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January 24, 2013

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Import Administration

FROM: Gary Taverman  
Senior Advisor  
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping  
Duty New Shipper Reviews: Certain Frozen Fish Fillets from the  
Socialist Republic of Vietnam

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## SUMMARY

In response to requests from interested parties, the Department of Commerce (“the Department”) is conducting four new shipper reviews (“NSRs”) of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam (“Vietnam”) for the period of review (“POR”) August 1, 2011, through January 31, 2012. The Department preliminarily has determined that Quang Minh Seafood Co., Ltd. (“Quang Minh”), Dai Thanh Seafoods Company Limited (“Dathaco”), Fatifish Company Limited (“Fatifish”), and Hoang Long Seafood Processing Co., Ltd. (“Hoang Long”) (collectively, the “New Shipper Respondents”) did not sell subject merchandise in the United States at prices below normal value (“NV”).

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (“CBP”) to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We will issue final results no later than 90 days from the date of publication of this notice, pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (“the Act”).



## Background

On April 3, 2012, the Department initiated four new shipper reviews of certain frozen fish fillets from Vietnam for the period August 1, 2011, through January 31, 2012.<sup>1</sup> On September 12, 2012, the Department extended the time period for issuing the preliminary results by 120 days.<sup>2</sup> As explained in the memorandum from the Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, through October 30, 2012. Thus, all deadlines in this segment of the proceeding have been extended by two days. The revised deadline for the preliminary results of these new shipper reviews is now January 24, 2013.<sup>3</sup>

The Department sent antidumping duty questionnaires to the New Shipper Respondents, to which they responded in a timely manner. Between October and December, 2012, the Department issued supplemental questionnaires to these respondents, to which they also responded in a timely manner. Between September and October 2012, the Department received surrogate country/surrogate value comments, and rebuttal comments from interested parties.

## Scope of the Order

The product covered by the order is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti*, *Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*), and *Pangasius Micronemus*. Frozen fish fillets are lengthwise cuts of whole fish. The fillet products covered by the scope include boneless fillets with the belly flap intact (“regular” fillets), boneless fillets with the belly flap removed (“shank” fillets), boneless shank fillets cut into strips (“fillet strips/finger”), which include fillets cut into strips, chunks, blocks, skewers, or any other shape. Specifically excluded from the scope are frozen whole fish (whether or not dressed), frozen steaks, and frozen belly-flap nuggets. Frozen whole dressed fish are deheaded, skinned, and eviscerated. Steaks are bone-in, cross-section cuts of dressed fish. Nuggets are the belly-flaps. The subject merchandise will be hereinafter referred to as frozen “basa” and “tra” fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under tariff article codes 1604.19.4000, 1604.19.5000, 0305.59.4000, 0304.29.6033 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the Harmonized Tariff Schedule of the United States (“HTSUS”).<sup>4</sup> The order covers all frozen fish fillets meeting the above specification,

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<sup>1</sup> See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Reviews*, 77 FR 20008 (April 3, 2012).

<sup>2</sup> See Memorandum to Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations from Jerry Huang, International Trade Compliance Analyst, Antidumping and Countervailing Duty Operations, re: *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Deadline for Preliminary Results of Antidumping Duty New Shipper Reviews*, dated September 12, 2012.

<sup>3</sup> See Memorandum to the Record from Paul Piquado, AS for Import Administration, re: “Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Hurricane,” dated October 31, 2012.

<sup>4</sup> Until July 1, 2004, these products were classifiable under tariff article codes 0304.20.60.30 (“Frozen Catfish Fillets”), 0304.20.60.96 (“Frozen Fish Fillets, NESOI”), 0304.20.60.43 (“Frozen Freshwater Fish Fillets”) and 0304.20.60.57 (“Frozen Sole Fillets”) of the HTSUS. Until February 1, 2007, these products were classifiable under tariff article code 0304.20.60.33 (“Frozen Fish Fillets of the species *Pangasius* including basa and tra”) of the HTSUS.

regardless of tariff classification. Although the HTSUS subheading is provided for convenience and Customs purposes, our written description of the scope of the order is dispositive.

