



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D. C. 20230

A-552-801
AR 8/1/10 - 7/31/11
NSRs 8/1/10 - 7/31/11
Public Document
IA/NME/IX: AJM, PW, SI, SSP

March 13, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

SUBJECT: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam:
Issues and Decision Memorandum for the Final Results of the
Eighth Administrative Review and Aligned New Shipper Reviews

SUMMARY

The Department of Commerce (“the Department”) has analyzed the comments submitted by the petitioners,¹ Vinh Hoan Corporation (“Vinh Hoan”),² Anvifish Joint Stock Company (“Anvifish”) and Vinh Quang Fisheries Corporation (“Vinh Quang”), the new shipper respondents,³ and the Vietnam Association of Seafood Exporters and Producers (“VASEP”) in the eighth administrative review and aligned ninth new shipper reviews of certain frozen fish fillets from the Socialist Republic of Vietnam (“Vietnam”). Following the *Preliminary Results*⁴ and the analysis of the comments received, we have made changes to the margin calculations for the final results. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

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

² We note that Vinh Hoan includes Vinh Hoan Corporation and its affiliates Van Duc Food Export Joint Company (“Van Duc”) and Van Duc Tien Giang (“VDTG”).

³ The new shipper respondents are An Phu Seafood Corporation (“An Phu”), Docifish Corporation (“DOCIFISH”), and Godaco Seafood Joint Stock Company (“GODACO”).

⁴ See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results of the Eighth Antidumping Duty Administrative Review and Ninth New Shipper Reviews, Partial Rescission of Review, and Intent to Revoke Order in Part*, 77 FR 56180 (September 12, 2012) (“*Preliminary Results*”).



BACKGROUND

On September 12, 2012, the Department published the *Preliminary Results* of this administrative review and aligned new shipper reviews.⁵ On December 13, 2012, the Department extended the final results to March 13, 2013.⁶ Between December 21, 2012 and January 17, 2013, interested parties submitted case and rebuttal briefs. On February 21, 2013, the Department held a hearing.

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 beheaded, 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”).⁷ The order covers all frozen fish fillets meeting the above specification, 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.

⁵ *Id.*

⁶ See Memorandum to Gary Taverman, Senior Advisor, through James Doyle, Office Director, from Paul Walker, Case Analyst, “Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Deadline for Final Results of the Eighth Antidumping Duty Administrative Review and Aligned New Shipper Reviews,” dated December 13, 2012.

⁷ Until July 1, 2004, these products were classifiable under tariff article codes 0304.20.6030 (“Frozen Catfish Fillets”), 0304.20.6096 (“Frozen Fish Fillets, NESOI”), 0304.20.6043 (“Frozen Freshwater Fish Fillets”) and 0304.20.6057 (“Frozen Sole Fillets”) of the HTSUS. Until February 1, 2007, these products were classifiable under tariff article code 0304.20.6033 (“Frozen Fish Fillets of the species *Pangasius*, including basa and tra”) of the HTSUS.

DISCUSSION OF THE ISSUES

General Issues

Comment I: Selection of the Surrogate Country

A. *Economic Comparability*

Petitioners

- Indonesia and the Philippines are both economically comparable to Vietnam.

VASEP/Vinh Hoan

- The Surrogate Country List⁸ relies on 2010 data; however, more contemporaneous data exists on the record for both gross national income (“GNI”) and gross domestic product (“GDP”). Due to the large differences in GNI and GDP from Vietnam, neither Indonesia nor the Philippines are economically comparable to Vietnam. Only Bangladesh is economically comparable to Vietnam.
- The Court of International Trade (“CIT”) recently ruled that the Department must weigh the relative strengths and weaknesses of potential surrogate countries, and if, for example, one potential surrogate has superior data quality and another is closer in GNI to the non-market economy (“NME”) country in question, the Department must weigh these differences when selecting the appropriate surrogate country.⁹

Department’s Position: Because Vietnam is being treated as an NME, when calculating normal value (“NV”), section 773(c)(4) of the Tariff Act of 1930, as amended (“the Act”), requires the Department to value the factors of production (“FOPs”), to the extent possible, in a surrogate country that is (a) at a level of economic development comparable to Vietnam, and (b) a significant producer of comparable merchandise. Using 2010 GNI data, the Department provided parties with a list of potential surrogate countries found to be economically comparable to Vietnam, which included Bangladesh, India, Indonesia, Nicaragua, Pakistan, and the Philippines.¹⁰

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.¹¹ The annual GNI levels for the list of potential surrogate

⁸ See letter to Interested Parties, from Matthew Renkey, Acting Program Manager, “Antidumping Duty Administrative Review of Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Country List,” dated November 22, 2011 (“Surrogate Country List”).

⁹ See *Ad Hoc Shrimp Trade Action Committee v. United States*, 882 F. Supp. 2d 1366 (CIT 2012) (“*PRC Shrimp Remand*”).

¹⁰ See Surrogate Country List.

¹¹ 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) (“*Magnesium from the PRC*”), and accompanying Issues and Decision Memorandum at Comment 4.

countries range from \$640 to \$2,580.¹² The Department is satisfied that they are equally comparable in terms of economic development and serve as an adequate group to consider when gathering surrogate value (“SV”) data. Further, providing parties with a range of countries with varying GNIs is reasonable, given that any alternative would require a complicated analysis of factors affecting the relative GNI differences between Vietnam and other countries which is not required by the statute. In contrast, by identifying countries that are economically comparable to Vietnam based on GNI, the Department provides parties with a predictable practice which is also reasonable and consistent with the statutory requirements.

The Department has found that the selection of the range of economically-comparable countries based on GNIs is reasonable and consistent with the Act.¹³ Identifying potential surrogate countries based on GNI data has been affirmed by the CIT.¹⁴ Selecting a surrogate country is not limited to those identified in the Surrogate Country List as we may consider “other countries on the case record if the record provides {us} adequate information to evaluate them.”¹⁵

Regarding the argument that the Department should rely upon most recent GNI/GDP data, we disagree. The Department considers the selection of potential surrogate countries to be similar to the selection of mandatory respondents in an administrative review – both are very important to the proceeding and must be resolved early in the case in order to provide sufficient time for party participation and the necessary analysis.¹⁶ To ensure sufficient time was provided in selection of potential surrogate countries for this proceeding, shortly after selecting the mandatory respondents, the Department identified a list of six economically-comparable countries based on the most up-to-date information available from the *World Development Report* provided by the World Bank, which was the 2010 World Bank GNI data.¹⁷ The World Bank GNI/GDP data submitted by VASEP was not available on the record of this review for the Department to use at the time when we made our surrogate country selection, as it is dated September 27, 2012, after the Department made its surrogate country determination.¹⁸ Thus, the Surrogate Country List which the Department released on November 22, 2011 contained the most up-to-date information accessible from the World Bank regarding countries economically comparable to Vietnam.

Additionally, no party timely challenged the list of potential surrogate countries. All interested parties were provided six months, from November 22, 2011 through May 23, 2012, to submit any information the Department should consider when selecting the surrogate country.¹⁹ Then,

¹² See Surrogate Country List.

¹³ See *Magnesium from the PRC*, and accompanying Issues and Decision Memorandum at Comment 4.

¹⁴ See *Fujian Lianfu Forestry Co., Ltd. v. United States*, 638 F. Supp. 2d 1325, 1347-50 (CIT 2009).

¹⁵ See Surrogate Country List.

¹⁶ See *Fresh Garlic from the People’s Republic of China: Final Results of the 2009-2010 Administrative Review of the Antidumping Duty Order*, 77 FR 34346 (June 11, 2012) (“Garlic”), and accompanying Issues and Decision Memorandum at Comment 1.

¹⁷ See Surrogate Country List.

¹⁸ See VASEP’s November 23, 2012 submission at Exhibit 3c.

¹⁹ See Memorandum to the File, from Paul Walker, Case Analyst “Eighth Administrative Review, and Aligned New Shipper Reviews, of Frozen Fish Fillets from the Socialist Republic of Vietnam: Deadline for Surrogate Country and Surrogate Value Submissions,” dated April 27, 2012.

based on the comments and information submitted during this six-month period, the Department preliminarily determined that, of the countries included in the Surrogate Country List, Bangladesh would be the most appropriate surrogate country for the *Preliminary Results*.²⁰

The Department provided the parties to this proceeding with more than sufficient time to submit any information related to the potential surrogate countries for these administrative reviews. Yet, the Department notes that at no time during the surrogate country comment period did any party, including VASEP, submit any new information or in any way contest the Surrogate Country List. VASEP did not submit new GNI/GDP data until November 23, 2012, and did not argue that the Department should disregard the list of countries in the Surrogate Country List and instead use the new list of potential surrogate countries until January 11, 2013.²¹ In accordance with our regulations and practice, the Department identified potential surrogate countries based on the information available to it at the time. As discussed above, it is important for the Department to determine the list of potential surrogate countries early in the case in order to provide sufficient time for party participation and the necessary analysis.²² The Surrogate Country List represents the best information available to the Department at the time it was issued. Revising the list of surrogate countries at a later date would be potentially unfair to the parties and create undue administrative difficulties.²³

Regarding VASEP/Vinh Hoan's argument that, in accordance with *PRC Shrimp Remand*, the Department must weigh differences in GNI in making our surrogate country selection, we disagree. In *PRC Shrimp Remand*, the Court questioned the Department's economic comparability analysis, stating:

An unexplained and conclusory blanket policy of simply ignoring relative GNI comparability within a particular range of GNI values does not amount to a reasonable reading of the evidence in support of a surrogate selection where more than one potential surrogate within that GNI range is a substantial producer of comparable merchandise for which adequate data is publicly available. Rather, in such situations, Commerce must explain why its chosen surrogate's superiority in one of the three eligibility criteria outweighs another potential surrogate's superiority in one or more of the remaining criteria.²⁴

While the Department continues to disagree with the Court that the statute requires it to compare relative GNI comparability in its analysis, in these reviews, the Department nevertheless has thoroughly analyzed whether the potential surrogate countries are significant producers of comparable merchandise and the availability of whole fish data in certain of the potential surrogate countries. Therefore, we view the scenario that the Court addressed in *PRC Shrimp Remand* is distinct from the instant reviews.

²⁰ See *Preliminary Results*, 77 FR at 56183-84.

²¹ See VASEP's November 23, 2012 submission for updated GNI/GDP data; see also VASEP's January 11, 2013 case brief.

²² See *Garlic*, and accompanying Issues and Decision Memorandum at Comment 1.

²³ *Id.*

²⁴ See *PRC Shrimp Remand*, 882 F. Supp. 2d at 1375.

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. Significant Producer of Comparable Merchandise

Petitioners

- Because the export data of frozen fish fillets from the United Nations Food and Agriculture Organization (“FAO”) (used by the Department in this and past segments of this case to demonstrate production of comparable merchandise) shows a precipitous decline for Bangladesh, it can no longer be considered a significant producer of comparable merchandise.²⁵
- FAO export data for exports of frozen fish fillets from Indonesia and the Philippines shows that these two countries continue to be significant producers of comparable merchandise.²⁶ Moreover, Global Trade Atlas (“GTA”) data confirm that Indonesia and the Philippines were significant exporters of frozen fish fillets during the POR, while there is no data to show that Bangladesh exported frozen fish fillets during the POR.²⁷

VASEP/Vinh Hoan

- The Department is mandated to examine the production data of whole live fish based on the species that are listed in the scope.²⁸ In cases where the subject merchandise is an aquatic or agricultural commodity based on a single major input (such as raw shrimp in case of warmwater frozen shrimp), it has been the Department’s longstanding and consistent policy to dovetail its choice of primary surrogate country based on the country providing the best SV data for valuing the major input in question.²⁹
- Since the record contains numerous production data relating to *pangasius hypophthalmus*, one of three *pangasius* species subject to the scope, the Department should, as it has done in

²⁵ Specifically, FAO data shows that Bangladeshi exports of frozen fish fillets dropped from 1,837 metric tons (“mt”) in 2007, to 131 mt in 2009, the latest year for which data is available from the FAO. See Memorandum to the File, from Paul Walker, Case Analyst, “Eighth Administrative Review, and Aligned New Shipper Reviews, of Frozen Fish Fillets from the Socialist Republic of Vietnam: United Nations Food and Agriculture Organization Data,” dated September 19, 2012.

²⁶ In 2009, Indonesia exported 3,196 mt of frozen fish fillets and the Philippines exported 1,950 mt of the same. *Id.*

²⁷ See Petitioners’ November 20, 2012 submission at Exhibit 16. GTA data also indicates that Indonesia was a net exporter of frozen fish fillets. *Id.*

²⁸ The *Policy Bulletin* notes that in cases “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.” See Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (“*Policy Bulletin*”) (emphasis added).

²⁹ 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, 56165 (September 12, 2011) (*Vietnam Shrimp 5th AR*), and accompanying Issues and Decision Memorandum at Comment 1.

prior reviews, compare the quantity produced, by Bangladesh, Indonesia and the Philippines, of whole *pangasius hypophthalmus*, the most significant single input factor.³⁰

- Bangladesh is a significant producer of identical merchandise *pangasius hypophthalmus*.³¹ In contrast, there is no separately reported production data specifically for Indonesia which cultivates five separate species of *pangasius*, while the reported data from the Philippines is commercially negligible.³²
- Import statistics indicate that both Indonesia and the Philippines are net importers of *pangasius* fillets, principally from Vietnam, making them a less desirable choice as a primary surrogate country than Bangladesh.³³
- The production experiences of *pangasius* producers in Bangladesh replicates those of the Vietnamese respondents in that produce *pangasius* through commercial pond-based aquaculture. This directly implies that the cost of production, related expenses, and revenues for *pangasius* farmers in Vietnam and Bangladesh are very similar.³⁴
- In Indonesia, only 70 percent of the 2011 *pangasius* production is from ponds, and the record is unclear as to what proportion of the Indonesian pond based aquaculture production is accounted for commercial-based pond aquaculture as opposed to homestead-based pond aquaculture. In the Philippines there is no record evidence as to how *pangasius* is produced, although given the *de minimis* production levels, large scale farming cannot be common.
- In prior segments of these proceedings the Department has dismissed Petitioners' arguments concerning the valuation of other FOPs beside the whole fish because those inputs are minor.³⁵

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 should consider the broad category of frozen fish fillets as the comparable merchandise, while VASEP and Vinh Hoan argue that the Department should select *pangasius hypophthalmus* fish, the main input to producing subject merchandise, as comparable merchandise for purposes of selecting a surrogate

³⁰ In prior reviews, the Department has determined that, for purposes of surrogate country selection, the comparable merchandise is whole *pangasius* fish used to produce the frozen fish fillets. See, e.g., *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Notice of Preliminary Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 72 FR 53527 (September 19, 2010); *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission*, 73 FR 15479 (March 24, 2008).

³¹ The official *Bangladesh Fisheries Statistics Report 2010-11* shows annual production of *pangasius hypophthalmus* of approximately 156,000 mt from pond-based aquaculture systems. See Petitioners' November 20, 2012 submission at Exhibit 10.

³² *Fisheries Statistics of the Philippines ("Philippines FS")* for 2009-2011, and several other sources indicate that *pangasius* production in the Philippines is at a non-commercial or experimental level. See Petitioners' November 20, 2012 submission at Exhibit 1.

³³ See VASEP's December 4, 2012 submission at Exhibits 5, 8 and 9; see also VASEP's June 14, 2012 submission at Exhibit 1a

³⁴ See VASEP's December 4, 2012 submission at Exhibits 7 and 16-20.

³⁵ See *Preliminary Results*; see also *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) ("*7th AR Fish Final*"), and accompanying Issues and Decision Memorandum at Comment 1.

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.”³⁶ In the *Preliminary Results* we noted, as we have in prior segments of this case, that because there is no world production data of *pangasius* frozen fish fillets to identify producers of identical merchandise, the Department’s practice is to compare, wherever possible, data for comparable merchandise and establish whether any economically-comparable country was a significant producer.³⁷

The *Policy Bulletin* further notes that in cases where the identical merchandise is not produced, the Department must determine if other merchandise that is comparable is produced on a case-by-case basis.³⁸ The *Policy Bulletin* also states that:

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. Intermittent production, however, would not be significant . . . In another case there may not be adequate data available from major producing countries. In such a case, “significant producer” could mean a country that is a net exporter, even though the selected surrogate country may not be one of the world’s top producers.³⁹

In this case, we find that frozen fish fillets are a more suitable product to consider as comparable merchandise than live whole *pangasius hypophthalmus*. 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.⁴⁰

Regarding the argument that countries which are not net exporters are not significant producers, we disagree. The Act does not define the phrase “significant producer.”⁴¹ Certain legislative

³⁶ See *Policy Bulletin* at 2.

³⁷ See *Preliminary Results*, 77 FR at 56183; see also 7th AR Fish Final, and accompanying Issues and Decision Memorandum at Comment 1.

³⁸ See *Policy Bulletin* at 3.

³⁹ *Id.*

⁴⁰ We made an identical finding in the last review. See 7th AR Fish Final, and accompanying Issues and Decision Memorandum at Comment 1.

⁴¹ See section 773(c)(4)(B) of the Act; accord *Policy Bulletin*.

history arguably suggests that the Department may consider a country to qualify as a “significant producer” if, among other things, it is a “net exporter” of identical or comparable merchandise.⁴² However, that text does not define the phrase “net exporter” or explain whether a potential surrogate country must constitute a net exporter in terms of quantity, value, or both to fit the example provided in the legislative history.⁴³ As a result, this ambiguous provision of the Act does not compel the Department to define “significant producer” in any particular manner.⁴⁴

Regarding the argument that the specific aquaculture process, *i.e.*, commercial-based or homestead-based, by which the live whole fish are grown is indicative of whether the merchandise is comparable, we disagree. All Vietnamese-origin fish fillets fall within the scope of the order, regardless of the aquaculture process used to grow the fish from which they are made. Furthermore, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.⁴⁵ In this case, we note that Bangladesh, Indonesia and the Philippines produce fish *via* aquaculture methods. Consequently, we do not find VASEP’s and Vinh Hoan’s argument that fish produced in Bangladesh are more specific to fish produced in either Indonesia or the Philippines due to the type of aquaculture system employed to be persuasive.

