demonstrates that the alleged

²⁵ We note that the record now contains this updated data; therefore, we will no longer consider the Fisheries Statistics of the Philippines 2007 to 2009 data, as more recent information is available.

²⁶ We note that, even though no one is arguing for its use, for Bangladesh the record also contains the FAO Report which was used in prior segments. However, this data is not contemporaneous with the POR, and, as such, we find the DAM data superior in this regard. Thus we will focus our analysis on the DAM data for Bangladesh.

subsidy programs constituted countervailable subsidies.²⁷ In this case, as we have found in prior segments, there is no record evidence that the subsidies alleged by Petitioners and TAFISHCO constitute countervailable subsidies.

With respect to the DAM data, FS 08-10, and the FIGIS data, we note that all are from approved surrogate countries, and there is no evidence since the Preliminary Results, that they are not tax- and duty-exclusive. Therefore, we find these sources satisfy these criteria. With regard to price fluctuations in the data, we note that the single price observation for Indonesia prevents us from analyzing and comparing prices within the Indonesian market. The DAM data and FS 08-10 both have price fluctuations. However, this is to be expected in different markets with different supply, demand and logistical characteristics. Therefore, nothing on the record indicates that the data sets as a whole are anomalous with regard to price variances and, thus, consider all sources equal in this regard. We now turn our attention to the remaining selection criteria and their application to the individual sources.

Since the Preliminary Results, Petitioners submitted an updated FS 08-10. We note that everything about this source is the same as compared to what was on the record at the time of the Preliminary Results (FS 07-09), except that now it includes 2010 data from 12 provinces rather than eight out of 81 total provinces. In addition, we note that the volume increased from 34 MTs in 2009 to 79 MTs in 2010. With regard to public availability and specificity, in the Preliminary Results, we stated that we found, as in previous reviews, that the BAS' Fisheries Statistics are publicly available and are specific to the species, *Pangasius hypophthalmus*.²⁸ Nothing since the Preliminary Results has been introduced to make us reverse our decision. Therefore we continue to find this source publicly available and specific to the species of the input. With regard to contemporaneity, we note that the 2010 data in the FS 08-10 overlap with five of the six months of the POR. Therefore, we find that the data sufficiently overlap with the POR, and are thus contemporaneous with the POR.

However, all other observations and concerns about the data also remain the same as in the Preliminary Results and prior segments, or are highlighted even further by the new data on the record. In the last segment, we stated²⁹:

Next, Respondents challenge the survey format underlying the FS 07-09 data, essentially arguing that unlike the DAM data, ...the Philippine data were gathered only from certain companies in certain parts of the country and was gathered less frequently. Specifically, ...the FS 07-09 survey methods, with respect to *Pangas*, generated only 12 price observations from nine of the 81 provinces in the Philippines. Respondents also point out that the survey was sent only to certain

²⁷ See AR7 Final Results at Comment I.C.; See also 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; see also Silicon Metal from the People's Republic of China: Notice of Final Results of 2005/2006 New Shipper Reviews, 72 FR 58641 (October 16, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

²⁸ See AR7 Final Results at Comment I.C.; see also Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Antidumping Duty New Shipper Reviews, 76 FR 35403 (June 17, 2011) ("09-10 NSR Final Results"), and accompanying Issues and Decision Memorandum at Comment I; see also 6th AR Final Results; see also Memorandum to the File, dated July 15, 2011, RE: Response to Questions for the Philippine Bureau of Agriculture Statistics Regarding Price Data in the Fisheries Statistics of the Philippines, at Question I.

²⁹ We recognize that certain of the figures have changed in the excerpt below from the prior to the current review. Given that the changes were minor, they do not alter our overall evaluation of these data sources.

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 *Pangasius* 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 2009.³⁰

In this review, we note that the data collection methods and survey format remained the same. Therefore, the same observations still remain. In addition, even though the number of provinces increased to 12 of 81, this still lags behind the 31 of 68 districts and price observations of the online DAM data. Moreover, although the volume increased to 79 MT, this contrasts unfavorably with the 109,685 MT of *Pangasius* in Indonesia and with the 124,760 MT of *Pangasius hypophthalmus* in Bangladesh, given that Vietnam's production in 2009 was 1,050,000 MT of *Pangasius*.³¹ In addition, it still is not clear what prices (i.e., farm-gate, further processed, first point-of-sale) are included in the FS 08-10 data. Finally, we note that the values and volumes reported for each of the districts do not reconcile to the total reported for the country.³² Given that the data are a sample, we do not know the magnitude of the discrepancy for the country as a whole. Therefore, given this and the analysis below, we recommend finding that the FS 08-10 data are not the best option for valuing the whole fish input, in light of the suitability of the remaining sources on the record.