## DISCUSSION OF THE METHODOLOGY

### Bona Fides Analysis

Consistent with the Department's practice, we examined the *bona fides* of the sales under review in these NSRs by the New Shipper Respondents.<sup>5</sup> In evaluating whether a sale in a NSR is commercially reasonable or typical of normal business practices, and therefore *bona fide*, the Department considers, *inter alia*, such factors as (a) the timing of the sale, (b) the price and quantity, (c) the expenses arising from the transaction, (d) whether the goods were resold at a profit, and (e) whether the transaction was made at an arm's length basis.<sup>6</sup> Accordingly, the Department considers a number of factors in its *bona fides* analysis, "all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise."<sup>7</sup> In *TTPC*, the Court of International Trade ("CIT") also affirmed the Department's decision that any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant,<sup>8</sup> and found that the weight given to each factor investigated will depend on the circumstances surrounding the sale.<sup>9</sup> Finally, in *New Donghua*, the CIT affirmed the Department's practice of evaluating the circumstances surrounding an NSR sale, so that a respondent does not unfairly benefit from an atypical sale and obtain a lower dumping margin than the producer's usual commercial practice would dictate.<sup>10</sup> Where the Department finds that a sale is not *bona fide*, the Department will exclude the sale from its export price calculations.<sup>11</sup>

We found that the sales by the New Shipper Respondents were made on a *bona fide* basis. Based on our investigation into the *bona fide* nature of the sales, the questionnaire responses submitted by New Shipper Respondents, and the companies' eligibility for a separate rate (*see* the "Separate Rate" section below), we preliminarily determine that the New Shipper Respondents have met the requirements to qualify as new shippers during this POR. Because much of the factual information used in our analysis of the *bona fides* of the New Shipper Respondents' transactions involves business proprietary information, the full discussion of the basis for our preliminary finding that these sales are *bona fide* is set forth in the respective *bona fides*

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<sup>5</sup> See, e.g., *Honey from the People's Republic of China: Rescission and Final Results of Antidumping Duty New Shipper Reviews*, 71 FR 58579 (October 4, 2006) and accompanying Issues and Decision Memorandum at Comment 1b.

<sup>6</sup> See *Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1249-1250 (CIT 2005) ("*TTPC*").

<sup>7</sup> See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) ("*New Donghua*") (citing *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002), and accompanying Issues and Decision Memorandum: New Shipper Review of Clipper Manufacturing Ltd.).

<sup>8</sup> See *TTPC*, 366 F. Supp. 2d at 1250.

<sup>9</sup> *Id.* at 1263.

<sup>10</sup> See *New Donghua*, 374 F. Supp. 2d at 1344.

<sup>11</sup> See *TTPC*, 366 F. Supp. 2d at 1249.

memos.<sup>12</sup> Therefore, for the purposes of these preliminary results, we are treating the New Shipper Respondents' sales of subject merchandise to the United States as appropriate transactions for their NSRs.

### Non-Market Economy Country

In every case conducted by the Department involving Vietnam, Vietnam has been treated as a non-market ("NME") country.<sup>13</sup> In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Accordingly, the Department continues to treat Vietnam as a NME in this proceeding.

### Separate Rates

In proceedings involving NME countries, there is a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Sparklers*,<sup>14</sup> as amplified by *Silicon Carbide*.<sup>15</sup> However, if the Department determines that a company is wholly foreign-owned or located in a market economy ("ME"), then a separate rate analysis is not necessary to determine whether it is independent from government control.<sup>16</sup>

#### a) *Absence of De Jure Control*

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated

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<sup>12</sup> See Memorandum to James C. Doyle, Director, Office 9, from Seth Isenberg, Case Analyst, Office 9, "New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: *Bona Fide* Analysis of Quang Minh Co. Ltd's New Shipper Sale," dated concurrently with this notice; see also Memorandum to James C. Doyle, Director, Office 9, from Jerry Huang, Case Analyst, Office 9, "New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: *Bona Fide* Analysis of Dai Thanh Seafoods Company Limited's New Shipper Sale," dated concurrently with this notice; see also Memorandum to James C. Doyle, Director, Office 9, from Jerry Huang, Case Analyst, Office 9, "New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: *Bona Fide* Analysis of Fatifish Company Limited's New Shipper Sale," dated concurrently with this notice; see also Memorandum to James C. Doyle, Director, Office 9, from Toni Dach, Case Analyst, Office 9, "New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: *Bona Fide* Analysis of Hoang Long Seafood Processing Co., Ltd.'s New Shipper Sale," dated concurrently with this notice.