Regarding the argument that the valuation FOPs other than the whole fish are minor, we disagree. In the last administrative review, the Department stated that the whole fish SV and financial ratios accounted for the vast majority of NV.⁴⁶ We note that Vinh Hoan is substantially integrated, as are many of the separate rate respondents, meaning that these companies produce an increasingly significant volume of whole fish for use in the production of subject merchandise.⁴⁷ In these reviews we examined what each FOP accounted for in Vinh Hoan’s NV calculation in the *Preliminary Results*. Because Vinh Hoan’s production experience is similar to many Vietnamese exporters of subject merchandise, and because it is one of the largest exporters of subject merchandise, we examined the degree to which each factor of production contributed to Vinh Hoan’s NV calculation.⁴⁸ Our findings have led us to re-evaluate our statement from the last administrative review, although many of the SVs used in the *Preliminary Results* were

⁴² See Conference Report to the 1988 Omnibus Trade and Competitiveness Act, H.R. Rep. No. 100-576, at 590, 1988 U.S.C.C.A.N. 1547, 1623 (1988).

⁴³ *Id.*

⁴⁴ See *Dorbest Ltd. v. United States*, 462 F. Supp. 2d 1262, 1274 n.5 (CIT 2006).

⁴⁵ See, e.g., *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 47771 (August 9, 2010) (“*Shrimp Vietnam*”), and accompanying Issues and Decision Memorandum at Comment 2 (where the Department determined that differing aquaculture methods to produce shrimp produced equally comparable merchandise); see also *Sebacic Acid from the People’s Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 65674 (December 15, 1997) (“*Sebacic Acid*”), and accompanying Issues and Decision Memorandum at Comment 1 (to 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).

⁴⁶ See 7th AR *Fish Final*, and accompanying Issues and Decision Memorandum at Comment 1.

⁴⁷ See Memorandum to the File, from Susan Pulongbarit, through Scot T. Fullerton, “Eighth Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results Analysis Memorandum for Vinh Hoan Corporation,” dated March 13, 2013 (“*Vinh Hoan Final Analysis Memo*”).

⁴⁸ Because factor usage rates are proprietary, a fuller discussion of this issue may be found in the Vinh Hoan Final Analysis Memo. See Vinh Hoan Final Analysis Memo at Attachment 1.

identical to the ones used in the last administrative review. As a result, we have concluded that factors other than the whole fish and surrogate ratios account for a significant portion of direct materials and NV, and we have taken this into account in selecting the primary surrogate country.⁴⁹ Moreover, we note that these factors were valued at the *Preliminary Results* using non-contemporaneous SVs from Bangladesh.⁵⁰ Consequently, for these final results, we have considered the contemporaneous nature of all SVs, as well as the whole fish SV, in the surrogate country selection process. A review of the record indicates that, with two exceptions, all SVs submitted for Indonesia are contemporaneous with the POR, whereas the majority of Bangladeshi SVs are not by a significant degree.⁵¹ We consider the contemporaneity of virtually all SVs in Indonesia and the Philippines to be an important factor in our determination of the best information available.⁵²

Regarding Petitioners' argument that the FAO data shows a precipitous decline for Bangladeshi imports, and thus Bangladesh is not a significant producer, we disagree. The *Policy Bulletin* states that there may not be adequate data available from major producing countries.⁵³ As noted above, we relied on FAO data concerning frozen fish fillet exports. While the FAO data indicate that exports of frozen fish fillets from Bangladesh were significantly lower than in previous years, the *Fisheries Statistical Yearbook of Bangladesh* indicates that Bangladesh produced large quantities of frozen fish fillets in 2009 and during the POR.⁵⁴ Thus, as in previous reviews, we consider Bangladesh to be a significant producer of comparable merchandise. We also note that Bangladesh does not report data to GTA, as do many other countries; thus, the absence of Bangladesh from GTA is not indicative of its production of frozen fish fillets.

In summary, given the above, based on 2009 export data of frozen fish fillets from the FAO, we continue to find that Bangladesh, India, Indonesia, Nicaragua, Pakistan and the Philippines are exporters of frozen fish fillets and, thus, significant producers of comparable merchandise.⁵⁵

C. Data Considerations -- Whole Live Fish

As noted above, we have concluded for the final results that Bangladesh, India, Indonesia, Nicaragua, Pakistan, and the Philippines are economically comparable to Vietnam and significant producers of comparable merchandise. The *Policy Bulletin* states that, if more than

⁴⁹ We note that VASEP has argued that some of the Bangladeshi SVs used in the *Preliminary Results* are aberrational. See Comments IV and V, below.

⁵⁰ See Memorandum to the File, through Scot T. Fullerton, Program Manager, Office 9, from Paul Walker, Case Analyst, "Eighth Administrative Review and Ninth New Shipper Reviews of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results," dated August 30, 2012.

⁵¹ See Vinh Hoan Final Analysis Memo at Attachment 1.

⁵² See *Clearon Corp. v. United States*, No. 08-00364, 2013 WL 646390, at *6 (CIT, Feb. 20, 2013) ("deriving the surrogate data from one surrogate country limits the amount of distortion introduced into {Commerce's} calculations") ("*Clearon*").

⁵³ See *Policy Bulletin* at 3.

⁵⁴ See Petitioners' November 20, 2012 submission at Exhibit 10. Specifically, in 2008-09 Bangladesh produced 19,294 mt of frozen fish fillets and in 2010-11, 16,743 mt of frozen fish fillets.

⁵⁵ See Memorandum to the File, from Paul Walker, Case Analyst, "Eighth Administrative Review, and Aligned New Shipper Reviews, of Frozen Fish Fillets from the Socialist Republic of Vietnam: United Nations Food and Agriculture Organization Data," dated December 19, 2012 at Attachment I.

one country satisfies the economically comparable and significant producer criteria for surrogate country selection purposes, “then the country with the best factors data is selected as the primary surrogate country.”⁵⁶ Importantly, the *Policy Bulletin* explains further that “data quality is a critical consideration affecting surrogate country selection” and that “a country that perfectly meets the requirements of economic comparability and significant producer is not of much use as a primary surrogate if crucial factor price data from that country are inadequate or unavailable.”⁵⁷

Section 773(c)(1) of the Act instructs the Department to value the FOPs based upon the best available information from a market economy (“ME”) country or a countries that the Department considers appropriate. When considering what constitutes the best available information, the Department considers several criteria, including whether the SV data is contemporaneous, publicly available, tax and duty exclusive, represents a broad market average, and is specific to the input.⁵⁸ The Department’s preference is to satisfy the breadth of the aforementioned selection criteria.⁵⁹ 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.⁶⁰ The Department must weigh the available information with respect to each input value and make a product-specific and case-specific decision as to what constitutes the “best” available SV for each input.⁶¹

We have examined the available data on the record, with respect to Bangladesh, India, Indonesia, Nicaragua, Pakistan, and the Philippines 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 has argued for valuing whole fish from India, Nicaragua, or Pakistan. Moreover, the record does not contain suitable SVs from these countries to value whole live fish. Therefore, we determine that these three countries are not suitable as the primary surrogate country.

The record does contain whole fish values from Bangladesh, Indonesia, and the Philippines. Since the *Preliminary Results*, interested parties have placed additional data on the record with respect to these three countries. We now have an updated publication of the *Philippines FS* on

⁵⁶ See *Policy Bulletin*.

⁵⁷ *Id.*

⁵⁸ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People’s Republic of China*, 71 FR 53079 (September 8, 2006) (“CLPP”), and accompanying Issues and Decision Memorandum at Comment 3.

⁵⁹ See, e.g., *Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 51940, 51943 (August 19, 2011), and accompanying Issues and Decision Memorandum at Comment 2.

⁶⁰ See *Certain Preserved Mushrooms from the People’s Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) (“Mushrooms”), and accompanying Issues and Decision Memorandum at Comment 1; see also *Freshwater Crawfish Tail Meat from the People’s Republic of China; 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.

⁶¹ See, e.g., *Mushrooms*, and accompanying Issues and Decision Memorandum at Comment 1.

the record, which contains *pangasius* prices for 2009 - 2011.⁶² In addition, the record now contains the *Indonesian Aquaculture Statistics* (“*Indonesian AS*”), which contains *pangasius* prices for 2011 and 2010.⁶³ The data for the 2010 Indonesian price and quantity data from the FAO’s *Fisheries Global Information System* (“*FAO FIGIS Data*”) was not supplemented after the *Preliminary Results*. Finally, the Department notes that the online data from the Bangladeshi Department of Agriculture Marketing (“*DAM Data*”) is the same data used in the *Preliminary Results*; however, it has been supplemented by additional information by parties.

In evaluating the data from Bangladesh, Indonesia, and the Philippines, we note that we are, as in the preceding review, in the unusual situation of having on the record three sources of information issued by governments, which represent official statements of those governments as to the price of whole live fish – *i.e.*, the *Philippines FS*, *Indonesian AS*, and *DAM Data* sources, and one source from an international organization, relevant to our analysis – *i.e.*, the *FAO FIGIS Data* source. While we typically do not scrutinize official government statistics in such detail,⁶⁴ the necessity to respond to the comments raised by interested parties and to select one of the sources compelled us to do so in this case. Below, we have analyzed each of these data sources using the Department’s criteria for determining the best available information. As explained below, we determine that the *Indonesian AS* data constitutes the best information available on the record.

Bangladesh

Petitioners

- The record indicates that a significant percentage of dead fish are represented in the *DAM Data*, and dead fish sell for less than live fish.⁶⁵ *DAM* failed to respond to the Department’s request for information concerning whether the *DAM Data* fish prices represented live or dead fish.⁶⁶
- Information submitted by *VASEP* indicates that, in addition to *pangasius hypophthalmus* and *pangasius bocourti*, at least one other species of *pangasius*, *pangasius pangasius*, is native to Bangladesh and is grown there.⁶⁷ Statements from *DAM* indicate that there are several varieties of *pangas* in Bangladesh.⁶⁸
- The total country-wide *pangasius* production in Bangladesh during 2011 was approximately 156,000 mt,⁶⁹ which is 32 percent less than the Indonesian country-wide production of approximately 229,000 mt during the same year.⁷⁰ When comparing 2011 *pangasius*

⁶² See Petitioners’ November 20, 2012 submission at Exhibit 1.

⁶³ See Petitioners’ November 20, 2012 submission at Exhibits 3 and 4.

⁶⁴ See, e.g., *Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of the Eleventh Administrative Review and New Shipper Reviews*, 72 FR 34438 (June 22, 2007), and accompanying Issues and Decision Memorandum at Comment 2b (where the Department notes we typically find that official government publications to be reliable and credible sources of information).

⁶⁵ See Petitioners’ November 20, 2012 submission at Exhibit 8; *VASEP*’s November 20, 2012 submission at Exhibit 16; *VASEP*’s December 4, 2012 submission at Exhibit 13.

⁶⁶ See the Department’s letter to *DAM*, dated July 27, 2012 (“*DAM Questionnaire*”).

⁶⁷ See *VASEP*’s May 23, 2012 submission at Exhibit 26c; *VASEP*’s December 4, 2012 submission at Exhibit 13.

⁶⁸ See *VASEP*’s May 23, 2012 submission at Exhibit 13.

⁶⁹ See Petitioners’ November 20, 2012 submission at Exhibit 10.

⁷⁰ *Id.* at Exhibit 4.

hypophthalmus production reported in *Fisheries Statistical Yearbook of Bangladesh* with the districts which reported prices in the *DAM Data*, the *DAM Data* only covers 29 percent of Bangladeshi production of *pangasius*.⁷¹ In addition, the number of districts reporting *pangasius* prices dropped from 31 to 27. Notably, the *DAM Data* did not include prices from Mymensingh, which is the largest producer of *pangasius* in Bangladesh.⁷²

- DAM surveyors do not employ statistically valid sampling procedures⁷³ to collect data and DAM does not follow any protocols to check or corroborate the validity of the *pangasius* prices that it ultimately publishes, and as a result, the *DAM Data* contain errors.⁷⁴ DAM failed to respond to the Department's request for information concerning DAM's data collection methods.⁷⁵
- VASEP has suggested that the DAM wholesale price worksheets provide the underlying dataset for the wholesale *DAM Data*, although the substantial discrepancies between the worksheet and online datasets underscore the unreliability of these sources.⁷⁶ More weekly price points (*i.e.*, 939) were excluded from the DAM wholesale price listing than were included (*i.e.*, 492), and many of the price points that were included did not fluctuate during the POR.⁷⁷ Given Petitioners' knowledge of the market, the unusual lack of any variation in many of the reported DAM prices calls into serious question the accuracy of the commodity prices and collection methods used by DAM.

VASEP/Vinh Hoan

- Although Petitioners have included affidavits concerning the sale of dead *pangasius* at wholesale markets in Bangladesh, a previous Deputy Director of DAM has stated that the wholesale price of *pangasius* as listed in the *DAM Data* represent the prices of whole, live, unprocessed *pangasius* sold in the marketplace.⁷⁸ Therefore, even though both live and dead fish may be sold in wholesale markets in Bangladesh, DAM officials are mandated to gather and publish the price data pertaining to live fish only, *i.e.*, the *DAM Data* is not distorted by the price of dead fish.
- Although Petitioners argued that the *DAM Data* is not specific to *pangasius hypophthalmus*, the record contains much documentary evidence consisting of independently published articles and reports, as well as official statistics, confirming the fact that the *pangasius*

⁷¹ In 2011 the *Fisheries Statistical Yearbook of Bangladesh* shows that the districts providing data to DAM produced 52,000 mt of the country-wide production of 183,502. See Petitioners' December 20, 2012 submission at Exhibit 10.

⁷² In 2011 the *Fisheries Statistical Yearbook of Bangladesh* shows that Mymensingh produced 66 percent of all *pangasius* in Bangladesh. Total Bangladeshi production was approximately 184,000 mt, and Mymensingh accounted for approximately 118,000 mt of that total. *Id.*

⁷³ See Petitioners' June 14, 2012 submission at Exhibits 26, 29 and 45.

⁷⁴ See VASEP's December 4, 2012 submission at Exhibits 13 and 15a.

⁷⁵ See DAM Questionnaire.

⁷⁶ See VASEP's July 13, 2012 submission at 15-16. In some instances, there are data for certain districts on the DAM worksheets that do not appear on the website. In other instances, data appear on the DAM website but are not reflected on the worksheets. Finally, in other instances, data are reported on both sources, but the figures do not reconcile.

⁷⁷ See Petitioners' November 20, 2012 submission at Exhibit 7.

⁷⁸ See VASEP's May 23, 2012 submission at Exhibit 13B.

hypophthalmus species accounts for nearly the entire production of *pangasius* in Bangladesh.⁷⁹

- The *DAM Data* is superior to datasets which contain a single aggregate quantity and value for the whole year, as these annual quantities and values do not permit an analysis of the dataset in a manner afforded by the *DAM Data*. Moreover, the Department has had a longstanding preference for databases which report actual price data alone, akin to *DAM Data*, rather than extrapolated averages.⁸⁰
- While Petitioners note that the *DAM Data* does not contain any price points from Mymensingh, presumably because it is still being vetted and reviewed, there are data for Mymensingh in the hardcopy DAM worksheets. Moreover, the *DAM Data* still accounts for 27 districts in Bangladesh and was preferred in prior reviews not because it included price data from Mymensingh, but because the *DAM Data* afforded the only price database on the record with hundreds of price observations from a considerable portion of the country together with the size of *pangasius* industry in Bangladesh.⁸¹ Importantly, Petitioners have failed to point out any distortion caused by the delay in uploading the Mymensingh data from the worksheets onto *DAM Data*.
- With regard to the few instances where the entries between the DAM worksheets and *DAM Data* may be “slightly different,” this is explained entirely by the fact that the raw price data entered on the hardcopy worksheets is later vetted, reviewed, and corrected prior to being uploaded on the website.⁸² Although infrequent, as with any other database of similar proportion, minor discrepancies in posting of data are not entirely unexpected, which the Department noted in the 7th AR Fish Final.⁸³
- The broad price consistency lends credibility to the *DAM Data* as opposed to unexplained volatilities. Market prices typically change nationally, not regionally or by individual market, thus, consistent prices between regions would be expected until the national market price changes. Although Petitioners have noted errors in the *DAM Data*, clarifying information on the record shows that the anomalous data is related solely to conversion issues.⁸⁴

The Philippines

Petitioners

- The record contains evidence demonstrating that *pangasius hypophthalmus* is the only species of *pangasius* that is commercially produced in the Philippines, and Bureau of Aquaculture Statistics (“BAS”) officials have stated that the *pangasius* data in the *Philippines FS* is only for *pangasius hypophthalmus*.⁸⁵

⁷⁹ See VASEP’s May 23, 2012 submission at Exhibits 24a-f.

⁸⁰ See, e.g., *Prestressed Concrete Steel Wire Strand from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 28560 (May 21, 2010), and accompanying Issues and Decision Memorandum at Comment 1B (where the Department used a data source for the main input, wire rod, despite there being no quantity information associated with the published prices).

⁸¹ See 7th AR Fish Final, and accompanying Issues and Decision Memorandum at Comment I.C.

⁸² See VASEP’s January 11, 2013 submission at 46.

⁸³ *Id.*

⁸⁴ See VASEP’s December 4, 2012 submission at Exhibits 13 and 15a.

⁸⁵ See Petitioners’ May 23, 2012 submission at Exhibits 8d and 12.

- The Department’s observation in the 7th *AR Fish Final* that some prices in the *Philippines FS* may reflect further processed fish is incorrect.⁸⁶ Several affidavits from BAS officials, who are directly responsible for the collection and publication of *Philippines FS* indicate that the *Philippines FS* represent data for whole live fish.⁸⁷
- The *Philippines FS* data is collected quarterly by professional data collectors using detailed statistical methods, the data are reviewed quarterly to ensure accuracy and that producers in both large and small provinces are represented in the sampling methods.⁸⁸
- Although in the 7th *AR Fish Final* the Department determined that the *Philippines FS* did not include a sufficient number of price observations to render it a broad market average, whether a given source publishes a large number of individual price observations does not indicate whether the data reflects the experience of the surrogate country.⁸⁹ Moreover, production volume is not a determinative factor of the broad market average criterion.⁹⁰ There is no record evidence which suggests that the data is inaccurate or does not reflect actual commercial transactions in the reporting periods.

VASEP/Vinh Hoan

- Although Petitioners have downplayed record evidence that there are two species of *pangasius* sold in the Philippines, *pangasius hypophthalmus* and *basa bocourti*, *basa bocourti* is a more expensive fish than *hypophthalmus* and its inclusion in the *Philippines FS* distorts the value.⁹¹
- Record evidence indicates that *Philippines FS* includes data for processed fish,⁹² which explains the wide price fluctuations in the BAS data.⁹³
- The surveys used by BAS to collect the data published in the *Philippines FS* collect pricing data by farming type and environment (e.g., “pond,” “freshwater,” etc.) and not by species.⁹⁴ As a result, only if *pangasius* farming happens to be undertaken in the selected provinces, municipalities, and farms will the volume and value data results appear in the *Philippines FS*. Critically, the list of fish type on the survey does not even include *pangasius*; thus, the surveyed farmers must include *pangasius* under the “Others” category at the bottom of the survey. As such, the *Philippines FS* are not broad market surveys of *pangasius* pricing, but broad market surveys of fishpond aquaculture.
- Because the unit price of *pangasius* fish depends on its overall weight since the attendant costs of raising and harvesting different sizes of *pangasius* are different, and because the *Philippines FS* does not differentiate *pangasius* prices by size, as the *DAM Data* does, the

⁸⁶ See 7th *AR Fish Final*, and accompanying Issues and Decision Memorandum at Comment 1.