With regard to the FIGIS data, in the Preliminary Results, we found this source to be publicly available, and continue to do so. Since the Preliminary Results, TAFISHCO placed an affidavit on the record from the Director General of Aquaculture under the Ministry of Marine Affairs and Fisheries in Indonesia, stating that *Pangasius* in Indonesia encompasses four species (only one of which is the subject species used by TAFISHCO, *Pangasius hypophthalmus*). Moreover, the affiant states that the IAS data collected and published by the Indonesian Ministry of Marine Affairs and Fisheries can include any of these species. In addition, the Director General states that the IAS data reflect retail prices and that the data contain fish that have been further processed after harvesting. TAFISHCO argues that since the volume in the IAS data matches the FIGIS volume, the FIGIS data must be based on the IAS data and, thus, inclusive of all concerns about the data.

With regard to the affidavit from the Director General of Aquaculture, one critical point missing from the affidavit is whether the IAS provided the FAO with the data the FAO published in FIGIS, or whether IAS data were used in some form by the FAO. There is no express link between the two data sources. In addition, TAFISHCO's calculation of the IAS volume is faulty and is off by an estimated 13 percent (approximately 14,000 MT), establishing that there is a

³⁰ See AR7 Final Results at Comment I.C.; see also 09-10 NSR Final Results at Comment I.C.; see also AR6 Final Results at Comment I.C.

³¹ See Memorandum to the File, from Alexis Polovina, Case Analyst, dated July 15, 2011.

³² In the AR7 Final Results, we stated that we had observed 83,000 kg of *Pangasius* in the FS 08-10. However, we have revised this figure herein and using the total of the individual provinces, 78,690 kg. By the same token, the total value for the country was reported as 6,863,810 pesos, but the total of the provinces is 6,605,060 pesos.

significant difference in volumes between the two sources. Moreover, the IAS data are incomplete, as only excerpts were submitted and certain quantity and value data are missing.³³ Therefore, we cannot determine with any certainty to what extent, if any, the IAS data (along with the concerns raised about them in the affidavit) and the FIGIS data are linked.

While recognizing that the Director General's affidavit states that *Pangasius* in Indonesia can consist of four species, information on the record indicates that *Pangasius* is primarily farmed in Asia, including Indonesia,³⁴ and that the majority of farmed *Pangasius* is of the *Pangasius hypophthalmus* species.³⁵ Moreover, there are no data on the record establishing that *Pangasius hypophthalmus* is not the majority species in Indonesia, or that the inclusion of other *Pangasius* species necessarily distorts the price. Therefore, we continue to find that the FIGIS data are sufficiently specific even though the data themselves may not be species-specific.

With respect to broad-market average, while we note the FIGIS data only contain one price observation for the whole country, this one price observation represents a significant volume. In addition, the FAO states that it issues customized national questionnaires, indicating that they are meant to capture data for the entire country. Moreover, we note that the FIGIS data indicate that the Indonesian *Pangasius* industry has grown in size every year since 2006, to 109,685 MT. Therefore, we continue to find that the Indonesian data are a broad-market average. Finally, with regard to contemporaneity, we note that the FIGIS data is from 2009, while the POR starts eight months later. Therefore, we find the data are not as contemporaneous with the POR, unlike the DAM data.

In the Preliminary Results, we expressed concerns regarding the public availability of the DAM data hard copies³⁶ on the record and did not consider the DAM data hard copies for use in the Preliminary Results. The primary reason for this concern was that DAM did not respond to the Department's repeated requests for information regarding how the DAM data is made available to the public. In addition to our efforts to confirm the public availability of the data, Petitioners also attempted to collect the purported public data directly from the relevant Bangladeshi government ministry, but were unable to do so. As evidence, they submitted an affidavit from their Bangladeshi source who attempted to obtain the DAM data, even after meeting personally with DAM officials. While TAFISHCO provided an affidavit from a researcher attempting to explain DAM's non-submittal of a reply to our requests for information as not being made through the proper government-to-government channels, there was no citation to any law, regulation, or practice supporting that claim.

After evaluating the record, we do not consider that our concern on the public availability of the Bangladeshi DAM data hard copies has been satisfactorily resolved. The record evidence continues to show: (1) the Bangladeshi government did not respond in any way to our two requests for information; and (2) an affidavit from a Bangladeshi source who was not able to

³³ We also note that Petitioners submitted the *Pasarikan* periodical to corroborate the FIGIS data. However, this source was also incomplete as it only included excerpts. Furthermore, and more importantly, it was not translated, thus we could not analyze the data therein.

³⁴ Sec Memorandum to the File, from Alexis Polovina, Case Analyst: Placing Indonesian FAO Data and Related Information on the Record, dated July 15, 2011, at Attachment 4: World Wildlife Fund article on farmed *Pangasius* citing data source as "FAO FishStat 2005."

³⁵ See id.

³⁶ We refer to the "hard copies" that were obtained by respondent's counsel by visiting the DAM directly and making photo copies of the wholesale pricing worksheets, and not the data as obtained from the DAM website.

obtain the DAM data after speaking with DAM officials. Therefore, we will not consider the DAM data hard copies further.

However, since the Preliminary Results, the record now contains wholesale price data from the DAM website for *Pangasius hypophthalmus*. This website lets the user submit a query based on: commodity, price type and time frame.³⁷ Given that we continue to find the DAM hard copies not to be publicly available, we will now consider only the DAM data published online by the Bangladeshi government.