<sup>13</sup> See, e.g., *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 11349 (March 17, 2009).

<sup>14</sup> See *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*").

<sup>15</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*").

<sup>16</sup> See, e.g., *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007) ("*Wax Candles from the PRC*").

with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.<sup>17</sup>

The evidence provided by the New Shipper Respondents supports a preliminary finding of *de jure* absence of government control based on the following: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) applicable legislative enactments decentralizing control of the companies; and (3) formal measures by the government decentralizing control of the companies.<sup>18</sup>

b) *Absence of De Facto Control*

Typically, the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.<sup>19</sup>

For the New Shipper Respondents, we determine that the evidence on the record supports a preliminary finding of *de facto* absence of government control based on record statements and supporting documentation showing the following: (1) the respondents set their own export prices independent of the government and without the approval of a government authority; (2) the respondents retain the proceeds from their sales and make independent decisions regarding disposition of profits or financing of losses; (3) the respondents have the authority to negotiate and sign contracts and other agreements; and (4) the respondents have autonomy from the government regarding the selection of management.<sup>20</sup>

Therefore, the evidence placed on the record of this review by the New Shipper Respondents demonstrates an absence of *de jure* and *de facto* government control with respect to their exports of subject merchandise under review, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. As a result, we are preliminarily granting them each a separate rate.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production

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<sup>17</sup> See *Sparklers*, 56 FR at 20589.

<sup>18</sup> See Quang Minh's Section A questionnaire response, dated April 30, 2012; see also Dathaco's Section A questionnaire response, dated May 8, 2012; see also Fatifish's Section A questionnaire response, dated May 8, 2012; see also Hoang Long's Section A questionnaire response, dated April 30, 2012.

<sup>19</sup> See *Silicon Carbide*, 59 FR at 22586-87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

<sup>20</sup> See Quang Minh's Section A questionnaire response, dated April 30, 2012; see also Dathaco's Section A questionnaire response, dated May 8, 2012; see also Fatifish's Section A questionnaire response, dated May 8, 2012; Hoang Long's Section A questionnaire response, dated April 30, 2012.

(“FOPs”), valued in a surrogate ME country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.<sup>21</sup>

In this segment, the Department has determined that Bangladesh, India, Indonesia, Nicaragua, Pakistan, and the Philippines are countries whose per capita gross national incomes (“GNI”) are comparable to Vietnam in terms of economic development.<sup>22</sup> As discussed below, the Department also has determined that all of these countries are significant producers of comparable merchandise. The sources of the surrogate values (“SVs”) we have used in these NSRs are discussed under the “Normal Value” section below.

a) *Economic Comparability*

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.<sup>23</sup> As explained in our Surrogate Country Memo, the Department considers Bangladesh, India, Indonesia, Nicaragua, Pakistan and the Philippines all to be comparable to Vietnam in terms of economic development. Accordingly, unless we find that all of these countries determined to be equally economically comparable are not significant producers of comparable merchandise, do not provide a reliable source of publicly available surrogate data or are unsuitable for use for other reasons, or we find that another equally comparable country is an appropriate surrogate, we will rely on data from one of these countries.

b) *Significant Producers of Identical or Comparable Merchandise*

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. 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.”<sup>24</sup> Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in

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<sup>21</sup> See Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (“*Policy Bulletin*”).

<sup>22</sup> See Memorandum to Paul Walker, Acting Program Manager, Office 9, from Carole Showers, Director, Office of Policy, re: “Request for a List of Surrogate Countries for a New Shipper Review of the Antidumping Duty Order on Certain Frozen Fish Fillets (“FFF”) from the Socialist Republic of Vietnam (“Vietnam”)”, dated April 23, 2012 (“*Surrogate Country Memo*”).

<sup>23</sup> 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.

<sup>24</sup> See *Policy Bulletin* at 2.

selecting a surrogate country.<sup>25</sup> Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.<sup>26</sup> “In cases where the identical merchandise is not produced, the Department must determine if other merchandise that is comparable is produced. How the Department does this depends on the subject merchandise.”<sup>27</sup> 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.<sup>28</sup>

Further, while the legislative history provides that the term “significant producer” includes any country that is a significant “net exporter,”<sup>29</sup> it does not preclude reliance on additional or alternative metrics.