⁸⁷ See Petitioners’ May 23, 2012 submission at Exhibits 12 and 13a-b.

⁸⁸ See Petitioners’ May 23, 2012 submission at Exhibits 11, 12 and 13a.

⁸⁹ See 7th *AR Fish Final*, and accompanying Issues and Decision Memorandum at Comment I.C.

⁹⁰ For example, in previous segments of this proceeding the Department relied on a Bangladeshi whole fish price stated in a 2007 FAO report which represented 78 mt over a four-month period, which was less than the volume of other whole fish SV sources on the record. 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*, 75 FR 12726 (March 17, 2010), and accompanying Issues and Decision Memorandum at Comment 2.A.

⁹¹ See VASEP’s December 4, 2012 submission at Exhibit 11a.

⁹² See VASEP’s June 14, 2012 submission at Exhibit 7i.

⁹³ *Id.*; see also VASEP’s Case Brief at Exhibit 1.

⁹⁴ See Petitioners’ May 23, 2012 submission at Exhibit 12.

Philippines FS is not specific to the input in question. In prior cases, the Department has found that SV data is more specific where it is reported on more specific sizes.⁹⁵

- According to the *Philippines FS*, *pangasius* production in the Philippines is non-commercial and in decline, especially as compared to Bangladesh.⁹⁶ The Department has held that prices derived from small quantities should also be disregarded when they conflict with other record information.⁹⁷
- BAS is not contemporaneous because it only covers seven months of the POR and the lists used to survey fish farms are from 2009.⁹⁸
- The Philippine government provides subsidies to the *pangasius* industry, including networking and linkages between the government and private sector, guaranteed prices of whole live fish, assurances to purchase farmed output regardless of market demand, the establishment of satellite *pangasius* hatcheries for free fingerling dispersals, free technical support and training, genetic improvement and dispersal of improved brood stocks, *etc.*⁹⁹

Indonesia

(a) **FAO FIGIS DATA**

Petitioners

- The record does not support a finding that: (1) the *pangasius* referenced in the *FAO FIGIS Data* is not *pangasius hypophthalmus*, the species most prevalent in Indonesia; or that (2) material price differences exist between the four species that warrant finding that the data for *pangasius* is not sufficiently specific to *pangasius hypophthalmus*.
- *FAO FIGIS Data* are based on farmgate prices and, thus, represent live fish prices.¹⁰⁰
- Although the *FAO FIGIS Data* contains one quantity and value, the data is based upon national data collected by the FAO from the Indonesian government *via* a customized national questionnaire on aquaculture production that the FAO issues each year. Moreover, there is also ample evidence on the record regarding the survey questionnaires used by the FAO and its data validation procedures.¹⁰¹
- Although in the 7th *AR Fish Final* the Department found that *FAO FIGIS Data* represented a broad market average, it also found that *DAM Data* was a more robust data source, “given its breadth and focus.”¹⁰² The fact that *FAO FIGIS Data* consists of total aggregated national quantity and value data, rather than a list of the individual price observations, which were

⁹⁵ See *Certain Steel Nails from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 26, 2008), and accompanying Issues and Decision Memorandum at Comment 10 (where the Department found a specific data source to be more specific than import statistics because it was reported on more specific sizes).

⁹⁶ See Petitioners’ May 24, 2012 submission at Exhibit 28.

⁹⁷ See *Heavy Forged Hand Tools from the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not To Revoke in Part*, 66 FR 48026 (September 17, 2001), and accompanying Issues and Decision Memorandum at Comment 11.

⁹⁸ See VASEP’s June 14, 2012 submission at Exhibits 6b and c, and 7a.

⁹⁹ See, e.g., VASEP’s June 14, 2012 submission at Exhibits 7d and 8a.

¹⁰⁰ See Petitioners’ May 23, 2012 submission at Exhibit 28, Attachment 1.

¹⁰¹ See Petitioners’ May 23, 2012 submission at Exhibits 2 and 28.

¹⁰² See 7th *AR Fish Final*, and accompanying Issues and Decision Memorandum at Comment I.C.

aggregated does not disqualify the data, as the Department frequently relies on aggregated volume and value data to calculate SVs.¹⁰³

- The *Fisheries Statistical Yearbook of Bangladesh* indicates that *DAM Data* covers districts accounting for approximately 52,000 mt and *FAO FIGIS Data* account for approximately 128,000 mt.

VASEP/Vinh Hoan

- FAO does not collect the data itself, but rather relies on the national surveying agency and only checks outlier values.¹⁰⁴ Notably, there is no supporting information about the corresponding primary data source or survey methods used by the collecting agencies.
- The single value/volume data reported for an entire calendar year also masks the price fluctuations between *pangasius* species, growing periods, and aquaculture types.
- The record is ambiguous with respect to the species covered by *FAO FIGIS Data*. Petitioners' assertion that a majority of *pangasius* farmed in Indonesia is *hypophthalmus* is simply wrong because the article cited pertains to worldwide production, and given Vietnam's vast weighting factor of farmed *pangasius*, the worldwide concentration in this species is dictated by Vietnam.¹⁰⁵
- *FAO FIGIS Data* is not contemporaneous as it covers only five months of the POR.
- FAO website gives no clear indication that the *FAO FIGIS Data* is specific to whole live fish.
- The Indonesian government provides subsidies to the Indonesian aquaculture industry, including subsidy support programs extending across all aspects of fish farming and processing, from labor to energy, management to marketing, and financing to construction.¹⁰⁶

(b) *Indonesian AS*

Petitioners

- In the 7th *AR Fish Final* the Department found that the primary species of *pangasius* farmed in Indonesia is *pangasius hypophthalmus*, and the inclusion of other *pangasius* species do not distort the Indonesian price.¹⁰⁷ Indonesian Aquaculture Statistics ("IAS") officials confirmed that *pangasius hypophthalmus* is the primary species of *pangasius* grown in Indonesia, and that it is the primary species of *pangasius* covered by *Indonesian AS*.¹⁰⁸
- *Indonesian AS* covers three species of *pangasius* - *pangasius hypophthalmus*, *pangasius jambal* ("jambal"), and *pangasius pasopati* (a hybrid of *pangasius hypophthalmus* and *jambal*) - grown in four different cultures: freshwater ponds, freshwater cages, floating nets, and paddy fields. *Jambal* is only grown in floating nets in streams, whereas *pangasius hypophthalmus* is grown in freshwater ponds and freshwater cages. The vast majority of the

¹⁰³ See, e.g., *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Review*, 74 FR 13349 (March 9, 2009), and accompanying Issues and Decision Memorandum at Comment 2.A. For example, the Department based whole live fish for many segments of this proceeding on the aggregated sales quantity and value data reported in financial statements.

¹⁰⁴ See Petitioners' May 23, 2012 submission at Attachments I and II.

¹⁰⁵ *Id.* at Exhibit 28.

¹⁰⁶ See, e.g., VASEP's June 14, 2012 submission at Exhibit 19g.

¹⁰⁷ See 7th *AR Fish Final*, and accompanying Issues and Decision Memorandum at Comment I.C.

¹⁰⁸ See Petitioners' November 20, 2012 submission at Exhibit 6.

pangasius produced in Indonesia is produced in freshwater ponds and cages and, thus, the *Indonesian AS* data for freshwater ponds and cages are specific to *hypophthalmus*.

- IAS officials stated that IAS data represents live fish, as prices are gathered at the farm gate level from the *pangasius* production centers throughout Indonesia, which commonly harvest whole live fish.¹⁰⁹
- *Indonesian AS* represents a broad market average because the information is gathered at the national level using a statistically sound survey method intended to ensure accurate data representing countrywide values and production volumes. For example, the volume of freshwater pond *pangasius hypophthalmus* reported in *Indonesian AS* in 2011 equaled 157,000 mt, whereas the Bangladeshi data for the same period was approximately 52,000 mt.
- *Indonesian AS* is an official publication of an Indonesian government agency and is therefore a reliable and credible source of information for surrogate valuation under Department practice.¹¹⁰

VASEP/Vinh Hoan

- The 2011 *Indonesian AS* is not as contemporaneous as *DAM Data*, as the 2011 *Indonesian AS* only covers seven months of the POR, and the 2010 *Indonesian AS* only covers five months of the POR.
- *Indonesian AS* is overly broad and covers several types of *pangasius*.¹¹¹ More specifically, *pangasius jambal*, a larger, higher quality, higher priced fish than *pangasius hypophthalmus*, is included in *Indonesian AS* and is commonly grown in Indonesia.¹¹² Moreover, there are no size data in *Indonesian AS*.
- It is not clear that *Indonesian AS* represents farmgate or wholesale prices, which have been marked up, or even that *Indonesian AS* is representative of live fish.¹¹³
- Record evidence indicates that some *jambal* may be grown in ponds.¹¹⁴
- *Indonesian AS* from 2010 contains errors,¹¹⁵ and IAS data in general show greater price volatility than the *DAM Data*.¹¹⁶
- The Indonesian government provides subsidies to the Indonesian aquaculture industry, including subsidy support programs extending across all aspects of fish farming and processing - from labor to energy, management to marketing, and financing to construction.¹¹⁷

¹⁰⁹ See Petitioners' November 20, 2012 submission at Exhibit 6.

¹¹⁰ Petitioners note that VASEP has placed on the record an e-mail which alleges inaccuracies in the IAS data; however, a recital of these inaccuracies, said to be included in an email attachment, has not been placed on the record. See VASEP's December 4, 2012 submission at Exhibit 1. Moreover, the pre-POR power point presentation submitted by VASEP, which merely includes the logo of Indonesia's Directorate General of Aquaculture, outlines the then-current status of data collection at the IAS and identifies areas for improvement, for example, on the scope of data collection can be expanded. *Id.* at Exhibit 3. Rather than undermining the reliability of IAS data, the presentation instead showcases the statistical protocols employed by the IAS and its efforts to constantly analyze and improve its own data collection procedures.

¹¹¹ See VASEP's June 14, 2012 submission at Exhibit 19.

¹¹² *Id.* at Exhibits 19b and 19c.

¹¹³ *Id.* at Exhibit 19E, page 2.

¹¹⁴ *Id.* at Exhibit 19C.

¹¹⁵ See VASEP's December 4, 2012 submission.

¹¹⁶ See VASEP's Case Brief at Exhibits 3 and 4.

¹¹⁷ See, e.g., VASEP's June 14, 2012 submission at Exhibit 19g.

Department's Position: Section 773(c)(1) of the Act instructs the Department to value the FOPs based upon the best available information from an ME country or countries that the Department considers appropriate. As noted above, when considering what constitutes the best available information, the Department considers several criteria, including whether the SV data is contemporaneous, publicly available, tax and duty exclusive, representative of a broad market average, and specific to the input.¹¹⁸ Below, we have used these criteria to examine the *DAM Data*, *FAO FIGIS Data*, *Philippines FS*, and *Indonesian AS* data sources and to determine which of these sources represents the best available data to value the Vietnamese respondents' whole live fish FOP.

Contemporaneous

We note that the *DAM Data*, *FAO FIGIS Data*, *Indonesian AS*, and *Philippines FS* data sources all overlap the POR to varying degrees. Although VASEP and Vinh Hoan have argued that the *DAM Data* represents data that is contemporaneous with the POR, and other data sources only overlap the POR by five or seven months, we consistently have recognized that data sources which overlap part of the POR are considered contemporaneous.¹¹⁹

Moreover, as noted above, factors other than the whole fish and surrogate ratios account for a significant portion of direct materials and NV, and we have taken this into account in selecting the primary surrogate country. A review of the record indicates that, with two exceptions, all SVs submitted for Indonesia are contemporaneous with the POR, whereas the majority of Bangladeshi SVs are not by a significant degree.

Publicly Available

In past administrative reviews, we have found the *DAM Data* (which is available online), *FAO FIGIS Data*, and *Philippines FS* to be publicly available.¹²⁰ No record evidence nor arguments made have been introduced to make us reverse our finding with respect to these three data sources. Therefore, we continue to find the online *DAM Data*, *FAO FIGIS Data* and *Philippines FS* to be publicly available.

Regarding the *Indonesian AS*, we note that it is an official Indonesian government publication, published specifically by the Directorate General of Aquaculture.¹²¹ We further note that the *Indonesian AS* prefaces state that they are the 12th and 13th publication of these books and that

¹¹⁸ See, e.g., *CLPP*, and accompanying Issues and Decision Memorandum at Comment 3.

¹¹⁹ See, e.g., *Frontseating Service Valves From the People's Republic of China: Final Results of the 2008-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 76 FR 70706 (November 15, 2011), and accompanying Issues and Decision Memorandum at Comment 9 (where the Department found that SV data from a period that overlaps a part of the POR is contemporaneous with that review period); *Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 51940 (August 19, 2011), and accompanying Issues and Decision Memorandum at Comment 4 (same); *Certain Helical Spring Lock Washers From The People's Republic of China: Final Results of Antidumping Administrative Review*, 61 FR 66255, 66258 (December 17, 1996) (determining same at Comment 2); and *Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China: Final Results of Antidumping Administrative Review*, 61 FR 15028, 15030 (April 4, 1996) (determining same at Comment 4).

¹²⁰ See, e.g., *7th AR Fish Final*, and accompanying Issues and Decision Memorandum at Comment I.C.

¹²¹ See Petitioners' November 20, 2012 submission at Exhibit 4.

their purpose is to provide for the planning of aquaculture development and for the evaluation of aquaculture progress, as well as to provide information to the public about the latest conditions of aquaculture in Indonesia.¹²² Moreover, no party has argued that this data source is not publicly available. Consequently, we find the *Indonesian AS* to be publicly available.

Tax and Duty Exclusive

In past administrative reviews, we have found the *DAM Data*, *FAO FIGIS Data*, and *Philippines FS* to be tax and duty exclusive.¹²³ No record evidence nor arguments made have been introduced to make us reverse our finding with respect to these three data sources. Regarding the *Indonesian AS*, record evidence indicates that its prices are tax and duty exclusive.¹²⁴ Therefore, we find all four sources be tax and duty exclusive.

Although parties have alleged that the *pangasius* industries in Indonesia and the Philippines receive government assistance and, therefore, these countries should be disregarded as surrogate countries, it is the Department's practice to exclude data from consideration only when the record evidence demonstrates that the alleged subsidy programs constituted subsidies found countervailable by the U.S. government in a trade remedy proceeding.¹²⁵ In this case, as we have found in prior segments,¹²⁶ there is no record evidence that the alleged subsidies constitute countervailable subsidies.

Broad Market Average

In the last administrative review, the Department rejected the *Philippines FS* because it was not as robust as other whole live fish data sources on the record.¹²⁷ We note that the latest *Philippines FS* indicates that *pangasius* production in the Philippines decreased from 83 mt in 2010 to 71 mt in 2011.¹²⁸ This quantity compares unfavorably with the quantities represented by the *DAM Data* (52,000 mt), *FAO FIGIS Data* (128,000 mt), and *Indonesian AS* (325,000 mt). We disagree with VASEP's and Vinh Hoan's contention that *Philippines FS* does not represent a broad market average, as it represents national data which is collected quarterly by professional data collectors using detailed statistical methods and the data are reviewed quarterly to ensure accuracy and that producers in both large and small provinces are represented in the sampling methods.¹²⁹ However, we continue to have concerns regarding the *Philippines FS* collection methods, as record evidence indicates that some parts of the country are not surveyed, and thus

¹²² *Id.*

¹²³ See, e.g., 7th AR Fish Final, and accompanying Issues and Decision Memorandum at Comment I.C.

¹²⁴ See Petitioners' November 20, 2012 submission at Exhibit 6.

¹²⁵ 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; 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.

¹²⁶ See, e.g., 7th AR Fish Final, and accompanying Issues and Decision Memorandum at Comment I.C.

¹²⁷ See, e.g., 7th AR Fish Final, and accompanying Issues and Decision Memorandum at Comment I.C.

¹²⁸ See Petitioners' November 20, 2012 submission at Exhibit 1.

¹²⁹ See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Notice of Preliminary Results and Partial Rescission of the Sixth Antidumping Duty Administrative Review and Sixth New Shipper Review*, 75 FR 56061 (September 15, 2010) (where the Department indicated that quality, national level data represents a broad market average regardless of the quantity of that data) unchanged in final.

the production data may be understated.¹³⁰ Therefore, given that *Philippines FS* does not represent as robust a data source as the *DAM Data*, *FAO FIGIS Data* and *Indonesian AS*, we find that the *Philippines FS* data do not represent the best available information for valuing the respondents' whole fish input, in light of the suitability of the remaining sources on the record.

With respect to the *FAO FIGIS Data*, while we note the *FAO FIGIS Data* only contains one price observation for the whole country, this one price observation represents a significant volume (128,000 mt).¹³¹ In addition, the FAO states that it issues customized national questionnaires, indicating questionnaires that are meant to capture all-encompassing whole country data.¹³² We disagree with VASEP's and Vinh Hoan's assertion that the *FAO FIGIS Data's* one price observation hides price fluctuations, making it not representative of a broad market average. On a routine basis, the Department values FOPs using, for example, the GTA to determine the SVs for certain raw materials, by-products, and packing material inputs, which represents cumulative quantities and values for the applicable POR.¹³³ Therefore, we continue to find that the *FAO FIGIS Data* is a broad-market average.

With respect to *Indonesian AS*, we note that the 2011 and 2010 data contain 146 data points specific to *pangasius hypophthalmus* from 28 of 33 districts in Indonesia.¹³⁴ We note that this data represents a significant quantity of *pangasius*, 325,000 mt.¹³⁵ In addition, the IAS states that it issues customized national questionnaires, indicating that they are meant to capture all-encompassing whole country data.¹³⁶ Therefore, we find that the *Indonesian AS* represents a broad-market average.

With respect to the *DAM Data*, we note that there are several differences between the *DAM Data* used in the last administrative review and the *DAM Data* submitted for this administrative review. For one, there are fewer price points from fewer districts in this POR's *DAM Data* as compared to last year's. Specifically, in the last review there were 767 price points from 31 of 68 districts; however, in this review there are only 491 data points from 27 of 68 districts.¹³⁷ Put another way, the district coverage has dropped from 46 to 40 percent, while the data coverage has dropped to 32 percent from 47 percent. As noted above, this compares unfavorably with the *Indonesian AS*, which has district coverage of 82 percent (27 of 33). Moreover, unlike last review, there are more weekly price omissions from the *DAM Data* (939) than were included (492).¹³⁸

¹³⁰ See VASEP's June 14, 2012 submission at Exhibits 6b-c and 7a.