As an initial matter, we address parties' arguments regarding the growers' prices (as opposed to the wholesale) published on the DAM website.³⁸ Even though parties make arguments for or against its use, the Department finds that the two price observations³⁹ for growers' prices from a single district (and not the biggest *Pangasius*-producing district) for the same month (November 2009), do not constitute a broad market average and are not contemporaneous with the POR, and thus, are not the most suitable source with which to value the whole fish input, especially given the analysis below.

Petitioners have repeated their argument from the prior segments that the DAM wholesale prices are not farm-gate prices, and therefore are an inappropriate surrogate value as they likely include trader markups in addition to the value of the fish itself. As we noted in those segments, it is uncertain the extent to which such a distinction is relevant in the surrogate valuation analysis.⁴⁰ Surrogate valuation seeks to determine the price a respondent would pay for an input if it were to produce subject merchandise in the surrogate country, not necessarily what producers/sellers of the input in the surrogate country receive. Therefore, we do not find that the fact that these prices reflect wholesale prices (and not farm-gate prices) enough to disqualify them as a suitable source.

For purposes of this proceeding, we will analyze the wholesale prices of *Pangash* small (up to 1.5 kilograms (kg)) in the DAM website data.⁴¹ We note that the record also contains data for *Pangash* big from the same website. However, that is for sizes greater than 1.5 kg,⁴² and there is no indication that TAFISHCO purchased whole fish this large. Therefore, we will not use this as a source to value the whole fish input. With regard to specificity, we first note that the term *Pangas* and *Pangash* are used interchangeably for the same species (as described below). In addition, we note that *Pangas* is the local name for *Pangasius hypophthalmus*, the subject species.⁴³ Moreover, new information on the record, the *Fisheries Statistical Yearbook of Bangladesh 2009-2010*, published by the Bangladeshi government, notes that *Pangasius hypophthalmus* is the only species listed under *Pangas*.⁴⁴ Finally, there is no information on the record indicating that other species are included in the data or what those species may be. Therefore, we find this source to be species-specific to the input.

³⁷ See TAFISHCO's January 31, 2012, submission at exhibit 5D 1-21.

³⁸ Among the prices that the website lets one query is "growers," "wholesale," and "retail."

³⁹ From a query of all the districts for 2009-2010.

⁴⁰ See AR7 Final Results at Comment I.C.; see also 09-10 NSR Final Results at Comment I.C.; see also 6th AR Final Results at Comment I.C.

⁴¹ See January 31, 2012, submission at Exhibit 5D-4

⁴² See TAFISHCO's July 29, 2011, submission at Exhibit E-13D.

⁴³ See TAFISHCO's July 29, 2011, submission at Exhibit 14 (FAO Report at 33).

⁴⁴ See TAFISHCO's January 31, 2012, submission at Exhibit 5E (Table 18)

With regard to broad-market average, we note that even though the online data represent prices for only 17 districts, this still represents 59 price observations from a considerable portion of the country, a number greater in scope than the data from a single company we used in prior reviews. Therefore, given this, together with the size of the *Pangasius hypophthalmus* industry explained below, we find this source to be a broad-market average.

In sum, even though the DAM published online data for only 17 of the 68 districts: 1) the data are species-specific (unlike the FIGIS data); 2) this still represents 59 monthly price observations;⁴⁵ 3) where average prices are given, the numbers reconcile (unlike the BAS data); 4) the data match five of six months of the POR; and 5) the data are publicly available. In addition, the *Fisheries Statistical Yearbook of Bangladesh 2009-2010*, establishes that cultured species-specific *Pangasius hypophthalmus*⁴⁶ production in Bangladesh was 124,760MT, greater than the volume from the FIGIS data (109,685MT). Although we do not question the reliability of the FIGIS data, we find the DAM data to be a more robust data source, given its breadth and focus, especially with respect to specificity and contemporaneity. We thus find that the DAM data represent the best option for valuing the whole fish input.

As described above, the Bangladeshi DAM data offer the best option for valuing the whole fish. Moreover, Bangladesh also has viable surrogate financial companies as discussed below. Therefore, given the totality of the facts on the record of this proceeding, we find that Bangladesh is the most suitable primary surrogate. Both Indonesia and the Philippines are suitable secondary surrogate countries. Lastly, our findings are based on the record of this proceeding, and in future segments, we will continue to evaluate based on record evidence what the appropriate surrogate country and factor values should be.

ii. Data Considerations: Financial Ratios

Petitioners

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

TAFISHCO

- Philippines producer Bluefin's⁴⁷ financial statements cost of sales details are limited to raw materials, direct labor, and factory overhead—which may include energy costs. The other Philippine producer Fisher Farms⁴⁸ received subsidies from the government and processes marine (not aquaculture) seafood and is therefore dissimilar to TAFISHCO.
- Indonesian producers PT Dharma⁴⁹ and PT Central⁵⁰ have financial statements that are either not contemporaneous with the POR (from 2007) and are the same companies that showed net losses and financial distress during the POR. Moreover, PT Central is consolidated as part of

⁴⁵ In the AR7 Final Results, the online DAM data used by the Department consisted of 767 weekly price observations. However, the DAM data submitted on the record that are contemporaneous with the POR of this NSR are the aforementioned 59 monthly price observations.