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.<sup>30</sup> In this case, we have determined to use the broader category of frozen fish fillets as the basis for identifying producers of comparable merchandise. Therefore, consistent with cases that have similar circumstances as are present here, we obtained export data for each country identified in the surrogate country list. Based on 2009 export data from the United Nations Food and Agriculture Organization,<sup>31</sup> Bangladesh, India, Indonesia, Nicaragua, Pakistan and the Philippines are exporters of frozen fish fillets and, thus, are significant producers. Because none of the potential surrogate countries have been definitively disqualified through the above analysis, the Department looks to the availability of SV data to determine the most appropriate surrogate country.

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<sup>25</sup> The *Policy Bulletin* also states that “if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise.” *See id.* at note 6.

<sup>26</sup> *See Sebacic Acid from the People’s Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 65674, 65675-76 (December 15, 1997) (“{T}o impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.”).

<sup>27</sup> *See Policy Bulletin* at 2.

<sup>28</sup> *See id.* at 3.

<sup>29</sup> *See* Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).

<sup>30</sup> *See Certain Magnesia Carbon Bricks from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 11847, 11849 (March 12, 2010), unchanged for the final determination, 75 FR 45468 (August 2, 2010).

<sup>31</sup> *See* Department’s Memorandum, re: “Tenth New Shipper Reviews of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results,” dated concurrently with this notice (“Prelim Surrogate Value Memo”) at Attachment I.

c) *Data Availability*

After applying the first two selection criteria, if more than one country remains, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data from those countries.<sup>32</sup> When evaluating SV data, 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.<sup>33</sup> There is no hierarchy among these criteria. 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.<sup>34</sup>

In this case, the whole fish input is the most significant input because it accounts for the largest percentage of NV, as fish fillets are produced directly from the whole live fish. Accordingly, we must consider the availability and reliability of the surrogate values for whole fish on the record. This record does not contain any data for whole live fish from Nicaragua or Pakistan. Therefore, these countries will not be considered for primary surrogate country purposes at this time. However, the record contains whole fish surrogate value data from Bangladesh, the Philippines, Indonesia, and India.

Quang Minh placed the Bangladeshi Department of Agriculture Marketing, Ministry of Agriculture, online *pangas* price data ("online DAM data") on the record that is contemporaneous to the POR.<sup>35</sup> Petitioners placed the *Fisheries Statistics of the Philippines, 2008-2010*, published by the Philippines Bureau of Agricultural Statistics, Department of Agriculture ("*Fisheries Statistics*"), on the record.<sup>36</sup> Moreover, Petitioners placed 2010 Indonesian price and quantity data from the United Nations Food and Agriculture Organization's Fisheries Global Information System ("*FIGIS data*"), on the record.<sup>37</sup> Dathaco and Fatifish placed the *Present Status of the Pangasius, Pangasianodon-Hypophthalmus Farming in Andhra Pradesh, India* ("*Pangasius Study*"), on the record.<sup>38</sup>

We find that the online DAM data from Bangladesh represents the best available information with which to value the whole live fish input. Specifically, the online DAM data provides the only contemporaneous surrogate value for whole live fish in this segment of proceeding and it represents a more robust data source than the *Fisheries Statistics*, *FIGIS data* or *Pangasius Study*, given its broader data coverage and species-specific focus.<sup>39</sup> Moreover, with respect to other aspects of data availability, we note that the record contains a contemporaneous financial

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<sup>32</sup> See *Policy Bulletin*.

<sup>33</sup> See, e.g., *Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>34</sup> See *Policy Bulletin*.

<sup>35</sup> See Quang Minh's September 7, 2012 submissions at Exhibit 1.

<sup>36</sup> See Petitioners' September 7, 2012 submission at Exhibit 11.

<sup>37</sup> See Petitioners' September 7, 2012 submission at Exhibit 28.

<sup>38</sup> See Dathaco and Fatifish's September 7, 2012 submission at Exhibit 36A.

<sup>39</sup> See Prelim Surrogate Value Memo at 3 and Exhibit 3.

statement from a Bangladeshi producer of comparable merchandise.<sup>40</sup> Finally, Bangladesh has reliable, publicly available data for the majority of the factors of production.<sup>41</sup>

Therefore, for the preliminary results, the Department will select Bangladesh as the surrogate country.