¹³¹ See Petitioners' June 24, 2012 submission at Exhibit 28.

¹³² *Id.*

¹³³ See, e.g., *Utility Scale Wind Towers from the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 77 FR 75984 (December 26, 2012), and accompanying Issues and Decision Memorandum at Comment 1.

¹³⁴ See Petitioners' November 20, 2012 submission at Exhibit 4.

¹³⁵ See Petitioners' November 20, 2012 submission at Exhibit 4.

¹³⁶ *Id.*

¹³⁷ See 7th AR Fish Final, and accompanying Issues and Decision Memorandum at Comment I.C.; see also generally VASEP's June 23, 2012 submission at Exhibit 33a-n.

¹³⁸ See 7th AR Fish Final, and accompanying Issues and Decision Memorandum at Comment I.C.; see also VASEP's June 23, 2012 submission at Exhibit 33a-n.

Another significant difference between the *DAM Data* used in the last administrative review and the *DAM Data* submitted for this administrative review is the omission of the largest *pangasius* producing district, Mymensingh. According to the *Fisheries Statistical Yearbook of Bangladesh*, Mymensingh produced 66 percent of all *pangasius* produced in Bangladesh.¹³⁹ The record is replete with articles which indicate the importance of Mymensingh in Bangladesh's *pangasius* industry, which is akin to the Mississippi delta in the United States with regard to catfish production.¹⁴⁰ Importantly, as a result of the omission of Mymensingh from the *DAM Data*, the *DAM Data* only represent 52,000 mt.¹⁴¹ While this sum is not an insignificant amount of *pangasius*, it is smaller than the amount of *pangasius* represented in last year's data (124,000 mt) and several times smaller than the amount represented by the *Indonesian AS*.¹⁴² Consequently, we consider the *DAM Data* to not represent as broad a market average as it did in the last administrative review and not as broad of a market average as the *Indonesian AS*.

VASEP and Vinh Hoan note that some 2010 data for Mymensingh is available in the record in the form of the DAM Worksheets. While VASEP and Vinh Hoan have speculated that this data from Mymensingh is being vetted by DAM before its inclusion in the online data, there is no record evidence to support this conclusion. Record evidence indicates that DAM does not regularly vet its data for errors.¹⁴³ In the last administrative review, we found that the DAM Worksheets were not publicly available because DAM did not respond to the Department's repeated requests for information regarding how the DAM Worksheets were made available to the public.¹⁴⁴ As DAM did not respond to the Department's request for information in this review, we continue to find the DAM Worksheets to not be publicly available. As a result, we have not considered any data from the DAM Worksheets in our SV selection process.

Specific to the Input

We find, as we found in the last administrative review, that the *DAM Data* is species-specific. Multiple sources on the record indicate that *pangasius hypophthalmus* is the primary *pangasius* species produced in Bangladesh.¹⁴⁵

However, multiple sources on the record indicate that dead fish may be included in the *DAM Data*. An affidavit detailing interviews of *pangasius* traders at two large markets, for which DAM reported data during the POR, notes that live *pangasius* transported from farms to the marketplace die during transit (in some cases the mortality rate is 50 percent¹⁴⁶), vendors sell live

¹³⁹ See Petitioners' November 20, 2012 submission at Exhibit 10.

¹⁴⁰ See, e.g., VASEP's June 23, 2012 submission at Exhibit 15a-c.

¹⁴¹ When comparing the *DAM Data* and the *Fisheries Statistical Yearbook of Bangladesh*, the districts reporting DAM Data prices account for 52,000 mt in the *Fisheries Statistical Yearbook of Bangladesh*. See Petitioners' November 20, 2012 submission at Exhibit 10.

¹⁴² See *7th AR Fish Final*, and accompanying Issues and Decision Memorandum at Comment I.C; see also Petitioners' November 20, 2012 submission at Exhibits 3 and 4.

¹⁴³ See Petitioners' June 14, 2012 submission at Exhibits 26, 29 and 45.

¹⁴⁴ See *7th AR Fish Final*, and accompanying Issues and Decision Memorandum at Comment I.C.

¹⁴⁵ See, e.g., VASEP's May 23, 2012 submission at Exhibit 24a-f.

¹⁴⁶ See Petitioners' November 20, 2012 submission at Exhibit 8.

and dead fish at the markets side-by-side, and dead fish are sold at lower prices than live fish.¹⁴⁷ An article published by the U.S. Agency for International Development indicates that up to 29 percent of the *pangasius* sold in Bangladeshi wholesale markets are dead, and that dead fish sell for less than live fish.¹⁴⁸ Information placed on the record by VASEP indicates (1) that while precautions are taken to ensure that live fish are delivered to the processing plants, there is a two to three percent mortality rate for those fish; and (2) that live and dead fish are sold in wholesale markets.¹⁴⁹ Moreover, there are two competing affidavits on the record from DAM officials concerning whether dead fish are included in the *DAM Data*. One affidavit, submitted by Petitioners, indicates that dead fish have been included in the *DAM Data*.¹⁵⁰ Another affidavit, submitted by VASEP and which concerns the DAM Worksheets, indicates that only live fish are included in the *DAM Data*.¹⁵¹ It is precisely because of this conflicting information that the Department requested that DAM clarify this issue. However, although provided two opportunities in this administrative review, DAM did not respond to the Department's questions, nor did DAM respond to the Department's questions in the last review.¹⁵² In this case, because DAM has not responded to the Department's questions concerning whether dead fish are included in the *DAM Data*, we cannot discern with certainty whether and to what extent the *DAM Data* represents prices only for whole live fish. The respondents have all indicated that they only consume live whole fish.¹⁵³ Consequently, we do not find the *DAM Data* to be as specific as another source on the record. Moreover, because dead fish sell for less than live fish, we harbor concerns that the *DAM Data* may understate the price of the whole live fish FOP. As noted below, the Department does not have this concern with respect to *Indonesian AS*.

Indonesian AS represents quantities and values of whole live fish. *Indonesian AS* states that discarded fish, whether because of poison, pollution, disease, and age are not included in the statistics.¹⁵⁴ In addition, *Indonesian AS* states that the quantities represent the wet weight at landed harvest time and that any which may have been processed are converted to the initial live weight.¹⁵⁵ Moreover, the value represents the landed live value of the fish.¹⁵⁶ Thus the IAS takes specific steps to ensure that the *Indonesian AS* data is specific to whole live fish, which is corroborated by a statement from its director whose signature appears in the *Indonesian AS* from

¹⁴⁷ In addition, Petitioners placed color photographs to support the statements in the affidavit. See Petitioners' November 20, 2012 submission at Exhibit 8. Also, Vinh Hoan reported that it pays less for fish which are sluggish, or near dead. See Vinh Hoan Verification Report at 27. This lends further evidence that the *DAM Data* may undervalue the live whole fish price as fish die throughout the day at the wholesale markets. The Vinh Hoan Verification Report indicates that on each invoice there are two prices for two quantities from the same supplier. *Id.* Company officials indicated that this is because towards the end of each incoming batch, the remaining fish on the delivery boat are worn out and not moving around as much. *Id.* They pay the farmer less for these fish. *Id.*

¹⁴⁸ See VASEP's November 20, 2012 submission at Exhibit 16, "Market Study on Some Freshwater Farmed Fish: Tilapia and Pangas (Mekong River Catfish)," dated March 2011.

¹⁴⁹ See VASEP's December 4, 2012 submission at Exhibit 13.

¹⁵⁰ See Petitioners' June 14, 2012 submission at Exhibit 30.

¹⁵¹ See VASEP's August 20, 2012 submission at Exhibit C.

¹⁵² See DAM Questionnaire.

¹⁵³ See, e.g., Anvifish's January 13, 2012 submission at 5; Vinh Hoan's January 3, 2012 submission at 7.

¹⁵⁴ See Petitioners' November 20, 2012 submission at Exhibit 4.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

2011.¹⁵⁷ The record belies VASEP and Vinh Hoan's arguments to the contrary. While VASEP and Vinh Hoan argue that *Indonesian AS* does not contain size data, we note that none of the respondents are able to report their CONNUMs on a size specific basis, nor do they report purchases of whole live fish on a size-specific basis, thus, we do not find a lack of sizing information in *Indonesian AS* to be any less specific than data which does contain size data.¹⁵⁸ Moreover, and contrary to VASEP and Vinh Hoan's claims that the Department cannot use the *Indonesian AS* data because it represents *pangasius* grown using distinct techniques, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.¹⁵⁹

In the last administrative review, we found that although there were four species of *pangasius* farmed in Indonesia, the Indonesia *FAO FIGIS Data* was sufficiently specific and the inclusion of *pangasius* species other than *hypophthalmus* did not distort the Indonesian price.¹⁶⁰ In this review, IAS officials have stated that there only two types of *pangasius* commonly grown in Indonesia, *hypophthalmus* and *jambal*, with *hypophthalmus* being the predominant species grown.¹⁶¹ In addition, IAS officials have stated that *hypophthalmus* grows in ponds and cages, while *jambal* grows in rivers.¹⁶² Therefore, by limiting the aquaculture area to ponds and cages, only *pangasius hypophthalmus*, and trace amounts of the *pangasius hypophthalmus* hybrid, are represented in the *Indonesian AS* data. There is no evidence that the inclusion of the *pangasius hypophthalmus* hybrid distorts prices significantly. In fact, because *hypophthalmus* and *jambal* sell at similar prices,¹⁶³ it is reasonable to suspect that the hybrid would sell at similar levels and that the inclusion of any such prices in the data would not distort the reported prices significantly. Consequently, if four species of *pangasius* are sufficiently specific, as we found in the last review, then a value consisting of only *hypophthalmus*, and trace amounts of the *hypophthalmus* hybrid, is more than sufficiently-specific to the input in question.

Regarding the argument that *jambal* is grown in ponds, we disagree. VASEP has cited two articles in support of this contention. One is a guide on how a fish farmer would go about qualifying for a program to grow *jambal*, and notes that *jambal* could be grown in ponds.¹⁶⁴ We note that this article is dated to 2006 and does not indicate that *jambal* was grown in ponds during the POR.¹⁶⁵ The second article cited by VASEP is a technical guide on how *jambal* could

¹⁵⁷ See Petitioners' November 20, 2012 submission at Exhibit 6.

¹⁵⁸ See, e.g., Anvifish's January 13, 2012 submission at 4; Vinh Hoan's January 3, 2012 submission at 5.

¹⁵⁹ See, e.g., *Shrimp Vietnam*, and accompanying Issues and Decision Memorandum at Comment 2 (where the Department determined that differing aquaculture methods to produce shrimp produced equally comparable merchandise); see also *Sebacic Acid*, and accompanying Issues and Decision Memorandum at Comment 1 (to 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).

¹⁶⁰ See 7th AR Fish Final, and accompanying Issues and Decision Memorandum at Comment I.C.

¹⁶¹ There is a third type of *pangasius*, a hybrid between the *hypophthalmus* and *jambal*, included in the *Indonesian AS*, but it is not commonly grown in Indonesia. See Petitioners' November 20, 2012 submission at Exhibit 6.

¹⁶² See Petitioners' November 20, 2012 submission at Exhibit 6.

¹⁶³ See Petitioners' November 20, 2012 submission at Exhibit 4.

¹⁶⁴ See VASEP's June 18, 2012 submission at Exhibit 19b.

¹⁶⁵ *Id.*

be grown in ponds and cages.¹⁶⁶ We note that this article is dated to 2005 and does not indicate that *jambal* was grown in ponds during the POR.¹⁶⁷ Due to the age of these articles, we find the IAS official's statement that *jambal* is grown in rivers¹⁶⁸ to be more probative than the articles cited by VASEP in determining the aquaculture in which *jambal* is current grown in Indonesia.

As we found in the last administrative review, we similarly find that the *FAO FIGIS Data* is not as species specific as the *DAM Data* or *Indonesian AS*. Record evidence indicates that there are five species of *pangasius* grown in Indonesia.¹⁶⁹ Although record evidence indicates that only two species of *pangasius* are commonly grown in Indonesia, *hypophthalmus* and *jambal*, it is unclear which of these species are represented in the *FAO FIGIS Data*, although *hypophthalmus* is the dominant species. Unlike the *Indonesian AS*, where the species are delineated by aquaculture area, the *FAO FIGIS Data* does not list the aquaculture areas from which its data was collected. Moreover, we note that the *FAO FIGIS Data* is a secondary source in that it publishes data collected from the Indonesian government; however, there is no record evidence linking the *FAO FIGIS Data* to any data published by the IAS. As we have a primary source from Indonesia, *Indonesian AS*, which is more species specific than the *FAO FIGIS Data*, we find that the *FAO FIGIS Data* does not represent the best available information with which to value the respondents' whole live fish.

Parties have argued that it would be inappropriate to value whole live fish using wholesale prices and not farmgate prices. As we noted in the last review, it is uncertain the extent to which such a distinction is relevant in the surrogate valuation analysis.¹⁷⁰ 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.¹⁷¹ Therefore, whether the *FAO FIGIS Data*, *DAM Data*, *Philippines FS* or *Indonesian AS* represents wholesale prices or farmgate prices is immaterial to our SV analysis.

Finally, in addition to our concerns on its representativeness of broad market averages, we similarly find that the *Philippines FS* data source is not as specific as the *DAM Data* or *Indonesian AS*. While record evidence indicates that *pangasius hypophthalmus* is the only species of *pangasius* commercially produced in the Philippines,¹⁷² other evidence indicates that some of the fish may be further processed, which the Department has found in past cases could explain some of the price variations.¹⁷³ Although VASEP argues that *basa bocourti* may be included in the data, an examination of the scope of the order indicates that this fish is included in the scope.¹⁷⁴ As further processed fish may be included in *Philippines FS*, we find this source to not be as specific to the input as *Indonesian AS*.

¹⁶⁶ See VASEP's June 18, 2012 submission at Exhibit 19c.

¹⁶⁷ *Id.*

¹⁶⁸ See Petitioners' November 20, 2012 submission at Exhibit 6.

¹⁶⁹ See VASEP's December 4, 2012 submission at Exhibit 6.

¹⁷⁰ See 7th AR Fish Final, and accompanying Issues and Decision Memorandum at Comment I.C.

¹⁷¹ *Id.*

¹⁷² See Petitioners' May 23, 2012 submission at Exhibits 8d and 12.

¹⁷³ See 7th AR Fish Final, and accompanying Issues and Decision Memorandum at Comment I.C.

¹⁷⁴ See the "Scope of the Order" section above.

Data Reliability

With regard to the parties' comments on price fluctuations in the data, we note that the *DAM Data* and *Indonesian AS* both have price fluctuations. With the exception of one area representing an insignificant quantity, the highest price in the *DAM Data* is roughly twice as high as the lowest price.¹⁷⁵ However, this is to be expected in different markets with different supply, demand, and logistical characteristics. VASEP cites to a shrimp from the PRC review as evidence that the Department conducts standard deviation tests when comparing SVs.¹⁷⁶ In that case we noted in the SVs memorandum that an interested party conducted a standard deviation and we found that the standard deviation contributed to our finding that a certain shrimp feed SV was aberrational.¹⁷⁷ However, we did not rely upon the standard deviation in the *PRC Shrimp Final*.¹⁷⁸ As a result, we do not find that any of the live whole fish SV choices discussed above to be anomalous with regard to price variances and, thus, consider all sources equal in this regard.

Affidavits from DAM officials note that DAM officials interview local wholesale businessmen at markets about their estimated selling prices of various fish, report those prices to DAM, and apart from interviews, the DAM officials do not undertake any process to consistently validate the prices, although DAM will correct mistakes or anomalies if they are brought to DAM's attention.¹⁷⁹ The Department has examined the *DAM Data* and found that it contains price differences between the weekly and yearly averages. For example, the POR yearly price for *pangasius* (small) from Tangail is 7,220 Bangladeshi taka, while an average of the POR weekly prices is 7,019 Bangladeshi taka.¹⁸⁰ It is because the Department is uncertain as to what, if any, procedures are used by DAM to ensure its data accuracy, that the Department requested information from DAM concerning its collection and collation methods; however, DAM did not respond.¹⁸¹

The Department does not have the same concerns with regard to *Indonesian AS*. Data of *pangasius* production is collected in stages at the household, village, and municipal level, using random sampling to determine the surveyed villages and households which conduct *pangasius* aquaculture activities.¹⁸² Moreover, IAS officials indicate that they do make revisions and

¹⁷⁵ See Petitioners' November 20, 2012 submission at Exhibit 4; see also VASEP's June 23, 2012 submission at Exhibits 33a-n.

¹⁷⁶ See *Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Results, Partial Rescission, Extension of Time Limits for the Final Results, and Intent To Revoke, in Part, of the Sixth Antidumping Duty Administrative Review*, 77 FR 12801, 12808 (March 2, 2012).

¹⁷⁷ *Id.*

¹⁷⁸ See *Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not To Revoke in Part*, 77 FR 53856 (September 4, 2012) ("*PRC Shrimp Final*"), and accompanying Issues and Decision Memorandum at Comment 10.

¹⁷⁹ See Petitioners' June 14, 2012 submission at Exhibits 26, 29 and 45.

¹⁸⁰ See Memorandum to the File, through Scot T. Fullerton, Program Manager, Office 9, from Paul Walker, Case Analyst, "Eighth Administrative Review, and Ninth New Shipper Reviews, of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Values for the Final Results," dated concurrently with this notice.

¹⁸¹ See DAM Questionnaire.

¹⁸² See Petitioners' November 20, 2012 submission at Exhibit 6.

corrections to data when necessary.¹⁸³ For example, IAS officials acknowledged an error with regard to the 2010 paddy aquaculture are, an area which the Department has not used to calculate the whole live fish SV.¹⁸⁴

In sum, given the analysis above, we find that *Indonesian AS* represents data that are contemporaneous, publicly available, tax and duty exclusive, a broad market average, and specific to the input. Moreover, the *Indonesian AS* data does not give rise to the unanswered questions posed by the extent to which dead fish is represented in the *DAM Data*, the extent to, and processes by, which the *DAM Data* is examined for errors. As a result we find that *Indonesian AS* represents the best available information to value the Vietnamese respondents' whole live fish FOP. Combined with the far greater contemporaneity and demonstrated importance to the NV calculation of the additional FOP available from Indonesia we have, consequently, selected Indonesia as the primary surrogate country because it is economically comparable to Vietnam, is a significant producer of comparable merchandise, and has the best available information with which to value the main input into the subject merchandise, whole live fish.