⁴⁶ The only species listed under *Pangasius*.

⁴⁷ Bluefin Seafood Export Inc. (“Bluefin”).

⁴⁸ Fisher Farms Inc. (“Fisher Farms”).

⁴⁹ DSFI Dharma Samudera Fishing Industries (“PT Dharma”).

⁵⁰ CPRO Central Proteinaprima (PT Central”).

larger agri-businesses. For these reasons, neither company is a suitable source of financial ratios.

Department's Position: With regard to the Bangladeshi surrogate financial company Gemini,⁵¹ while this company is not primarily a fish processor, we note that its capital structure and facilities are similar to those of a processor of subject merchandise. Moreover, another Bangladeshi company's (Golden Harvest⁵²) financial statements are now on the record, and that company is primarily a processor of fish fillets. The Department's evaluation of these companies is further elaborated below in Comment II.A.

The record contains only one contemporaneous financial statement from an Indonesian company. That company makes animal feed, and breeds and processes poultry, beef, fish and shrimp. Based on either sales or production, seafood processing appears to constitute only a maximum of approximately seven percent of that company's operations. Thus, this company's financial experience would not reflect that of TAFISHCO in this review.

For the Philippines, the record contains two contemporaneous financial statements from non-integrated producers of comparable merchandise (*i.e.*, frozen seafood), but one company does not separate electricity (which we account for as an FOP) from its overhead. The remaining company would be a usable surrogate financial company for the mandatory respondent (as appropriately matched to the respondents' level of integration).

Thus, both Bangladesh and the Philippines offer viable options for calculating the surrogate financial ratios, while Indonesia does not. While we note that the Philippine and Indonesian data for the minor inputs (*i.e.*, besides whole fish) are more contemporaneous than the Bangladeshi data, the whole fish input and the surrogate financial ratios account for the vast majority of NV and thus are by far the predominant factors in selecting a surrogate country. Therefore, we find that the Bangladeshi financial ratios support selecting Bangladesh as the primary surrogate country.

COMMENT II: SURROGATE VALUES

A. Financial Ratios

Petitioners

- The Department should select the Philippine financial statements of Bluefin⁵³ because they are contemporaneous, publicly available, and come from a producer of comparable merchandise.
- Gemini's financial statements should not be used as they process frozen shrimp and not fish fillets.
- The Department should reject Gemini's financial statements because record evidence indicates the company received export subsidies.
- If the Department continues to use Gemini's surrogate financial statements, it should include the data of Bangladeshi seafood producer Golden Harvest.
- If the Department uses the Bangladeshi surrogate financial statements, it should ensure that it accounts for changes in inventory when calculating the surrogate financial ratios.

⁵¹ Gemini Sea Food Ltd. ("Gemini").

⁵² Golden Harvest Seafood & Fish Processing Ltd. ("Golden Harvest").

⁵³ Bluefin Seafood Export Inc.

- Finally, the Department should reject TAFISHCO's arguments concerning using Golden Harvest's financial statements.
- If the Department selects Indonesia as the primary surrogate country, it should use Indonesian producers' financial statements that are now available on the record.

TAFISHCO

- The Department should select the financial statements of Gemini as it processes fish and shrimp, is contemporaneous, and the most appropriate company on the record.
- The Department should not use the financial statements of Golden Harvest due to the lack of a Directors report and because of accounting discrepancies.
- The Department should continue to exclude the finished goods inventory changes from the ratio calculations as it would result in double counting.
- Over the investigation and several reviews, there has been no evidence showing that Gemini received government subsidies.
- The Indonesian companies Central Proteinaprima and PT Dharma Samudera, both experienced losses during the POR and were in serious financial distress. PT Japfa Comfeed's operations mostly have nothing to do with processing seafood.
- The Philippine financial statements lack detail, include subsidies, or don't match the production experience of the respondent.

Department's Position: Section 773(c)(1) of the Act directs the Department to use "the best available information" from an appropriate market-economy country to value FOPs. In selecting the most appropriate SV, the Department considers several factors including whether the SV is: publicly available, contemporaneous with the POR, represents a broad market average, from an approved surrogate country, tax and duty-exclusive, and specific to the input.⁵⁴ The Department's preference is to satisfy the breadth of the aforementioned selection criteria. Moreover, it is the Department's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the FOPs.⁵⁵ As there is no hierarchy for applying the above-mentioned principles, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what constitutes the "best" available surrogate value for each input.⁵⁶

As noted above in Comment I, for the final results of this new shipper review, 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.⁵⁷ The record of this new shipper

⁵⁴ See, e.g., First Administrative Review of Sodium Hexametaphosphate From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review, 75 FR 64695 (October 20, 2010) ("Sodium Hex"), and accompanying Issues and Decision Memorandum at Comment 3.