### Fair Value Comparisons

To determine whether sales of subject merchandise to the United States by the New Shipper Respondents were made at less than NV, the Department compared the export price (“EP”) to NV, as described in the “U.S. Price” and “Normal Value” sections below. In these preliminary results, the Department applied the average-to-average comparison methodology adopted in the *Final Modification for Reviews*.<sup>42</sup> In particular, the Department compared monthly, weighted-average EPs with monthly, weighted-average NVs, and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

#### *U.S. Price*

For the New Shipper Respondents’ EP sales, we used the EP methodology, pursuant to section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation. Where appropriate, we made deductions from the starting price (gross unit price) for foreign movement expenses, foreign brokerage and handling, foreign containerization, and international movement expenses, in accordance with section 772(c) of the Act.

#### *Normal Value*

Section 773(c)(1)(B) of the Act provides that the Department shall determine the NV using a FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department’s normal methodologies.

#### *Factor Valuations*

In accordance with section 773(c) of the Act, for subject merchandise produced by the New Shipper Respondents, the Department calculated NV based on the FOPs reported by the New Shipper Respondents for the POR. The Department used import data and other publicly available sources from Bangladesh, India, Indonesia, and the Philippines in order to calculate SVs for the New Shipper Respondents’ FOPs.<sup>43</sup> In selecting SVs, we considered the quality,

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<sup>40</sup> See Prelim Surrogate Value Memo at Exhibit 10.

<sup>41</sup> See Prelim Surrogate Value Memo at Exhibit 2.

<sup>42</sup> See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012) (“*Final Modification for Reviews*”).

<sup>43</sup> See Prelim Surrogate Value Memo at Exhibit 2.

specificity, and contemporaneity of the available values. Each of the values ultimately selected are publicly-available and specific to the input at issue. Where we could not obtain publicly available information contemporaneous to the POR, we adjusted the surrogate values using the appropriate Consumer Price Index as published in the International Financial Statistics of the International Monetary Fund, in order to derive surrogate values contemporaneous with the POR.<sup>44</sup> As noted above, Bangladesh is the surrogate country source from which we obtained data to value most inputs, and when data were not available from Bangladesh, we used Indian, Indonesian and Philippine sources. Specifically, we valued fish oil and rice husk using Indonesian and Philippine import statistics, respectively. Moreover, we valued fish waste, fish skin, and broken fish meat using a species-specific and product-specific price quote from a Philippine processor and valued containerization cost using information submitted by an Indian processor.<sup>45</sup> To calculate NV, the Department multiplied the reported per-unit FOP quantities by publicly available SVs.

As appropriate, the Department adjusted input prices by including freight costs to render them delivered prices. Specifically, we added to Bangladeshi import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory of production, or the distance from the nearest seaport to the factory of production, where appropriate. This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997). Where we did not use Bangladeshi Import Statistics, we calculated freight based on the reported distance from the supplier to the factory. Additionally, where necessary, the Department adjusted SVs for inflation, exchange rates, and taxes and converted all applicable FOPs to a per-kilogram basis.

Furthermore, with regard to the import-based SVs, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, India, South Korea, and Thailand may have been subsidized because we have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies.<sup>46</sup> Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, it is reasonable to infer that all exports to all markets from these countries may be subsidized.<sup>47</sup> Additionally, consistent with our practice, we disregarded prices from NME countries and excluded imports labeled as originating from an “unspecified” country from the average value,

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<sup>44</sup> See Prelim Surrogate Value Memo.

<sup>45</sup> See *id.*

<sup>46</sup> See, e.g., *Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4-5; see also *Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review*, 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4; see also *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19-20.