Comment II: Surrogate Financial Ratios

Petitioners

- Ratios should be valued using the publically available 2011 financial statements of Indonesian seafood producer PT Dharma Samudera Fishing Industries (“DSFI”),¹⁸⁵ which processes frozen seafood products, including frozen fish fillets. Thus, DSFI manufactures merchandise comparable to subject merchandise. DSFI’s statements are complete, in accordance with Indonesia’s generally accepted accounting principles, and DSFI showed a pre-tax profit in 2011. Therefore, the financial statements of DSFI are reliable for calculation of surrogate financial ratios.
- Alternatively, ratios could be valued using the publically available 2007 financial statements of Indonesian shrimp producer CP Proteinaprima (“CP Prima”).¹⁸⁶
- The Department has previously found that contemporaneity is not required for accepting a particular surrogate producer’s financial statements,¹⁸⁷ and the Department has previously relied on financial statements of companies less contemporaneous than other statements on the record when they represented the best record information for surrogate financial ratios.
- VASEP’s articles concerning CP Prima’s activities during 2009-2010¹⁸⁸ are not relevant to the company as it performed in 2007.

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ See Petitioners’ May 23, 2012 submission at Exhibit 36.

¹⁸⁶ *Id.* at Exhibit 37.

¹⁸⁷ See *Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Ukraine*, 67 FR 55785 (Aug. 30, 2002), and accompanying Issues and Decision Memorandum at Comment 1.

¹⁸⁸ See VASEP’s June 14, 2012 submission at Exhibit 16.

VASEP/Vinh Hoan

- DSFI's business is not comparable to the business activities of the respondents. DSFI's operations include catching, processing, selling, and trading fishery products, including grouper, tuna, octopus, and blue swimming crab.¹⁸⁹ DSFI also provides products such as sashimi, fish cutlets, cooked crab meat, cooked or live lobster, and stuffed crab shells. None of the respondents catch their fish. All subject merchandise comes from pond-raised fish. Therefore, DSFI's operations cannot be compared to the respondents' operations.
- DSFI was not profitable from 2008-2010, it has a history of securities violations, debt restructuring and restrictive covenants raise concerns about the company's future viability, and DSFI's Director cited lack of tuna supply as one reason for its poor performance.¹⁹⁰
- CP Prima is heavily involved in the production and sale of poultry and fish feeds.¹⁹¹ Therefore, CP Prima's operations cannot be compared to the respondents' operations.
- The CP Prima financial statement submitted by Petitioners is for 2007,¹⁹² so the statement is not contemporaneous. Also, CP Prima was not profitable from 2008-2010.¹⁹³

Department's Position: When selecting financial statements for purposes of calculating financial ratios, the Department's policy is to use data from ME surrogate companies based on the "specificity, contemporaneity, and quality of the data."¹⁹⁴ In accordance with 19 CFR 351.408(c)(4), the Department normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country to value manufacturing overhead, general expenses, and profit.¹⁹⁵ Although the regulation does not define what constitutes "comparable merchandise," it is the Department's practice to, where appropriate, apply a three-prong test that considers: (1) physical characteristics; (2) end uses; and (3) production process.¹⁹⁶ Additionally, for purposes of selecting surrogate producers, the Department examines how similar a proposed surrogate producer's production experience is to the NME producer's production experience.¹⁹⁷ However, the Department is not required to

¹⁸⁹ See An Phu's June 14, 2012 submission at Exhibit 1g (June 14, 2012); see also Vinh Hoan's December 4, 2012 submission at Exhibit 10.

¹⁹⁰ See VASEP's June 14, 2012 submission at Exhibits 17a-d, 17f.

¹⁹¹ See Petitioners' May 23, 2012 submission at Exhibit 36 (May 23, 2012) (CP Prima financial statement at 10).

¹⁹² *Id.*

¹⁹³ See VASEP's June 14, 2012 submission at Exhibit 16a.

¹⁹⁴ See *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079 (September 8, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

¹⁹⁵ See *Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 52049 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

¹⁹⁶ See, e.g., *Certain Woven Electric Blankets From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 38459 (July 2, 2010), and accompanying Issues and Decision Memorandum at Comment 2.

¹⁹⁷ See *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010), and accompanying Issues and Decision Memorandum at Comment 13.

“duplicate the exact production experience of” an NME producer, nor must it undertake “an item-by-item analysis in calculating factory overhead.”¹⁹⁸

The Department agrees with Petitioners that DSFI represents the best available information with which to value surrogate financial ratios. DSFI’s financial statements are contemporaneous, complete, publicly available, from the primary surrogate country, and the company manufactures comparable merchandise to subject merchandise. Specifically, DSFI’s 2011 financial statements cover January 1, 2011, through July 31, 2011 of the POR,¹⁹⁹ the statements are publicly available and certified by independent auditors to conform to Indonesian accounting standards,²⁰⁰ the company is based in Indonesia and is a fish producer.²⁰¹ We disagree with VASEP/Vinh Hoan’s argument that because DSFI’s fish are ocean fish,²⁰² the company’s activities are not comparable to respondents, as DSFI processes fresh fish.²⁰³ Moreover, the income statement in DSFI’s 2011 financial statements show that the company made both a pre-tax and post-tax profit.²⁰⁴

We disagree with VASEP and Vinh Hoan that DSFI’s past activities preclude the Department from using DSFI’s financial statements. As stated above, the record demonstrates that contrary to VASEP and Vinh Hoan’s arguments, DSFI was profitable during the POR, and we do not consider past unprofitable business cycles alone to be indicative of future performance. Moreover, DSFI’s securities violations occurred long before the POR, and there is no indication that DSFI engaged in similar behavior during the POR. DSFI’s debt restructuring and restrictive covenants similarly do not give us pause because they continued to conduct business profitably in 2011. Finally, the statement from DSFI’s Director that the company performed poorly because of a lack of tuna supply is immaterial to the present inquiry because the company’s issues with tuna supply did not render the company unprofitable in 2011. Therefore, the Department will use DSFI’s 2011 financial statements to calculate the surrogate financial ratios in the final results.

The Department agrees with VASEP and Vin Hoan that the non-contemporaneity of CP Prima’s 2007 statements, at a minimum, makes them less qualified relative to the contemporaneous DSFI statements.²⁰⁵ We will not address the argument of CP Prima’s comparability to respondent companies, except to note that CP Prima processes shrimp,²⁰⁶ which the Department has, in prior reviews of this proceeding, found to be comparable to subject merchandise.²⁰⁷ Therefore, the

¹⁹⁸ See *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1999); see also *Magnesium Corp. of Am. v. United States*, 166 F.3d 1364, 1372 (Fed. Cir. 1999).

¹⁹⁹ See Petitioners’ May 23, 2012 submission at Exhibit 36, which covers calendar year 2011.

²⁰⁰ *Id.* Independent Auditors’ Report, and Petitioners’ Case Brief at 89-90.

²⁰¹ See Petitioners’ May 23, 2012 submission at Exhibit 36, General.

²⁰² See An Phu Seafood Corporation’s June 14, 2012 Rebuttal Comments on Surrogate Country and Values at Exhibit 1G.

²⁰³ See Petitioners’ May 23, 2012 submission at Exhibit 36, Trade-Seafood Industry Directory.

²⁰⁴ *Id.* Consolidated Statements of Comprehensive Income.

²⁰⁵ See *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People’s Republic of China*, 71 FR 53079 (September 8, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

²⁰⁶ See Petitioners’ May 23, 2012 submission at Exhibit 37, General.

²⁰⁷ See, e.g., 7th AR Fish Final, and accompanying Issues and Decision Memorandum at Comment II-A.

Department will not use CP Prima's 2007 financial statement to calculate surrogate financial ratios.

Parties have raised issues concerning surrogate financial statements from Bangladesh and the Philippines.²⁰⁸ However, because we have a surrogate financial statement from the primary surrogate country which meets the Department's SV selection criteria, consistent with the preference stated in our regulations, we will not consider surrogate financial statements from other countries.²⁰⁹ As such, we find arguments concerning those other statements to be moot.

Comment III: Labor

Petitioners

- Although the Department typically uses International Labor Organization ("ILO") Yearbook Chapter 6A as its primary source,²¹⁰ in this case, the only Indonesian labor data on the record comes from Chapter 5B.²¹¹ The Department should value labor using Chapter 5B from 2008 because it still comes from the Department's preferred source, ILO.

VASEP/Vinh Hoan

- The Department should not use ILO Chapter 5B Indonesian information as it pertains to sub-classification 15 of the ISIC-Revision 3 Standard entitled, "Manufacture of Food Products and Beverages" which is overly broad.
- The ILO information on record is from 2008 and, thus, is not contemporaneous.
- Instead, the Department should use the same data – the 2011 data from the Bangladeshi Bureau of Statistics – that it used in the *Preliminary Results*.

Department's Position: The Department agrees with Petitioners that ILO Chapter 5B represents the best available information with which to value labor. The labor data comes from a publicly available source, the ILO, and is representative of broad market averages, given that ILO data represents country-wide data.²¹² Moreover, there is no indication that the data is inclusive of duties and taxes. With respect to specificity, we disagree with VASEP and Vinh Hoan that the Indonesian ILO data is overly-broad. In a prior review of this proceeding, we have found that the explanatory notes for sub-classification 15 of the ISIC-Revision 3 Standard entitled, "Manufacture of Food Products and Beverages" specifically state that the category includes the processing and preservation of fish and fish products.²¹³ Finally, while the

²⁰⁸ See, e.g., Petitioners' Case Brief at 49-55, 87-89; VASEP's Case Brief at 10-15.

²⁰⁹ See 19 CFR 351.408(c)(2).

²¹⁰ See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) ("Labor Methodologies").

²¹¹ See Petitioners' May 23rd Surrogate Value Submission at Exhibit 33.

²¹² *Id.*

²¹³ See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Sixth Antidumping Duty Administrative Review and Sixth New Shipper Review*, 76 FR 15941 (March 22, 2011), and accompanying Issues and Decision Memorandum at Comment III; 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 lc

Indonesian ILO data is not as contemporaneous as other sources on the record, we do not consider this material to our analysis because the Indonesian data unquestionably satisfies the other SV criteria. Therefore, the Department will use ILO Chapter 5B Indonesian data to calculate the labor SVs in the final results.

Parties have raised issues concerning surrogate labor information from Bangladesh and the Philippines.²¹⁴ We have declined to use data from these countries pursuant to our practice as stated in *Labor Methodologies*, which states that the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country.²¹⁵

Comment IV: Sawdust

VASEP

- The UN Comtrade 2006 Bangladesh import data for HTS 4401.30, “Sawdust And Wood Waste and Scrap,” is aberrational because the AUV for one kg of sawdust is greater than one kg of whole fish. Additionally, the data is not contemporaneous with the POR.²¹⁶
- Sawdust should be valued using a simple average of the Bangladeshi price quotes issued by SR Apparels, Dhaka, and MK Traders, Chittagong, in November 2012.²¹⁷

Vinh Hoan/Godaco/Docifish

- The Department should not value sawdust using UN Comtrade import data because Bangladeshi HTS 4401.30 is a basket category which has been found by U.S. Customs and Border Patrol to include various value-added products, such as cat litter and wood fire starters, whereas the M.K. Traders price quote is specific to the FOP consumed by the respondents.²¹⁸

Petitioners

- The Department should value sawdust using Philippine or Indonesian import data.²¹⁹
- The price quotes for sawdust proposed by respondents are not contemporaneous or reliable.²²⁰

(finding data sourced from ISIC Rev. 3 Sub-Classification 15 for the manufacture of food products and beverages to be reliable).

²¹⁴ See, e.g., Petitioners’ Case Brief at 93-94; Vin Hoan’s Rebuttal Case Brief at 49-51; VASEP’s Rebuttal Brief at 163-66 .

²¹⁵ See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092, 36093 (June 21, 2011); and *Clearon*, 2013 WL 646390, at *6 (“deriving the surrogate data from one surrogate country limits the amount of distortion introduced into {the Department’s} calculations”).

²¹⁶ See VASEP’s Case Brief at 25.

²¹⁷ See VASEP’s Case Brief at 26 – 27.

²¹⁸ See Vinh Hoan’s Case Brief at 5- 7.

²¹⁹ See Petitioners’ Case Brief at 27 – 29.

²²⁰ See Petitioners’ Case Brief at 29 – 30.

Department’s Position: As noted above, the Department has chosen Indonesia as the surrogate country for these final results. Section 773(c)(1)(B) of the Act, instructs the Department to “use the best available information” on the record when selecting SVs with which to value FOPs. It is the Department’s practice to choose SVs that represent non-export price averages, prices specific to the input, prices that are net of taxes and import duties, prices that are contemporaneous with the POR, and publicly-available, non-aberrational data from a single surrogate market economy country.²²¹

We find that Indonesian GTA import data under HTS 4401.30 provide the best information available on the record for valuing sawdust.²²² The Department has previously found that data from GTA, such as that on the record for the input at issue, is publicly-available, represents a broad market average, and is tax and duty exclusive.²²³ Additionally, the Indonesia HTS is contemporaneous with the POR. Finally, the HTS is specific to the input at issue because the HTS heading from which the data is derived, “Sawdust And Wood Waste and Scrap,” is specific to the sawdust FOP reported by the respondents. As we have a SV for sawdust which meets the Department’s selection criteria for SVs and which is from the primary surrogate country, we find that we need not leave the primary surrogate country to value this FOP. Moreover, we note that no party has argued against using this Indonesian HTS. Accordingly, for these final results, the Department has valued sawdust using GTA Indonesian import data for HTS 4401.30, “Sawdust And Wood Waste and Scrap.”

Finally, we do not believe the other sources to constitute the best information available. The Bangladeshi UN Comtrade data and price quotes are not contemporaneous with the POR. Moreover, given that we have reliable data for this input from the primary surrogate on the record, consistent with our regulation, we will not use data from the Philippines.

Comment V: Rice Husk

VASEP

- Rice husk should be valued using a simple average of price quotes from Seraph International, Chittagong, and SR Apparels Dhaka.²²⁴
- The value used for rice husk, a waste product, at the *Preliminary Results* is aberrational because at greater than \$2.00 kg, rice husk is valued at more than the cost of whole fish per kg. Additionally, HTS 1213.00, “Cereal Straw And Husks, Unprepared, Whether Or Not Chopped, Ground, Pressed Or In The Form Of Pellets,” is not specific to rice husk because it is a basket category.²²⁵

²²¹ See *Carbazole Violet Pigment 23 from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 36630 (June 28, 2010) (“*Carbazole Violet*”), and accompanying Issues and Decision Memorandum at Comment 4; see also 19 CFR 351.408(c)(2).

²²² See Petitioners’ May 23, 2012 submission at Exhibit 30.

²²³ See, e.g., *Certain Preserved Mushrooms from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 55808 (September 11, 2012) (“*Mushrooms*”), and accompanying Issues and Decision Memorandum at Comment 3.

²²⁴ See VASEP’s Case Brief at 23 – 24.

²²⁵ See VASEP’s Case Brief at 22 – 23.

- Although Petitioners have placed information on the record stating that Seraph International and SR Apparels Dhaka do not produce and sell rice husk, Seraph’s business activities include a wide range of “Agriculture & food Categories.” Petitioners’ arguments regarding SR Apparels are misguided because they placed information on the record for SR Apparels Limited.²²⁶

Petitioners

- The Department should continue to value rice husk using Philippine import data because it is contemporaneous.²²⁷
- The rice husk quotes are not reliable because the Seraph quote is not accompanied by an affidavit nor is it contemporaneous to the POR. The SR Apparels quote is unreliable because the quote was obtained under false pretenses and there is evidence that the respondents potentially self-selected price quotes obtained from various processors and traders.²²⁸

Department’s Position: As noted above, the Department has chosen Indonesia as the surrogate country for these final results. Section 773(c)(1)(B) of the Act instructs the Department to “use the best available information” on the record when selecting SVs with which to value FOPs. It is the Department’s practice to choose SVs that represent non-export price averages, prices specific to the input, prices that are net of taxes and import duties, prices that are contemporaneous with the POR, and publicly-available, non-aberrational data from a single surrogate market economy country.²²⁹

We find that Indonesian GTA import data under HTS 1213.00 provide the best information available on the record for valuing rice husk.²³⁰ As noted above, the Department has previously found that data from GTA, such as that on the record for this input, is publicly-available, represents a broad market average, and is tax and duty exclusive.²³¹ Additionally, the Indonesian HTS data is contemporaneous with the POR. Finally, the HTS is specific to the input at issue because the HTS heading from which the data is derived, “Cereal Straw And Husks, Unprepared, Whether Or Not Chopped, Ground, Pressed Or In The Form Of Pellets,” is specific to the rice husk FOP reported by the respondents. As we have a SV for rice husk which meets the Department’s selection criteria for SVs and which is from the primary surrogate country, we find that we need not leave the primary surrogate country to value this FOP. Moreover, we note that no party has argued against using this Indonesian HTS. Accordingly, for these final results, the Department has valued sawdust using GTA Indonesian import data for HTS 1213.00, “Cereal Straw And Husks, Unprepared, Whether Or Not Chopped, Ground, Pressed Or In The Form Of Pellets.”

²²⁶ See VASEP’s Case Brief at 23 – 24.

²²⁷ See Petitioners’ Rebuttal Brief at 32 – 33.

²²⁸ See Petitioners’ Rebuttal Brief at 33 – 34.

²²⁹ See *Carbazole Violet Pigment 23 from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 36630 (June 28, 2010) (“*Carbazole Violet*”), and accompanying Issues and Decision Memorandum at Comment 4; see also 19 CFR 351.408(c)(2).

²³⁰ See Petitioners’ May 23, 2012 submission at Exhibit 30.

²³¹ See, e.g., *Mushrooms*, 77 FR 55808 and accompanying Issues and Decision Memorandum at Comment 3.

Finally, we do not view the Bangladeshi price quotes on the record as the best information available for this input because, among other reasons, they are not contemporaneous with the POR.

Comment VI: Zeroing

VASEP

- The Department should not zero in the final results.

Department's Position: Consistent with the *Preliminary Results*,²³² and the Department's practice as announced in *Final Modification for Reviews*, we have not applied the zeroing methodology in these final results.²³³

Comment VII: By-Products

When calculating NV, the Department may offset production costs incurred by a respondent with the sale of by-products generated during the production process.²³⁴ Some of the Vietnamese respondents have claimed they produce and sell various by-products in their respective production processes. We address each below.