⁵⁵ See Certain Preserved Mushrooms from the PRC: Final Results and Final Partial Rescission of the Sixth Administrative Review, 71 FR 40477 (July 17, 2006) ("Mushrooms from the PRC"), and accompanying Issues and Decision Memorandum at Comment 1; see also Freshwater Crawfish Tail Meat from the PRC: Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review, 67 FR 19546 (April 22, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

⁵⁶ See Mushrooms from the PRC.

⁵⁷ 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) ("NSR5 Final Results"), 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) ("Furniture from China"), and accompanying Issues and Decision Memorandum at Comment 3.

review 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 or Indonesia, for purposes of calculating surrogate financial ratios.

As an initial matter, and consistent with our practice, we will adjust the denominator for the calculation of SG&A and profit for changes in finished goods inventory for the company selected below.⁵⁸

With respect to the public availability of Golden Harvest's financial statements, we note that, for the purposes of calculating financial ratios, this factor is satisfied. However, Golden Harvest's financial statement is not contemporaneous with the POR of this NSR. Therefore, consistent with our practice of not using non-contemporaneous surrogate financial companies when the record contains a more suitable source, we will not be using Golden Harvest's financial statements for the final results. In addition, because we are not using Golden Harvest's financial statements for the final results, we need not address the issues concerning the completeness and errors of that company's financial statements.

With regard to Gemini's financial statements, we first note that they cover two months of TAFISHCO's POR. We further note that they can be found on the internet. Therefore, with respect to the public availability and contemporaneity of Gemini's financial statements, we note that for the purposes of calculating the financial ratios, these factors are satisfied. With regard to the merchandise produced and sold by the company, we note that Gemini states it processes fish and shrimp,⁵⁹ of which the production processes (capital structure) is similar in terms of: cold processing area, freezing machines, and cold storage. Moreover, we note that similar to TAFISHCO, Gemini is a processor only company. Thus, we find Gemini's production experiences to be similar to that of TAFISHCO. In addition, the CIT has upheld our use of this company to calculate financial ratios in other proceedings.⁶⁰ Finally, contrary to Petitioners' claim, there is no evidence on the record that the subsidies in Gemini's financial statement are in fact countervailable. The Department's practice is to exclude only financial statements that show evidence of subsidization involving programs that the Department has determined to be countervailable.⁶¹ As a result, for the final results, we will rely on Gemini's 2009-2010 financial statements for the calculation of the surrogate financial ratios.

B. Fish Waste

Petitioners

- At the Preliminary Results the Department valued fish waste using Indonesian GTA data, HTS 0511.91.10.
- This category is overly broad and does not accurately value the fish waste of the subject merchandise.
- Fish waste is unprocessed byproduct collected and sold for a few cents. It should not be valued at 0.17/kg more than the price of whole fish.

⁵⁸ See Seamless Refined Copper Pipe and Tube From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 60725 (October 1, 2010).

⁵⁹ See TAFISHCO's July 29, 2011, submission at Exhibit 12-B.

⁶⁰ See Catfish Farmers of Am. v. United States, 641 F. Supp. 2d 1362, 1380 (September 14, 2009).

⁶¹ See, e.g., 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.

- Instead, the Department should select from several price quotes on the record: 1) a price quote from Vitarich Corporation, a Philippine seafood processor, accompanied by an affidavit addressing concerns the Department raised in the last review; 2) 2006 price quotes from several Indian processors; 3) 1998-2010 Indonesian price quotes from several published sources.
- In a prior new shipper review proceeding, the Department valued fish waste base on an average of Indian price quotes even though import statistics data was on the record.

TAFISHCO

- The Department should reject the Philippine price quote because it is unsigned, not specific to the subject by-product and is not from a primary or secondary country.
- The Indonesian price quotes are not reliable because they are: not comparable to the by-product, not translatable, or not contemporaneous.
- Instead, the Department should value fish waste using a price quote obtained from Indian frozen seafood producer, Shivani Network (“Shivani”).

Department’s Position:

Section 773(c)(1)(B) of the Act, instructs the Department to value the factors of production based upon the best available information from an appropriate market economy 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.

As noted above in Comment I, for the final results of this new shipper review, we have selected Bangladesh as the primary surrogate country. It is the Department’s preference to value all factors of production (“FOP”) with data from the primary surrogate country. When data is not available from the primary surrogate, the Department will look to secondary or other sources only when a suitable value from the primary surrogate country does not exist on the record.⁶² In this new shipper review, the record does not contain a value for fish waste from the primary surrogate country. In instances where Bangladeshi data is not available, we have selected either Indonesia or the Philippines, as secondary surrogate countries.⁶³ Therefore, we will not consider surrogate values from India for the final results.