<sup>47</sup> See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People’s Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 7.

because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.<sup>48</sup>

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (*i.e.*, not insignificant quantities) and pays in an ME currency, the Department uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping and/or subsidization.<sup>49</sup> Where the Department finds ME purchases to be of significant quantities (*i.e.*, 33 percent or more), in accordance with our statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs*,<sup>50</sup> the Department uses the actual purchase prices to value the inputs. Information reported by the New Shipper Respondents demonstrates that certain inputs were sourced from an ME country and paid for in ME currencies.<sup>51</sup> The information reported by the New Shipper Respondents also demonstrates that such inputs were purchased in significant quantities (*i.e.*, 33 percent or more) from ME suppliers.<sup>52</sup> Consequently, the Department has used the actual ME purchase prices to value these inputs.<sup>53</sup> Where appropriate, freight expenses were added to the ME price of the input.<sup>54</sup>

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings.<sup>55</sup> In *Labor Methodologies*, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (“ILO”) Yearbook of Labor Statistics.

In these preliminary results, the Department calculated the labor input using the wage method described in *Labor Methodologies*. As noted above, the Department has selected Bangladesh as the surrogate country for the preliminary results. However, because Bangladesh does not report labor data to the ILO, we are unable to use ILO’s Chapter 6A data to value the New Shipper Respondents’ labor wage. The record does contain a labor wage rate for fishery workers in Bangladesh, published by the Bangladesh Bureau of Statistics (“BBS”). We have found relying on such labor data collected by an official government source in the surrogate country to be

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<sup>48</sup> See *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 56158 (September 12, 2011) (“*Fifth Vietnam Shrimp AR*”) unchanged at *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Amended Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 64307 (October 18, 2011) (“*Fifth Vietnam Shrimp Amended Final*”).

<sup>49</sup> See, e.g., *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997).

<sup>50</sup> See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717-61718 (October 19, 2006) (“*Antidumping Methodologies: Market Economy Inputs*”).

<sup>51</sup> See, e.g., Dathaco’s Section D Questionnaire Response, dated May 31, 2012, at Exhibit D-3.

<sup>52</sup> See, e.g., Dathaco’s Section D Questionnaire Response, dated May 31, 2012, at Exhibit D-5.

<sup>53</sup> See Prelim Surrogate Value Memo at Exhibit 2.

<sup>54</sup> See *id.*

<sup>55</sup> See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (“*Labor Methodologies*”).

consistent with *Labor Methodologies* when ILO labor data is not available.<sup>56</sup> The Department also finds this labor wage rate to be the best available information on the record. Specifically, this data is publicly available, represents a broad market average (based on country-wide quarterly wage data), and is specific to the fishery industry.<sup>57</sup> While the 2009 BBS labor data is not contemporaneous to the POR, it is more contemporaneous than the 2008 ILO labor data for Indonesia and the Philippines, or the 2005 Indian labor data available on the record.<sup>58</sup>

The Department's criteria for choosing surrogate financial ratios are the availability of contemporaneous financial statements, comparability to the respondent's experience, and publicly available information.<sup>59</sup> Moreover, for valuing factory overhead ("OH"), selling, general & administrative expenses ("SG&A"), and profit, the Department normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.<sup>60</sup> As a result, to value the surrogate financial ratios for OH, SG&A, and profit in these reviews, the Department has relied upon the 2010-2011 financial statement of Gemini Seafood Limited ("Gemini").<sup>61</sup> Gemini is a producer of comparable merchandise – frozen seafood – in Bangladesh.<sup>62</sup> Its financial statement is contemporaneous to the POR, is complete, and is publicly available.<sup>63</sup> Accordingly, we have relied upon the financial data of Gemini to derive surrogate financial ratios for the New Shipper Respondents.

#### *Currency Conversion*

Where necessary, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

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<sup>56</sup> See, e.g., *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) and accompanying issues and Decision Memorandum at Comment IID1.

<sup>57</sup> See Dathaco and Fatifish's September 7, 2012 submission at Exhibit 3A.

<sup>58</sup> See Petitioners' September 7, 2012, submission at Exhibits 18 and 33; see also Dathaco and Fatifish's September 7, 2012 submission at Exhibit 39.

<sup>59</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 24502 (May 10, 2005) and accompanying Issues and Decision Memorandum at Comment 3.

<sup>60</sup> See 19 CFR 351.408(c)(4).

<sup>61</sup> See Prelim Surrogate Value Memo at Exhibit 10.

<sup>62</sup> See Dathaco and Fatifish's September 7, 2012 submission at Exhibit 12B.

<sup>63</sup> See *id.*

CONCLUSION

We recommend applying the above methodology for these preliminary results.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Import Administration

\_\_\_\_\_  
(Date)