A. Fish Waste, Fish Belly, and Fish Skin Produced and Sold by Vinh Hoan, Anvifish, An Phu, DOCIFISH, and GODACO

VASEP/Vinh Hoan/Anvifish

- Fish waste, fish belly, and fish skin should be valued based on the Asian Seafood price quotes from Bangladesh, instead of the Philippine Vitarich price quote. Alternatively, GTA Indonesian import data from HTS 0511.91.9000 may also be used.
- Vitarich's price quote from the Philippines is unreliable because it is neither signed nor does it show the name of the individual or company official who issued the quote.
- The Department rejected the same Vitarich price quote in the last administrative review because there was no official company stamp, it was not obtained as an actual business transaction, there was no terms of payment, and it did not list person who provided the price.²³⁵
- Asian Seafood price quotes from Bangladesh are reliable and free from defects because they are signed, list the name of the issuing company, specific to *pangasius* fish waste, belly, and skin, and from the primary surrogate country.

²³² See *Preliminary Results*, 77 FR at 56188 ("In these preliminary results, the Department applied the assessment rate calculation method adopted in Final Modifications for Reviews, i.e., on the basis of monthly average-to-average comparisons using only the transactions associated with that importer with offsets being provided for non-dumped comparisons." (footnote omitted)).

²³³ 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*").

²³⁴ See section 773(c) of the Act; accord *Guangdong Chems. Imp. & Exp. v. United States*, 460 F. Supp. 2d 1365, 1373 (Ct. Int'l Trade 2006).

²³⁵ See 7th AR *Fish Final*, and accompanying Issues and Decision Memorandum at Comment II.B.1.

- Petitioners’ argument against using Asian Seafood price quotes is contradicted by evidence on the record and fails to discredit its authenticity.

Petitioners

- The Department should continue to value fish waste, fish belly, and fish skin with the specific and reliable price quotes from the Philippine processor, Vitarich Corporation, because they are reliable and specific to the *pangasius* by-products sold by the respondents.
- The Asian Seafood price quotes from Bangladesh are unreliable because record evidence shows that they are not prices that the seller quotes in the ordinary course of trade, and do not represent actual market prices in Bangladesh.
- The Indonesian GTA data under HTS 0511.91.9000, which Vinh Hoan supports using, is not specific to the respondents’ reported fish waste, belly meat, and fish skin by-products.

Department’s Position: We agree with Petitioners. The Vitarich Philippine price quote is for *pangasius* fish waste products that includes head and belly waste, fat and intestines, bone and tails waste, and skin and trimmings.²³⁶ This is specific to the by-product inputs reported by the respondents of fish waste, fish belly, and fish skin. In contrast, the Asian Seafood price quote from Bangladesh lists only *pangasius* fish waste, instead of multiple kinds of fish waste products, and therefore is broader and less specific than the Vitarich quote.²³⁷ The Vitarich quote is from April 2010, and the Asian Seafood quote is from November 2012. Thus, while both price quotes do not fall within the POR, the Vitarich quote is more contemporaneous because it is only four months prior to the start of the POR, while the Asian Seafood quote is more than a year after the POR.

Moreover, the Vitarich price quote satisfies the Department’s criteria of whether the SV data is publicly available, includes terms of payment, is tax and duty exclusive, and represents a broad market average. We disagree with the respondents’ claim that the quote does not include terms of payment, is not publically available or represents a broad market average, and does not indicate if they are net of taxes. The affidavit accompanying the price quote explains that the price quote was obtained as publically available information pertaining to the production and sales of *pangasius* fish in the Philippines.²³⁸ The affidavit also details the payment terms, the party offering the price, and the manner in which the price quote was obtained.²³⁹ The affidavit also states that the price quotes were requested on an ex-factory and tax-exclusive basis.²⁴⁰

We dispute the respondents’ arguments that the Vitarich price quote is unreliable because it is neither signed nor shows the name of the individual or company official who issued the quote. Furthermore, the price quote includes Vitarich’s company letterhead, as well as the official Vitarich business card of Mr. Chun, the Sales and Marketing Director of Vitarich.²⁴¹ In addition, unlike the record from the last review, the record in this review demonstrates that the price quote

²³⁶ See Petitioners’ May 23, 2012, SV Submission at Exhibit 19.

²³⁷ See VASEP’s December 4, 2012, Post-Preliminary SV Submission at Exhibit 2A.

²³⁸ See Petitioners’ May 23, 2012, SV Submission at Exhibit 19.

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ See Petitioners’ May 23, 2012, SV Submission at Exhibit 19.

was obtained directly from Vitarich and issued by an official of the company for sales in the ordinary course of business.²⁴²

We disagree with the respondents' arguments of using Indonesia GTA data under HTS 0511.91.9000, "Animal Products Nesoi; Dead Animals (of Ch 3), Unfit for Human Consumption, Other Product of Fish or Crustaceans, Moluscs or Other Aquatic Invertebra," as an alternative. The Department recognizes that it used HTS 0511.91.9000 in the 7th AR *Fish Final* to value fish waste. We have carefully reviewed the information on the record in order to determine whether this is the proper source to value fish waste.

After reviewing the information on the record, we find that fish waste products are generally not internationally traded commodities which would be reflected in import statistics. In other aquaculture cases, for example, in *Vietnam Shrimp 5th AR*²⁴³, the Department has consistently valued the waste product using an Indonesian price quote. As a result, we find specificity to be the most important factor in valuing this by-product. Valuing fish waste using import statistics illogically results in a fish waste SV which is higher than that of the whole fish. Consequently, the use of import statistics to value fish waste would distort the NV calculation

Furthermore, based on the description of Indonesia GTA data under HTS 0511.91.9000, "Animal Products Nesoi; Dead Animals, Unfit for Human Consumption, Other Product of Fish or Crustaceans, Moluscs or Other Aquatic Invertebra," we cannot determine whether fish waste is included in this HTS category. Therefore, we find that HTS 0511.911.9000 is not usable source to value fish waste. Since we do not have a source to value fish waste from the primary surrogate country, Indonesia, we need to move to an alternative surrogate country. In this case, as explained above, we have reviewed all information on record, and determined that the Philippine Vitarich price quote is the best available source for valuing fish waste. Therefore, we will continue to value fish waste, fish belly, and fish skin by-products with the Vitarich price quote for the final results.

B. Fish Oil and Fish Meal Produced and Sold by Vinh Hoan

Petitioners

- At the *Preliminary Results*, the Department valued fish oil using Indonesian import statistics, specifically GTA data for HTS 1504.20 "Fish Fats & Oils & Their Fractions Exc Liver, Refined Or Not, Not Chemically Mod," with a value of \$3.13/kg.
- At the *Preliminary Results*, the Department valued fish meal using 2007 UN Comtrade Bangladesh import data for HTS 2301.20 "Flours, Meals & Pellets Of Fish, Crust, Mol Or Other Aqua Invert, Unfit Human Cons," with a value of \$0.63/kg.
- These HTS subheadings used by the Department represent broad basket categories of fish oil and fish meal that are more valuable and not specific to the respondent's fish oil and fish meal input during the POR. Moreover, these categories only include imports from countries where there is no evidence of commercial production or exportation of *pangasius*.

²⁴² See Petitioners' May 23, 2012, SV Submission at Exhibit 19

²⁴³ See, e.g., *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results, Partial Rescission, and Request for Revocation, In Part, of the Fifth Administrative Review*, 76 FR 12054 (March 4, 2011), unchanged in *Vietnam Shrimp 5th AR*.

- Fish oil and fish meal are minimally processed and normally sold at much lower prices, and fish oil should not be valued at 226 percent of whole fish input. The fish meal input used by respondents is a lower quality than HTS 2301.20, which is more processed, and fish meal should not be valued at 65 percent of the whole fish input.
- Instead, the Department should use publically available price quotes on the record from Yahdi, an Indonesian supplier, because they are more specific, more accurately valued, from an approved surrogate country, and are contemporaneous from November 2011.

Vinh Hoan

- Petitioners do not establish why the import data must come from *pangasius*-producing countries, why it must be *pangasius*-specific, or that the import data are flawed because their values are too high.
- The Indonesia GTA import data under HTS 1504.20 used to value fish oil and the UN Comtrade Bangladesh import data used to value fish meal in the *Preliminary Results* satisfy the Department's criteria for the selection of the SVs for fish oil and fish meal. In addition, the Indonesian price quotes are flawed and have been rejected by the Department in previous administrative reviews.

VASEP

- The Department should reject the Yahdi price quotes for fish oil and fish meal because they are issued by a reseller from Indonesia, a country that does not satisfy the primary or secondary surrogate country requirements.
- The Department should continue to value fish oil with the Indonesian import data under HTS 1504.20 because it specifically covers fish oils. Fish meal should also be valued with UN Comtrade Bangladesh data under HTS code 2301.20 because it specifically covers the type of fish meal at issue in the HTS classification: "flours, meals & pellets of fish." Both of these HTS codes should be used because they represent a broad market average, are publically available, contemporaneous with the POR, net of taxes and duties, and have been reliably used by the Department to value fish oil in multiple prior proceedings.
- Petitioners' arguments that fish oil and fish meal have low prices and relatively minor sales are not supported by the record. Moreover, Petitioners provide no evidence that the import data for these inputs may be with regard to value-added products. Instead, fish oil and fish meal are valuable commercial waste products and is marketable with sizeable markets of their own.
- Since the amount of fish oil and fish meal produced in processing the whole fish is small, the total value of fish oil and fish meal produced per Kg of whole fish would be less compared to the unit price of whole fish.

Department's Position: We disagree with Petitioners that the Department should value fish oil with the Indonesian price quote on the record. After reviewing the price quote from Indonesian supplier, Yahdi, we have determined that it is not a reliable source for valuing fish oil.²⁴⁴ The Yahdi price quote is from Agromaret, which appears to be an online agricultural commodities search engine site, instead of an official issued price quote directly from the company with a

²⁴⁴ See Petitioners' May 23, 2012, SV Submission at Exhibit 34-A.

signed affidavit. No record information indicates how this price is sourced, constructed or whether it reflects a market price. Moreover, the Yahdi price quote is not as contemporaneous with the POR as are other data for this input.

At the *Preliminary Results*, we valued fish oil using Indonesian import statistics, specifically GTA data for HTS 1504.20.9000 “Fish Fats & Oils & Their Fractions Exc Liver, Refined Or Not, Not Chemically Mod,”.²⁴⁵ After reviewing Vinh Hoan’s fish oil production process at verification, we found that Vinh Hoan’s fish oil is unrefined.²⁴⁶ At verification, we asked company officials to describe the production process for fish oil. Company officials noted that Vinh Hoan saves fish scrap during the production process. All of the scrap is transferred to Vinh Hoan Feed, where it is processed into fish oil and fish meal. There are machines at Vinh Hoan Feed that chop and grind the scrap, and then cook it. Then the scrap is pressed, and then a portion is then dried. Once it is dried, the dry part is used for fish meal, and the remaining liquid is further cooked to become fish oil. We asked what the fish oil is sold for. Company officials indicated that fish oil is sold mostly to animal food factories.²⁴⁷ We asked how it is packaged. Company officials indicated that the fish oil is not packaged, but rather it is pumped into containers belonging to the purchaser. Vinh Hoan’s fish oil is kept in a large vat and sold by turning a spigot which empties the oil into the customers’ buckets.²⁴⁸

Therefore, based on Vinh Hoan’s description of its fish oil production process, the company’s fish oil is unrefined and not packaged. As a result, we harbor concerns that the HTS 1504.20.9000 used in the *Preliminary Results* may be an overly broad HTS category in which to value the respondents’ fish oil, given that by its terms it may include refined fish oil.²⁴⁹

Nevertheless, we will continue to value fish oil using the Indonesia HTS 1504.20.9000 because by its terms it similarly encompasses unrefined fish oil. However, we will cap the price of HTS 1504.20.9000 at the calculated value of the FOPs and ratios used by Vinh Hoan to make fish oil, *i.e.*, fish waste, labor and energy, plus surrogate ratios, to ensure that it is a fully-loaded fish oil value.²⁵⁰

We agree with VASEP and Vinh Hoan with continuing to value fish meal with the Bangladesh HTS 2301.20 used at the *Preliminary Results*. After reviewing the price quote from Indonesian supplier Yahdi, we have determined that it is not a reliable source for valuing fish meal.²⁵¹ The Yahdi price quote is from Agromaret, which appears to be an online agricultural commodities

²⁴⁵ See Memorandum to the File, from Paul Walker, Case Analyst “8th Administrative Review, and Aligned 9th New Shipper Reviews, of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results,” dated August 30, 2012 (“Preliminary Results SV Memo”) at 5-6.

²⁴⁶ See Vinh Hoan Verification Report at 33 and 39-40.

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ VASEP has argued for sawdust that the HTS contains value added products and thus should not be used for SV purposes. See Comment IV.

²⁵⁰ See, *e.g.*, 7th AR Fish Final, and accompanying Issues and Decision Memorandum at Comment II.B.3 (where the Department capped the surrogate value for fresh broken fillets); see also Vinh Hoan Final Analysis Memo at Attachment 2.

²⁵¹ See Petitioners’ May 23, 2012, SV Submission at Exhibit 34-A.

search engine site, instead of an official issued price quote from the company with a signed affidavit. Moreover, the Yahdi data is not as contemporaneous as other data on the record. In contrast, the UN Comtrade Bangladesh HTS 230120 “Flours, Meals & Pellets Of Fish, Crust, Mol Or Other Aqua Invert, Unfit Human Cons,” is specific to fish meal.²⁵² In addition, it represents a broad market average, is a publically available and reliable source, contemporaneous with the POR, and net of taxes and duties. Also, while the Department has capped the fish oil SV over concerns it may contain some data on inputs that are dissimilar to the by-product in question, we do not have the same concerns with regard to fish meal. Put another way, the HTS description for fish meal is sufficiently specific to the fish meal by-product, whereas the HTS description for fish oil, while sufficiently specific, notes the HTS may contain refined fish oil, which is not sufficiently similar to the fish oil by-product. Therefore, for the final results, we will continue to value fish meal using UN Comtrade Bangladesh data, specifically, HTS 2301.20.

C. Frozen Broken Meat Produced and Sold by Vinh Hoan and DOCIFISH

Vinh Hoan

- At the *Preliminary Results*, the Department valued frozen broken meat using Indonesia GTA data for HTS 0304.99 “Other Fish Meat (Whether or Not Minced), Frozen,” which is less specific because it includes minced fish instead of fish fillets.
- Instead, for the final results, the Department should use Indonesian GTA data for HTS 0304.29, “Fish Fillets, Frozen, Nesoi,” because this category covers fish fillets and, therefore, is more specific.
- The Department previously used HTS 0304.29 to value frozen broken meat in the prior administrative review, and Petitioners submitted this HTS subheading to value this input in their Surrogate Value Submission at Exhibit 27, May 23, 2012.

Petitioners

- The Department should reject the respondent’s proposed SV for frozen broken fillets, Indonesia GTA data under subheading HTS 0304.29, because is not specific to frozen broken fillets and using this subheading would distort the margin calculations because it contains data for unbroken whole frozen fish fillets.
- Continue to value Indonesian GTA data under subheading HTS 0304.99 in the final results because it covers all frozen fish meat products of other types and is specific to the frozen fish fillet by-product reported by the respondents.

Department’s Position: We agree with Petitioners. Indonesia GTA data under subheading 0304.29 “Fish Fillets, Frozen, Nesoi,” is not specific to the respondents’ by-product of frozen broken fillets because it includes unbroken whole frozen fish fillets.²⁵³ Indonesia GTA data under subheading HTS 0304.99.0000 “Other Fish Meat (Whether Or Not Minced) Frozen” is more specific because it includes all frozen fish meat products of other types and is more

²⁵² See Memorandum to the File, from Paul Walker, Case Analyst “8th Administrative Review, and Aligned 9th New Shipper Reviews, of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results,” dated August 30, 2012 (“Preliminary Results SV Memo”) at 5-6.

²⁵³ See Petitioners’ May 23, 2012, Surrogate Value Submission at Exhibit 19.

representative of the frozen broken fillet by-product input reported by the respondents.²⁵⁴ Moreover, as stated above, the Department regards GTA data as representative of broad market averages, publicly available, and free of taxes and duties.²⁵⁵ Therefore, we will continue to value frozen broken fillets with Indonesian HTS 0304.99.0000 for the finals results.

D. Fresh Broken Meat Produced and Sold by Vinh Hoan and An Phu

Vinh Hoan

- At the *Preliminary Results*, the Department valued fresh broken fish meat using April 2010 price quotes from Vitarich, a Philippine company.
- Vitarich price quotes were obtained outside of an actual business transaction, and thus raise concerns about whether they are truly publically available prices and do not represent broad market average because they are single prices from a single company.
- Vitarich price quotes have no terms of payment, are not from primary surrogate country, are not contemporaneous with POR, do not indicate whether they are net of taxes, and have no official company stamp.
- VASEP states the Department rejected the same Vitarich price quote in the last administrative review because there was no official company stamp, it was not obtained as an actual business transaction, there was no terms of payment, and it did not list person who provided the price.²⁵⁶
- For the final results, the Department should use Indonesia GTA data for HTS 0304.19 “Fish Fillets And Other Meat, Fresh Or Chilled, Excluding Steaks, Nesoi,” because it is publically available, country-wide, contemporaneous, and tax and duty free.

Petitioners

- The Department should continue to value fresh broken fillet using reliable, specific domestic price quotes from Philippine producer Vitarich Corporation.
- Indonesian GTA data under HTS subheading 0304.19 is an overly broad basket category and includes data for whole, unbroken fresh fish fillets, and this would distort the final results margin calculations.

Department’s Position: We agree with Petitioners. Indonesia GTA data for HTS 0304.19 “Fish Fillets And Other Meat, Fresh Or Chilled, Excluding Steaks, Nesoi,” is not specific to fresh broken fillet input reported by the respondents because this category includes whole unbroken fresh fish fillets.²⁵⁷ In contrast, the price quote from the Philippine producer Vitarich, which the Department used to value fresh broken fillets in the *Preliminary Results*, is more specific because it covers the exact by-product produced by the respondents of fresh broken fillets.²⁵⁸ Moreover, as explained the Department’s Position in Comment 7A: “Fish Waste, Fish Belly, and Fish Skin,” above, the Vitarich price quote satisfies the Department’s criteria of

²⁵⁴ See Preliminary Results SV Memo at 5-6.

²⁵⁵ See, e.g., *Mushrooms*, 77 FR 55808 and accompanying Issues and Decision Memorandum at Comment 3.

²⁵⁶ See 7th AR Fish Final, and accompanying Issues and Decision Memorandum at Comment II.B.1.

²⁵⁷ See Petitioners’ May 23, 2012, Surrogate Value Submission at Exhibit 30.

²⁵⁸ See Petitioners’ May 23, 2012, SV Submission at Exhibit 19.

whether the SV data is publicly available, contemporaneous, includes terms of payment, is tax and duty exclusive, and represents a broad market average.