With respect to the Vitarich price quote, we first note that the data is from April 2010. Because the POR for this review is August 1, 2010, through January 31, 2011, the data is not contemporaneous with the POR. We further note that the Indonesian GTA data on the record covers the whole POR of this new shipper review. It is the Department’s preference to use surrogate values that are 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.⁶⁴ In this case, because we have data from Indonesia that is contemporaneous to the POR of this new shipper review, we will not use the Vitarich price quote for the final results.

With regard to the Shivani price quote, we note that it does not represent a broad market average, is not from a producer located in the primary surrogate country, or any of the secondary

⁶² See, e.g., NSR5 Final Results; See also Furniture from China.

⁶³ See Comment I.

⁶⁴ See, e.g., Sodium Hex and accompanying Issues and Decision Memorandum at Comment 3.

countries and is not specific to *Pangasius*. Given these concerns, the Department determines that this price quote is also not the best available information for purposes of valuing fish waste.

Finally, similar to the Vitarich price quote, we note that all of the Indonesian price quotes dating from 1988 through 2010, are also not contemporaneous to the POR. Furthermore, several of the price quotes are not translated. Therefore, we are also not considering any the Indonesian price quotes for the final results.

For the aforementioned reasons, we will not use these price quotes for the final results because: 1) the individual price quotes do not reflect actual sales and prices as do the import statistics; 2) the Indonesian import statistics on the record represent broad market averages.⁶⁵ Therefore, for the final results, we will value fish waste using Indonesian import statistics, specifically, GTA data for HTS 0511.91.90.00.⁶⁶

C. Fingerlings, Fish Feed, Nutrients, Lime

Petitioners

- In its case brief, TAFISHCO argues that the Department should use domestic price data from Bangladesh to value several farming factors.
- The Department should address the TAFISHCO's admission regarding the consumption of farming factors, determine that TAFISHCO is indeed an integrated producer and thus, apply adverse inferences to its farming inputs.

TAFISHCO

- The Department should value the farming factors for fingerlings, fish feeds, nutrients and lime based on domestic price data from Bangladesh.

Department's Position: We disagree with Petitioners. Petitioners refer to language in TAFISHCO's case brief regarding SVs for farming inputs that is irrelevant for this NSR and which is identical to the language from a respondent's case brief in the AR7 Final Results, where one respondent did in fact have farming inputs. First, we note that throughout this NSR TAFISHCO has consistently reported that it is a processor only, as opposed to being an integrated producer during the POR.⁶⁷ In addition, at no time in this proceeding has TAFISHCO reported any consumption for these inputs, nor is there any record evidence at all that TAFISHCO was in fact an integrated producer during the POR. In fact, TAFISHCO's cost reconciliation and financial records reflect that of a company that is a processor only. Therefore, this argument is not relevant to this NSR and for the final results, we will not apply an adverse inference with regard to these inputs.

D. Salt

Petitioners

- The Department should value salt using GTA Philippines data because it represents the best available information on the record to value this input.

⁶⁵ See, e.g., Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Partial Recession of Antidumping Duty Administrative Review, 74 FR 47191 (September 15, 2009) and accompanying Issues and Decision Memorandum at comment 7.

⁶⁶ See, e.g., AR7 Final Results.

⁶⁷ See, e.g., TAFISHCO's June 3, 2011, supplemental submission response at pages 17-19.

- The data in the Bangladesh Financial Express article are unsuitable because they are not contemporaneous and do not represent actual transaction data.

TAFISHCO

- The Department should use a price quote from a Bangladesh Financial Express article (“price quote”) dated May 15, 2008, to value salt because: 1) it is a domestic price quote from the primary surrogate country, Bangladesh; and 2) the Department’s preference is to use domestic values, rather than import values, when calculating SVs.

Department’s Position: We disagree with both parties, in part. As noted above in Comment I, for the final results of this review, we have selected Bangladesh as the primary surrogate country. It is the Department’s preference to value all FOP utilizing data from the primary surrogate country and to consider alternatives only when a suitable value from the primary surrogate country does not exist on the record.⁶⁸ In this review, the record contains a suitable value for salt from the primary surrogate country (see below). Therefore, for the final results, we will not use data from Indonesia or the Philippines for purposes of valuing this FOP.

With regard to TAFISHCO’s argument concerning the price quote on the record of this new shipper review, it is the Department’s general practice not to use price quote information if other suitable publicly available data is on the record because a quote does not represent actual prices or broad ranges of data. In addition, the Department is often unaware of the conditions under which the quote was solicited and whether or not it was self-selected from a broader range of quotes.⁶⁹ Therefore, we have determined that the salt value from the 2007 Bangladesh UN Comtrade data is the best available information on the record for valuation purposes because it is from the primary surrogate country and it satisfies the other SV selection criteria.⁷⁰ Therefore, for the final results, we have valued salt using data from 2007 Bangladesh UN Comtrade, inflated to the POR.⁷¹

E. STPP, CO Gas, PE Bags, Cartons, Tape, Label, Plastic Sheet, Banding, Diesel
Petitioners

- The Department should value these inputs using Philippine import data as the Philippines are the best choice for surrogate country.

TAFISHCO

- As Bangladesh is the most appropriate surrogate country, the Department should value these inputs using UN Comtrade for Bangladesh.

Department’s Position: We agree with TAFISHCO, in part. As noted above in Comment I, for the final results of this review, we have selected Bangladesh as the primary surrogate country. It is the Department’s preference to value all FOP utilizing data from the primary surrogate country and to consider alternative sources only when a suitable value from the primary surrogate

⁶⁸ See, e.g., AR7 Final Results; see also NSR5 Final Results; see also Furniture from China.

⁶⁹ See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 3987 (January 22, 2009) (“TRB”), and accompanying Issues and Decision Memorandum at Comment 5; see also Drill Pipe From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances 76 FR 1966 (January 11, 2011) (“Drill Pipe”), and accompanying Issues and Decision Memorandum at Comment 6.

⁷⁰ See, e.g., Sodium Hex.

⁷¹ See, e.g., AR7 Final Results.

country does not exist on the record.⁷² In this new shipper review, except for metal banding (“metal wire”), the record contains suitable values for the factors listed above from the primary surrogate country. Therefore, for the final results, we will not use data from the Philippines to value the aforementioned inputs. Additionally, at no time in this proceeding has TAFISHCO reported any consumption for CO gas or plastic sheet, nor is there any record evidence at all that TAFISHCO consumed these inputs; therefore, arguments regarding these FOPs are moot.

In this new shipper review, we have determined that even though data from 2007 Bangladesh UN Comtrade pre-dates the POR, they are the best available information on the record for valuing the aforementioned inputs. This is because they are from the primary surrogate country and they satisfy the Department’s other SV selection criteria, e.g., publicly available from the UN, broad market averages as they are national level data, tax and duty free, and specific to the input.⁷³ Therefore, for the final results, we have valued the aforementioned inputs, except for metal wire, using 2007 Bangladesh UN Comtrade data, inflated to the POR. For metal wire, because we do not have a surrogate value from the primary surrogate country, we will continue to use the GTA data for Indonesia from the Preliminary Results, as they best satisfy the Department’s SV selection criteria.

F. Labor

Petitioners

- The Department should use Philippine ILO Chapter 6A labor data in the final results, or in the alternative, Indonesian ILO chapter 5B data, as the Department’s preference for ILO data was affirmed in its announcement of its change in NME labor rate methodology.
- TAFISHCO’s argument regarding the non specificity of ILO Revision 3, Sub-classification 15 for “manufacture of food products and beverages” holds no merit and was expressly addressed in the prior review of this proceeding, where the Department stated that “the explanatory notes for this sub-classification states that this sub-classification includes the ‘processing and preservation of fish and fish products.’”⁷⁴
- Thus, the Department’s methodology complies with Allied Pacific because it is valuing the labor required to produce the subject merchandise.

TAFISHCO

- The labor rate applied in Preliminary Results is based on wage data reported by ILO under International Standard Classification of all Economic Activities (“ISIC”) Code sub-classification 15, described as “manufacture of food products and beverages,” which is a broad category including various types of unrelated industries and does not reflect the wage rates in the fish or seafood sector. On account of this, the Department should not use this data.
- The wage rate applied in the Prelim Results is not in conformity with the U.S. Court of International Trade’s ruling in Allied Pacific.⁷⁵
- The record contains three sources of labor rates for Bangladesh: 1) an agricultural labor rate for Bangladesh during from the Monthly Statistical Bulletin – Bangladesh (October, 2008);⁷⁶

⁷² See Fish NSR5 Final Results; see also Furniture from China.

⁷³ See, e.g., Sodium Hex.

⁷⁴ See 6th AR/NSR Final Results; see also Certain Non-Frozen Apple Juice Concentrate From the People’s Republic of China, 75 FR 81564 (December 28, 2010), and accompanying Issues and Decision Memorandum at comment 1 c.

⁷⁵ Allied Pacific Food Co., Ltd. v. United States, 587 F. Supp. 2d 1330, (2008).

⁷⁶ See TAFISHCO’s First Surrogate Value Submission, dated, July 29, 2011.

2) data regarding labor rates for pangasius production included in the thesis on Pangas production entitled “An Economic Analysis of Small Scale Commercial Pangas Farming In Some Selected Areas of Mymensingh District;”⁷⁷ and 3) references within the FAO Fisheries Technical Paper 505⁷⁸ regarding the average wage rate for pangas farming during the period of study – October 15, 2005 to February 15, 2006.

- Any of the above sources are specific to agricultural and/or seafood industries, including fish farming, and would best satisfy the statutory scheme and judicial guidelines.

Department’s Position: The Department agrees with TAFISHCO, in part. In this new shipper review, the Department has selected Bangladesh as the surrogate country for the final results. As noted above, it is the Department’s preference to value all FOPs and movement expenses 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. Because Bangladesh does not report labor data to the ILO, we are unable to use ILO’s Chapter 6A data to value TAFISHCO’s labor wage. However, the record does contain a labor wage rate for agricultural workers in Bangladesh, published by the Bangladesh Bureau of Statistics (“BBS”) in its Monthly Statistical Bulletin.