We disagree with Vinh Hoan's claim that the quote does not include terms of payment, is not publically available or represent a broad market average, and does not indicate if they are net of taxes. Although the Department normally accords little weight to affidavits from interested parties' attorneys, the affidavit accompanying the price quote explains that the price quote was obtained as publicly available information pertaining to the production and sales of *pangasius* fish in the Philippines. The affidavit also details the payment terms, the party offering the price, and the manner in which the price quote was obtained. The affidavit also states that the price quotes were requested on an ex-factory and tax-exclusive basis.²⁵⁹ Finally, we consider the Vitarich price quote contemporaneous, given that it is from April 2010 and, thus, is within four months of the POR.

We disagree with Vinh Hoan's argument that the Vitarich price quote is unreliable and deficient. Specifically, the Vitarich price quote is accompanied by a signed affidavit and reflects domestic prices of fresh broken fillets in the, a country that satisfies the statutory surrogate country criteria. We dispute Vinh Hoan's arguments that the Vitarich price quote is unreliable because it is neither signed nor show the name of the individual or company official who issued the quote. The Vitarich price quote is reliable because it was issued with a signed affidavit from Petitioners' attorney in the Philippines. Furthermore, the price quote includes Vitarich's company letterhead, as well as the official Vitarich business card of Mr. Chun, the Sales and Marketing Director of Vitarich.²⁶⁰ In addition, unlike the record from the last review, the record in this review demonstrates that the price quote was obtained directly from Vitarich and issued by an official of the company for sales in the ordinary course of business.²⁶¹

Therefore, we will continue to value fresh broken fillets with the price quote from Philippine producer, Vitarich, in the final results.

Company-Specific Issues

Comment VIII: Application of AFA to Vinh Hoan

The Department should apply adverse facts available ("AFA") to Vinh Hoan because Vinh Hoan failed to act to the best of its ability to report accurate information regarding its FOP reporting methodology, document retention system, and reported additive mix and weight gain.

A. Vinh Hoan's Reporting Methodology

Petitioners

- Vinh Hoan distorted its whole fish consumption factor by not reporting its FOPs on a CONNUM-specific basis and including non-subject merchandise in its denominator.

²⁵⁹ See Petitioners' May 23, 2012, SV Submission at Exhibit 19.

²⁶⁰ See Petitioners' May 23, 2012, SV Submission at Exhibit 19.

²⁶¹ See Petitioners' May 23, 2012, SV Submission at Exhibit 19

Further, it did not identify the efforts taken to comply with the Department's reporting instructions.²⁶²

- Vinh Hoan could have developed and incorporated a reporting methodology to report FOP data specific to subject merchandise or on a CONNUM-specific basis, similar to the tracking performed at the tests during verification or by purchasing the software for its sorting machines.²⁶³

Vinh Hoan

- Vinh Hoan could not have implemented a system to track yields and usage tests because doing so would require additional employees and delay processing.²⁶⁴ Even if Vinh Hoan attempted to use its sizing machines for more specific reporting, these machines are limited to a certain number of setting sizes that would not capture all of Vinh Hoan's fillet weights.²⁶⁵
- Vinh Hoan has used the same reporting methodology in every segment of this proceeding and the Department has never suggested that the methodology was unreasonable.²⁶⁶
- Vinh Hoan's document retention policy is not a newly implemented system. The Department has verified Vinh Hoan five times previously and their document retention practice has remained unchanged throughout the duration of the order.²⁶⁷

B. Vinh Hoan's Document Retention Methodology

Petitioners

- Vinh Hoan's failure to retain whole fish weigh-in receipts impeded the verification process since the Department was unable to conduct a complete reconciliation of Vinh Hoan's whole fish factor and farming factors.²⁶⁸

Vinh Hoan

- The characterization that Vinh Hoan does not keep "original source documentation" is incorrect in that Vinh Hoan believes it does keep its "source documents" (*i.e.*, purchase invoices, salary records, fingerlings and whole fish receipts, and daily inventory summaries), but does not maintain certain daily reports/summaries.²⁶⁹

²⁶² See Petitioners' January 8, 2013 Case Brief concerning the Vinh Hoan Verification Report ("Petitioners' Vinh Hoan Ver. Case Brief") at 27 – 34.

²⁶³ See Petitioners' Vinh Hoan Ver. Case Brief at 35 – 40.

²⁶⁴ See Vinh Hoan's January 17, 2013 Rebuttal Brief concerning the Vinh Hoan Verification Report ("Vinh Hoan's Ver. Rebuttal Brief") at 36.

²⁶⁵ See Vinh Hoan's Ver. Rebuttal Brief at 36 – 37.

²⁶⁶ See Vinh Hoan's Ver. Rebuttal Brief at 32.

²⁶⁷ See Vinh Hoan's January 8, 2013 Case Brief concerning the Vinh Hoan Verification Report ("Vinh Hoan Ver. Case Brief") at 6; see also *Notice of Antidumping Duty Order: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 47909 (August 12, 2003).

²⁶⁸ See Petitioners' January 17, 2013 Rebuttal Brief concerning the Vinh Hoan Verification Report ("Petitioners' Vinh Hoan Ver. Rebuttal Brief") at 11.

²⁶⁹ *Id.*

C. Vinh Hoan's Reported Additive Mix and Weight Gain

Petitioners

- Prior to verification, Vinh Hoan led the Department to believe that: (1) it employed a number of additive mixes during the POR, (2) the single additive mix yielded a certain percentage change in its fish fillets, (3) additive mixes varied by market, (4) additive mixes were changed to meet customers' specific requests, and (5) that Vinh Hoan did not record weight gains for specific products.²⁷⁰
- At verification, the Department found that: (1) a single additive mix was employed during the POR, (2) the additive mix increased fillet weights by a different percentage than reported in Vinh Hoan's supplemental responses in a test performed during verification, (3) additive mixes are not disclosed to customers, and (4) test reports detailing additive mixes and the corresponding weight gains are maintained by Vinh Hoan.

Vinh Hoan

- The claim that Vinh Hoan only used one additive mix is incorrect because the verification report indicates that although Vinh Hoan "settle{d} on one mix" that "was used during the entire POR," the report did not say that it was the "only" additive mix used. Moreover, Vinh Hoan reported other additives, which were not included in the previously mentioned mix.²⁷¹
- The verification report exhibits do not state that Vinh Hoan's additive mix always results in a weight yield, but that the formula has an expected weight gain result. Moreover, the weight gain referenced by Petitioners not based on the weight of the final merchandise, but post soaking weight.²⁷²
- Prior to verification, Vinh Hoan did provide a soaking formula to the Department, which was very close to the one provided at verification.²⁷³

Department's Position: We disagree with Petitioners and determine that Vinh Hoan has acted to the best of its ability to report accurate information in the review. The Department applies AFA pursuant to section 776(a) of the Act, which states that if necessary information is not available on the record or an interested party or any other person: (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadline, or in the form or manner requested; (C) significantly impedes a proceeding; or (D) provides such information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination.

A. Vinh Hoan's Reporting Methodology

With respect to Vinh Hoan's reporting methodology, the Department disagrees with Petitioners' argument that Vinh Hoan distorted its fish consumption factor with its FOP reporting methodology by not reporting more CONNUM-specific FOP data. The Department notes that Vinh Hoan has followed this same reporting methodology since the investigation because both

²⁷⁰ See Petitioners' Vinh Hoan Ver. Case Brief at 16 – 26.

²⁷¹ See Vinh Hoan's Ver. Rebuttal Brief at 11 – 14.

²⁷² *Id.* at 13 – 15.

²⁷³ *Id.* at 20 – 21.

subject and non-subject merchandise are produced at the same processing plants using the same factor inputs, such as chemicals, energy, and labor.²⁷⁴ Although Petitioners contest that Vinh Hoan did not identify the efforts undertaken to report its FOP data on a CONNUM-specific basis,²⁷⁵ in its questionnaire responses to the Department, Vinh Hoan provided a detailed explanation as to why it could not provide CONNUM-specific FOP data, stating that its production and accounting records do not distinguish the characteristics requested by the Department in its original questionnaire.²⁷⁶ Further, at verification, the Department did not find any evidence that Vinh Hoan kept production records which would enable it to report its FOPs on a more CONNUM-specific basis.²⁷⁷

In light of Vinh Hoan's and other respondents' experience with the Department's methodologies and their reporting ability, the Department intends to revisit the CONNUM specificity required in future reviews, as appropriate. Specifically, the Department may require Vinh Hoan and other respondents to report FOPs on a CONNUM-specific basis that will reflect the different production costs required to produce the different type of fish fillets, which may require respondents to maintain original accounting and production records on a monthly, product-specific basis.

With respect to Petitioners' argument that Vinh Hoan could have used its electronic sorting machines to record fish weights, the Department disagrees. As noted in Vinh Hoan's verification report, Vinh Hoan did not purchase electronic sorting machines for all of its production facilities.²⁷⁸ Moreover, Vinh Hoan did not purchase the software that would enable it to record the various fish fillet weights.²⁷⁹ As such, the Department agrees with Vinh Hoan that even if it reported fillet weights recorded by its sorting machines, the reported weights would not be an accurate representation of total fish fillet production.

B. Vinh Hoan's Document Retention Methodology

With respect to Vinh Hoan's document retention system, the Department agrees with Vinh Hoan. In order for the Department to draw an adverse inference under section 776(b) of the Act, the Department needs only to make two findings:

First, it must make an objective showing that a reasonable and responsible {respondent} would have known that the requested information was required to be kept and maintained

²⁷⁴ See Letter from Vinh Hoan, to the Department, regarding Certain Frozen Fish Fillets from Vietnam: Vinh Hoan Corporation Section D Supplemental Questionnaire Response, dated May 7, 2012 ("May 7, 2012 Vinh Hoan SQR") at 2 – 3.

²⁷⁵ See Petitioners' Vinh Hoan Ver. Case Brief at 31.

²⁷⁶ See May 7, 2012 Vinh Hoan SQR at 2.

²⁷⁷ See Memorandum to the File, from Susan Pulongbarit, through Scot T. Fullerton, regarding Verification of the Sales and Factors of Production Response of Vinh Hoan Corporation in the 2010-2011 Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, dated December 14, 2012 ("Vinh Hoan Verification Report") at 13 – 15. The Department notes that in the Factory Tour section of its verification report, there was no mention of Vinh Hoan maintaining CONNUM-specific records.

²⁷⁸ See Vinh Hoan Verification Report at 39.

²⁷⁹ *Id.* at 15.

under the applicable statutes, rules, and regulations. Second, Commerce must then make a subjective showing that the respondent under investigation not only has failed to promptly produce the requested information, but further that the failure to fully respond is the result of the respondent's lack of cooperation in either: (a) failing to keep and maintain all required records, or (b) failing to put forth its maximum efforts to investigate and obtain the requested information from its records.²⁸⁰

The Department recognizes that Vinh Hoan has been verified in previous administrative reviews without significant issue. As a result, it is reasonable to assume that the Department implicitly found Vinh Hoan's document retention system to be reasonable and, therefore, did not require that they keep or maintain certain records beyond which the Department had approved in prior segments, absent explicit evidence that would call into question the company's document retention system. Notwithstanding Petitioners' arguments to the contrary, as stated above and explained below, our verification of Vinh Hoan's records demonstrated that its document retention system is sufficient for our purposes. In addition, the Department did not explicitly put Vinh Hoan on notice to maintain certain original source documentation. Accordingly, the first requirement of drawing an adverse inference has not been met.

Further, with regard to Petitioners' argument that comments regarding Vinh Hoan's document retention policies constitute new factual information, the Department disagrees.²⁸¹ Pursuant to 19 CFR 351.301(b)(2), submission of factual information is due no later than 140 days after the last day of the anniversary month.²⁸² In this case, the deadline for the submission of factual information was February 17, 2012. In its May 7, 2012, questionnaire response to the Department, Vinh Hoan stated that its "reporting methodology has remained consistent in every single segment of this Order ... and has been verified by the Department."²⁸³ Although this is after the February 17, 2012, new factual information deadline, pursuant to 19 CFR 351.301(c)(2), the Department may request any person to submit factual information at any time during a proceeding, according to the Department's regulations, this information was timely.²⁸⁴ Moreover, the Department considers Vinh Hoan's document retention as part of its reporting methodology, and therefore, does not consider the Vinh Hoan's comments regarding its source documentation to be new factual information.

With respect to Petitioners' argument that the Department was unable to conduct a complete reconciliation of Vinh Hoan's whole fish factor, the Department disagrees. Although Vinh Hoan did not maintain certain weigh-in documents, the Department reviewed various accounting and production records (*e.g.*, inventory-in slips, contracts, raw material sub-ledger) at verification, which reconciled to Vinh Hoan's financial statements with no issue.²⁸⁵ Further, at verification the Department also requested and reviewed several documents, which were not previously

²⁸⁰ See *Tianjin Machinery Import & Export Corp. v. United States*, 353 F. Supp. 2d 1294, 1299 (CIT 2004) (*citing Nippon Steel Corp v. United States*, 337 F. 3d 1372, 1382 (Fed. Cir. 2003)).

²⁸¹ See Petitioners' Vinh Hoan Ver. Rebuttal Brief at 13.

²⁸² See 19 CFR 351.301(b)(2).

²⁸³ See Vinh Hoan SQR May 7, 2012 at 2.

²⁸⁴ See 19 CFR 351.301(c)(2).

²⁸⁵ See, *e.g.*, Vinh Hoan Verification Report at 25 – 27 and 42.

prepared and found no discrepancies.²⁸⁶ The Department finds that Vinh Hoan provided useable FOP information in a timely manner, which the Department was able to verify. Consequently, the Department has determined that there is enough useable information to calculate an accurate dumping margin for these final results. For further discussion of Vinh Hoan's whole fish consumption *see* Issue XI below.

C. Vinh Hoan's Reported Additive Mix and Weight Gain

With respect to Petitioners' argument that Vinh Hoan's responses to the Department's questionnaires misled the Department to believe that Vinh Hoan used multiple additive mixes during the POR even though the Department found that Vinh Hoan used only one additive mix during the POR, the Department disagrees. Although the Vinh Hoan verification report does state that Vinh Hoan "settled on one mix ... which they indicated was used during the entire POR,"²⁸⁷ the verification report also states that Vinh Hoan did use a different additive mix during the POR.²⁸⁸ Moreover, prior to verification Vinh Hoan provided the Department with a table describing a "typical tumbling formula"²⁸⁹ and also stated that the "types of chemicals used {in its soaking formula} changed from time to time during the POR."²⁹⁰

With respect to Petitioners' argument that Vinh Hoan claimed its additive mix achieved a certain percentage of weight change²⁹¹, the Department disagrees. The Department notes that the weight gain described by Petitioners is the weight gain of the fillets during an intermediary stage of the production process.²⁹² Specifically, the test reports presented to the Department at verification indicated that the fillets were weighed at different points during the testing process, including after the tumbling stage and after the freezing stage. Petitioners focus on the weight measured after the tumbling stage and not the weight measured after the final stage of production (*i.e.*, the freezing stage). Moreover, Vinh Hoan did not make any claims during verification or in its responses to the Department's questionnaires that it achieved the same yield in its post tumbling stage as it did at the final stage of production. Lastly, the weight gains achieved during the tests performed at verification²⁹³ were consistent with Vinh Hoan's expected final weight gain.²⁹⁴ In response to Petitioners' argument that Vinh Hoan claimed it uses different types of additives for various markets²⁹⁵, the Department disagrees. The Department notes that in its August 3, 2012, questionnaire response, Vinh Hoan was referencing its soaking times which "*could* be adjusted from production day-to-day, from market to market and depending on quality of raw material received every day"²⁹⁶ and not its additive mix. (emphasis added) Moreover, Vinh

²⁸⁶ *Id.* at 19 and 25.

²⁸⁷ *See* Petitioners' Vinh Hoan Ver. Case Brief at 23 *citing* Vinh Hoan Verification Report at 17.

²⁸⁸ *See* Vinh Hoan Verification Report at 39.

²⁸⁹ *See* May 7, 2012 Vinh Hoan SQR at 7 and Exhibit 8.

²⁹⁰ *See* Letter from Vinh Hoan, to the Department, regarding Certain Frozen Fish Fillets from Vietnam: Vinh Hoan Corporation – 3rd Supplemental Section D Questionnaire Response and Response to July 26, 2012 Letter, dated, August 3, 2012 ("August 3, 2012 Vinh Hoan SQR") at 7.

²⁹¹ *See* Petitioners' Vinh Hoan Ver. Case Brief at 15.

²⁹² *See* Vinh Hoan Verification Report at Week 1 Exhibit 10.

²⁹³ *See* Vinh Hoan Verification Report at Week 2 Exhibit 18 and Week 2 Exhibit 20.

²⁹⁴ *See* Vinh Hoan Verification Report at Week 1 Exhibit 10.

²⁹⁵ *See* Petitioners' Vinh Hoan Ver. Case Brief at 26 *citing* August 3, 2012 Vinh Hoan SQR at 7.

²⁹⁶ *See* August 3, 2012 Vinh Hoan SQR at 7.

Hoan did not state that it did change soaking times for each market, but that it could. Additionally, in its subsequent questionnaire responses, Vinh Hoan stated twice that “Vinh Hoan does not use different additives/preservative mixes for different specific markets.”²⁹⁷ As a result, the Department does not find Vinh Hoan’s statements at verification that it used a certain formula during the entire POR for all markets are contradictory to the responses it submitted to the Department prior to verification.

With regards to Petitioners’ argument that Vinh Hoan misled the Department when it stated that “Vinh Hoan does not record any specific weight gain for any specific product every day,”²⁹⁸ the Department disagrees. Although the verification report does state that “{Vinh Hoan} conducted experiments to see how much they could maximize weight *via* the tumbling process without losing the level of quality they needed to sell to certain markets” and that the Department obtained a “chart {that} reflects various tests conducted with various mixes of additives/chemicals,” the Department did not find any evidence during verification that Vinh Hoan maintained records tracking the specific weight gain for specific products on a daily basis.²⁹⁹ Further, although the Department did note that Vinh Hoan’s experiment chart indicated specific expected weight gains achieved by each formula, the Department finds expected weight gains to be altogether different from actual achieved weight gains.

In sum, the Department verified Vinh Hoan’s reported fish consumption and production without issue. Therefore, for all the foregoing reasons, we do not agree that Vinh Hoan failed to act to the best of its ability to report accurate and reliable FOPs.