As stated throughout this memorandum, when selecting possible surrogate values for use in an NME proceeding, the Department’s preference is to use surrogate values that are publicly available, broad market averages, contemporaneous with the POR, specific to the input in question, and exclusive of taxes. Pursuant to section 773(c)(1) of the Act, it is also the Department’s practice to use the best available information to derive surrogate values. The Department considers several factors, including quality, specificity and contemporaneity, to determine the best available information in accordance with the Act. The Department finds this labor wage rate to be the best available information on the record. These data are publicly available, represent a broad market average, are specific to the agricultural industry, are reasonably close in time to the POR, and are collected from an official Bangladeshi government source in the surrogate country that the Department has selected. Therefore, we note that the BBS data are consistent with the Department’s statement of policy regarding the calculation of the surrogate value for labor. The same, however, cannot be said of the alternative Bangladeshi labor data on the record, as they do not reflect country-wide data (broad market averages).

In this new shipper review, because there is no record evidence as to whether the BBS data contain all costs related to labor, including wages, benefits, housing, training, etc., we have made no adjustments to the surrogate financial ratios and have included all of the itemized indirect labor costs identified in the surrogate financial statements, as noted in Labor Methodologies.⁷⁹

G. Brokerage & Handling

Petitioners

- The Department should continue to use the Philippine Tariff Commission (“PTC”) rates to calculate brokerage and handling because: 1) the data are contemporaneous with the POR; and 2) the Department has used the PTC data in other proceedings.

⁷⁷ See id.

⁷⁸ See id.

⁷⁹ See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092 (June 21, 2011) (“Labor Methodologies”).

TAFISHCO

- The Department should value brokerage and handling by averaging Indian charges paid by Kejirwal Paper Ltd. and Agro Dutch Industries Ltd. because the Indian value: 1) is derived from data from a surrogate country; 2) is from a significant producer of comparable merchandise; 3) is derived from actual commercial transactions; 4) was used in prior segments of this proceeding; and 5) is more contemporaneous than the alternative data from the Philippines.
- The Department should not use Indonesian data from the World Bank's Doing Business in Indonesia publication to value brokerage and handling because Indonesia lacks any usable information on a country-wide basis to value the whole fish input.

Department's Position: We disagree with both parties. As noted above in Comment I, for the final results of this new shipper review, we have selected Bangladesh as the primary surrogate country. It is the Department's preference to value all FOPs and movement expenses 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.⁸⁰ In this new shipper review, the record does not contain a suitable value for brokerage and handling from the primary surrogate country. Therefore, we looked to the surrogate values from the secondary surrogate countries for calculating brokerage and handling. In addition to the Indonesian data used in the Preliminary Results, the record of this new shipper review now includes data from the Philippines. Both of these values are from countries which have been identified on the Surrogate Country List⁸¹ as economically comparable to Vietnam.

In reviewing the data from both surrogate countries, we note that the Philippine data is not as contemporaneous as the Indonesian data used in the Preliminary Results. Specifically, we note that although Petitioners contend the data is current as of August 10, 2009, the dates derived from the header, signature block, and web page, indicates the date as 2001.⁸² In addition, and more importantly, the Philippine data is only for Brokerage charges and does not contain a handling portion.⁸³

Therefore, we have determined that the Indonesian value from the World Bank's Doing Business in Indonesia publication continues to represent the best available information on the record to value brokerage and handling because it is from a secondary surrogate country and satisfies the Department's other SV selection criteria, e.g., publicly available from the UN, broad market averages as they are national level data, tax and duty free, and specific to brokerage and handling.⁸⁴ Therefore, for the final results, we have continued to use this source to value brokerage and handling, as we did in the Preliminary Results.⁸⁵

⁸⁰ See NSR5 Final Results; see also Furniture from China.

⁸¹ See Letter to Interested Parties: New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Country List, dated May 10, 2011 ("Surrogate Country List").

⁸² See Petitioners' surrogate values submission at Exhibit 17, dated, July 29, 2011.

⁸³ See WBF at Comment 22.

⁸⁴ The Department has used this series of World Bank publications to value brokerage and handling in other cases. See, e.g., Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 64318 (October 18, 2011), and accompanying Issues and Decision Memorandum at Comment 8.

⁸⁵ See, e.g., AR7 Final Results.

COMMENT III: CORRECTION OF PRELIMINARY MARGIN CALCULATION

Petitioners

- In the Preliminary Results, the Department erred in the calculation of international freight for TAFISHCO.
- TAFISHCO reported international freight on a dollar per pound basis. However, the Department did not convert the value to a dollar per kilogram basis.
- For the final results, the Department should revise the international freight calculation and convert the international freight to a dollar per kilogram basis.

TAFISHCO did not submit comments on this issue.

Department's Position: We agree with Petitioners and for the final results, will modify the international freight to reflect a pound to kilogram conversion.

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

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

May 3, 2012
Date