Comment IX: Vinh Hoan’s Gross Weight vs. Net Weight

Petitioners

- Because it is unlawful to sell frozen fish fillets on a gross weight basis (*i.e.*, inclusive of glazing), Vinh Hoan’s margin should be calculated on a net weight basis.³⁰⁰
- The Department should decrease all of Vinh Hoan’s tra products (with the exception of U.S. sold merchandise that was not glazed) by 20 percent, which is reflective of the test performed during verification.

Vinh Hoan

- Vinh Hoan sells fillets on a gross weight basis and, as such, should report all of its sales accordingly because this is consistent with the Department’s reporting instructions.
- If the Department does make an adjustment, it should reject Petitioners’ proposal to adjust the quantity of glazed production by 20 percent based on a single test at verification, but use the glazing data provided by Vinh Hoan.

²⁹⁷ See Letter from Vinh Hoan, to the Department, regarding Certain Frozen Fish Fillets from Vietnam: Vinh Hoan Corporation – Supplemental Sections A, C and D Questionnaire Response, dated October 13, 2012 (“Vinh Hoan October 13, 2012 SQR”) at 10 and 11.

²⁹⁸ See Petitioners’ Vinh Hoan Ver. Case Brief at 23 citing Vinh Hoan October 13, 2012 SQR at 10.

²⁹⁹ See Vinh Hoan Verification Report at 17.

³⁰⁰ See Petitioners’ Vinh Hoan Ver. Case Brief at 76 citing Letter from Petitioners, to the Department, regarding Eighth Administrative Review and Aligned New Shipper Reviews of Certain Frozen Fish Fillets from Vietnam, dated November 29, 2012, at Attachments 1 and 2.

Department’s Position: The Department disagrees with Petitioners and will not make the proffered adjustment. Vinh Hoan’s U.S. sales are reported on a gross weight basis.³⁰¹ Because none of Vinh Hoan’s U.S. customers requested ice, water, or glazing, its reported net weight and gross weight were the same.³⁰² Vinh Hoan reported on January 3, 2013, that its factors of products were reported on a gross weight basis,³⁰³ which was confirmed by the Department at verification.³⁰⁴ On January 3, 2012, Vinh Hoan stated that all of its production facilities “use water in the production process (*e.g.*, for making ice, glazing, cleaning, *etc.*).”³⁰⁵

Although Petitioners reference the second administrative review, in which the Department found that it was appropriate that “the relevant basis of comparison” for U.S. prices and NVs was on a different basis (*i.e.*, exclusive of glazing),³⁰⁶ the Department finds that the circumstances in the current review are not the same. In that review, the respondents reported its U.S. prices and FOPs on a net weight basis (*i.e.*, exclusive of glazing). As a result, because the NV and U.S. price data were both reported on a net weight basis, it was not necessary to increase the U.S. price because such adjustments are only appropriate where the per unit basis of comparison is affected by inconsistent denominators.³⁰⁷ In this case, the Department finds that because the NV and U.S. price were data were both reported on a gross weight basis, the relevant basis of comparison is consistent; therefore, no adjustment is necessary or warranted.

Comment X: Vinh Hoan’s Revocation

Vinh Hoan

- The Department should revoke the order with respect to Vinh Hoan.³⁰⁸

Petitioners

- As discussed in Issues VIII and XI, the Department should determine Vinh Hoan’s final margin based on AFA or partial facts available. In so doing, Vinh Hoan would receive a rate above zero or *de minimis* and, thus, not satisfying the criteria for revocation.³⁰⁹
- The Department has previously rejected a request for revocation, despite the calculation of three consecutive zeroes, because a respondent failed to provide highly material information. If Vinh Hoan is assigned zeroes in three consecutive administrative reviews,

³⁰¹ See Letter from Vinh Hoan, to the Department, regarding Certain Frozen Fish Fillets from Vietnam: Vinh Hoan Corporation – Section D Questionnaire Response, dated January 3, 2012 (“Vinh Hoan OQR”) at 9.

³⁰² See Letter from Vinh Hoan, to the Department, regarding Certain Frozen Fish Fillets from Vietnam: Vinh Hoan Corporation – First Supplemental C Questionnaire Response, dated April 20, 2013 (“April 20, 2013 Vinh Hoan SQR”) at 3-4.

³⁰³ See Vinh Hoan OQR at 9.

³⁰⁴ See Vinh Hoan Verification Report at 16.

³⁰⁵ See Vinh Hoan OQR at 38.

³⁰⁶ See Petitioners’ Vinh Hoan Ver. Case Brief at 76 (*citing Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Second Administrative Review*, 72 FR 13242 (March 21, 2007), and accompanying Issues and Decision Memorandum at Comment 14).

³⁰⁷ *Id.*

³⁰⁸ See Vinh Hoan’s Case Brief at 7 – 8.

³⁰⁹ See Petitioners’ Case Brief at 38.

the Department should still reject Vinh Hoan’s revocation request for those reasons listed above (*i.e.*, inaccurate information regarding whole fish and non-specific FOP reporting).³¹⁰

- Vinh Hoan will begin dumping once the order is revoked.³¹¹
- The order should not be revoked for those reasons stated in the Department’s partial revocation regulation.³¹²

Department’s Position: Pursuant to section 751(d) of the Act, the Department “may revoke, in whole or in part” an antidumping duty order upon completion of a review under section 751(a) of the Act. As stated in the *Preliminary Results*, the Department’s regulations outline certain procedural requirements for a party to request revocation in part, and Vinh Hoan has satisfied the requisite criteria.³¹³ Turning to the merits of Vinh Hoan’s request, the Department considers the following criteria in determining whether to revoke an antidumping duty order in part: (a) whether the company in question has sold subject merchandise at not less than NV for a period of at least three consecutive years, (b) whether the company has agreed in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Department concludes that the company, subsequent to revocation, sold the subject merchandise at less than NV, and (c) whether the continued application of the antidumping duty order is otherwise necessary to offset dumping.³¹⁴

For these final results, Vinh Hoan has not been assigned a zero or *de minimis* margin. As such, the Department finds that Vinh Hoan has not met the criteria listed in 19 CFR 351.222(b)(2)(i) and, thus, is not eligible for revocation.

Comment XI: Application of Partial Facts Available for Vinh Hoan’s Whole Fish Consumption

Petitioners

- The Department may not rely on Vinh Hoan’s soaking formula and weight gains found at verification because this information constitutes new factual information.³¹⁵
- Vinh Hoan has not explained why its whole fish yield is so different from industry benchmarks, Vinh Hoan’s yield rates in the 6th AR, and the yield rates of other respondents in the current review.³¹⁶
- A comparison of whole fish prices paid by Vinh Hoan to fish prices reported in articles placed on the record indicate that Vinh Hoan must have misreported its fish consumption.³¹⁷
- To address Vinh Hoan’s whole fish consumption ratio, the Department should apply partial facts available using Vinh Hoan’s data from the 6th AR.

³¹⁰ *Id.* at 42 – 43.

³¹¹ *Id.* at 45 – 46.

³¹² *Id.* at 46 – 48.

³¹³ *See Preliminary Results*, 77 FR at 56186.

³¹⁴ *See* 19 CFR 351.222(b)(2)(i)(A)-(C).

³¹⁵ *See* Petitioners’ Vinh Hoan Ver. Case Brief at 52 – 54.

³¹⁶ *See* Petitioners’ Vinh Hoan Ver. Case Brief at 60.

³¹⁷ *See* Petitioners’ Vinh Hoan Ver. Case Brief at 61.

Vinh Hoan

- Partial facts available are not warranted because the Department found no discrepancies between Vinh Hoan’s reported fish factor and the documents presented at verification. Further, the Department’s test at verification supports Vinh Hoan’s reported whole fish consumption.³¹⁸

Department’s Position: We agree with Vinh Hoan and will continue to use Vinh Hoan’s reported whole fish consumption ratio for the final results.

As noted above, sections 776(a)(1) and (2) of the Act provide that the Department shall apply facts otherwise available if necessary information is not on the record or an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified.

With respect to Vinh Hoan’s additive mix and weight gains observed at verification, as stated above, the Department does not find that these contradicted Vinh Hoan’s questionnaire responses and constituted untimely factual information. As stated above, the typical tumbling formula Vinh Hoan presented to the Department in its questionnaire response³¹⁹ closely matched the tumbling formula observed at verification.³²⁰

With regards to the argument that Vinh Hoan did not explain the change in its whole fish consumption from the 6th administrative review, the Department disagrees. In its questionnaire responses to the Department, Vinh Hoan provided several suggestions including “whole fish size, whole fish quality, customer requirements, and variations in the production process, including recovery, weight, soaking, and changes in the product mix.”³²¹ Moreover, Vinh Hoan presented information at verification, which supported claims made in its questionnaire responses that the company focused on these factors during the POR and explained its whole fish consumption ratio.³²² In particular, Vinh Hoan focused on aspects such as fish feed for its farmed fish, the quality of fish purchased from its outside suppliers, and the improvement of its farming practices to improve whole fish size, whole fish quality, and whole fish consumption.³²³ In terms of variations in Vinh Hoan’s production process, Vinh Hoan concentrated on various aspects of its production process during the POR, including the soaking process, to improve weight gain.³²⁴ As evidenced by information presented to the Department, Vinh Hoan was able to change its fish consumption ratio as a result of these various factors.³²⁵ Although Petitioners contest each of Vinh Hoan’s suggestions individually, the Department finds that these reasons collectively provide a reasonable explanation for Vinh Hoan’s whole fish consumption ratio.

³¹⁸ See Vinh Hoan’s Vinh Hoan Ver. Rebuttal Brief at 6.

³¹⁹ See May 7, 2012 Vinh Hoan SQR at Exhibit 8.

³²⁰ See Vinh Hoan Verification Report at Week 1 Exhibit 10.

³²¹ See Vinh Hoan’s August 3, 2012, SQR at 1.

³²² See Vinh Hoan Verification Report at Week 1 Exhibit 11.

³²³ *Id.*

³²⁴ *Id.*

³²⁵ *Id.* at 17 and Week 1 Exhibit 11.

With respect to the argument that Vinh Hoan could not have achieved the weight gains observed at verification because they differ from those of the other respondents' experience, specifications indicated on various additives' product literature, and various studies on the record³²⁶, the Department disagrees. The Department finds that comparing the weight gains achieved by Vinh Hoan and other respondents is not accurate because, unlike other respondents, Vinh Hoan is an integrated company. Further, despite the fact that various product literature and studies on the record resulted in weight gains that were different from Vinh Hoan's own soaking formula, we do not find this information to be contradictory to Vinh Hoan's weight gain experience. As evidenced by Petitioners' own admission, different types of solutions garner different weight gains.³²⁷ Further, the record does not contain any information claiming that the specific solutions submitted to the Department or observed at verification were unreasonable. In fact, the observations made at verification by the Department fully support Vinh Hoan's claims.³²⁸

With respect to the argument that Vinh Hoan's whole fish prices reflect a misreporting of its whole fish consumption factor, the Department disagrees. Petitioners arrive at this conclusion by comparing Vinh Hoan's monthly average unit purchase price for whole live fish to market prices for whole live fish obtained from VASEP, Cuu-Long, and other Vietnamese producers³²⁹ and claims that because Vinh Hoan appears to be paying a different price, it must be misreporting its whole fish consumption. The record evidence does not contain any evidence of misreporting. As stated in the 7th administrative review, the Department notes that we cannot rely on prices from within an NME.³³⁰ Additionally, because Vietnam is an NME, the Department cannot reasonably expect Vinh Hoan's average unit price for whole fish to approximate the market prices found in Vietnam because doing so makes the assumption that prices within a NME are reliable. However, in order to test the reasonableness and reliability of Vinh Hoan's purchase prices, the Department reviewed at verification Vinh Hoan's purchased and farmed prices for whole fish, which entered into production back to its audited financial statements with no issue, and found no evidence of misreporting.³³¹

Therefore, for all the foregoing reasons, we do not agree that Vinh Hoan's whole fish consumption ratio necessitates partial FA.

Comment XII: Vinh Hoan's Imputed Expenses for Constructed Export Price

Vinh Hoan

- The Department should not make any adjustments to the reported U.S. price for inventory carrying costs on consignment CEP ("CCEP") sales.³³²
- The credit expense calculation for CEP sales begins on the date when merchandise cleared customs. For consignment sales, the credit expense calculation captures the period of time

³²⁶ See Petitioners' Vinh Hoan Ver. Case Brief at 60 – 61.

³²⁷ See Petitioners' Vinh Hoan Ver. Case Brief at 61.

³²⁸ See Vinh Hoan Verification Report at Week 2 Exhibit 18 and Week 2 Exhibit 20.

³²⁹ See Petitioners' Vinh Hoan Ver. Case Brief at 65 – 70.

³³⁰ See 7th AR Fish Final, and accompanying Issues and Decision Memorandum at Comment 4.

³³¹ See Vinh Hoan Verification Report at 28 and 44.

³³² See Vinh Hoan's Vinh Hoan Ver. Case Brief at 3.

when merchandise was inventory and inventory carrying costs are included in the reported expense field.³³³

- Because Vinh Hoan USA's shipment date used for the credit calculation precedes delivery to the warehouse, the reported credit expense also includes inventory carrying costs.³³⁴

Department's Position: The Department disagrees with Vinh Hoan and finds that Vinh Hoan incorrectly calculated credit expenses and should have reported separate inventory carrying costs for its CCEP sales.

At verification, the Department found that Vinh Hoan calculated the credit expenses for its CCEP sales in the same manner as CEP sales, despite the fact that the shipping dates for the two types of sales differed.³³⁵ The Department's original questionnaire states that the credit expense "should be calculated and reported on a transaction-by-transaction basis using the number of days between date of shipment to the customer and date of payment."³³⁶ For these final results, as facts available, the Department has valued Vinh Hoan's credit expenses for its CCEP sales using an average of the days between the dates of shipment from inventory to the date of payment, calculated from the sales traces observed at verification.³³⁷ Additionally, for Vinh Hoan's inventory carrying costs for its CCEP sales, the Department has valued these costs using the average of the days between the date Vinh Hoan's merchandise cleared customs and the date they of shipment from warehouse.³³⁸

Comment XIII: Vinh Hoan's Market Economy Purchases

Petitioners

- The Department should value certain of Vinh Hoan's market economy purchases using SVs.³³⁹

Department's Position: We agree with Petitioners. In instances where the NME producer purchases a portion of its inputs from a ME supplier with a ME currency, the Department will use the ME average actual purchase price to value the entire input when the total volume of the ME input purchased from all ME sources during the period of investigation or review exceeds 33

³³³ See Vinh Hoan's Vinh Hoan Ver. Case Brief at 2.

³³⁴ *Id.*

³³⁵ See Memorandum to the File, from Susan Pulongbarit and Kabir Archuletta, through Scot T. Fullerton, regarding Verification of the CEP Sales Response of Vinh Hoan Corporation in the 8th Antidumping Duty Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, dated December 14, 2012 ("Vinh Hoan CEP Verification Report") at Exhibits 10A through 10F and 11A through 11C.

³³⁶ See Letter from the Department, to Vinh Hoan, regarding Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Initial Antidumping Duty Questionnaire, dated November 20, 2011 ("Original Questionnaire") at C-13.

³³⁷ See Vinh Hoan CEP Verification Report at Exhibits 10D and 11B.

³³⁸ See Memorandum to the File, through Scot T. Fullerton, from Susan Pulongbarit, regarding Eighth Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results Analysis Memorandum for Vinh Hoan Corporation, dated March 13, 2012 ("Vinh Hoan Final Results Analysis Memo") at Attachment 3.

³³⁹ See Petitioners' Vinh Hoan Ver. Case Brief at 78.

percent of the total volume of the input purchased from all sources during the period.³⁴⁰ The Department disregards ME input purchases when there is evidence that the prices for such inputs may be distorted or when the facts of a particular case otherwise demonstrate that ME input purchase prices are not the best available information.³⁴¹

For the *Preliminary Results*, the Department valued certain of Vinh Hoan's FOPs purchased from MEs using the ME prices, even though the FOPs were purchased from ME countries where there is evidence that the prices for such inputs may have been distorted by broadly available market subsidies.³⁴² As a result, for the final results, the Department has corrected this error and valued these FOPs using SVs.³⁴³

Comment XIV: Vinh Hoan's Verification Report Clarifications

Vinh Hoan

- The Department should clarify that Vinh Hoan notified the Department prior to verification that there exists no written confirmation for Vinh Hoan's cancelled contract with its consignment customer.³⁴⁴
- The Department should clarify that Vinh Hoan's customers in the United States, Canada, and Europe require traceability, while customers outside of those countries do not.³⁴⁵
- Although the Department refers to "Mrs. Kwan" in its verification report, the name should be spelled "Mrs. Khanh" (Khanh Le Thi Trong).³⁴⁶

Department's Position: We agree with Vinh Hoan. Vinh Hoan noted in its responses to the Department that there is no written confirmation of Vinh Hoan's cancelled contract with its consignment customer.³⁴⁷ Moreover, the Department inadvertently stated in its verification report that "non-U.S., Canada, and Europe sales ... do not require traceability."³⁴⁸ To clarify, the United States, Canada, and Europe do require traceability, while customers outside of those jurisdictions do not. Additionally, all references to Mrs. Kwan in the Department's verification report should, in fact, be made to Mrs. Khanh (Khanh Le Thi Trong).

³⁴⁰ See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717-18 (Oct. 16, 2006).

³⁴¹ *Id.*

³⁴² See Memorandum to the File, through Scot T. Fullerton, from Susan Pulongbarit, regarding Eighth Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results Analysis Memorandum for Vinh Hoan Corporation, dated August 30, 2012, at 4.

³⁴³ See Vinh Hoan Final Results Analysis Memo at 4.

³⁴⁴ See Vinh Hoan's Vinh Hoan ver. Case Brief at 2.

³⁴⁵ *Id.* at 7.

³⁴⁶ *Id.*

³⁴⁷ See Letter from Vinh Hoan, to the Department, regarding Certain Frozen Fish Fillets from Vietnam: Vinh Hoan Corporation – Supplemental Sections A, C and D Questionnaire Response, dated July 16, 2012 at 2 – 3.

³⁴⁸ See Vinh Hoan Verification Report at 18.

Comment XV: Vinh Hoan's Programming Changes

Petitioners

- The Department should correct certain changes to Vinh Hoan's margin program for additives, packing, energy, and by-products.³⁴⁹

Vinh Hoan

- The Department should correct certain changes to Vinh Hoan's margin program for boat freight, sales-related movement charges, energy, brokerage and handling, and environmental treatments.³⁵⁰
- The Department should reject Petitioners' margin program corrections because they should have been included in the general issues case briefs.³⁵¹

Department's Position: The Department agrees with Petitioners and Vinh Hoan regarding the above mentioned programming changes and have changed Vinh Hoan's final margin program accordingly.³⁵² Regarding the argument that the Department should reject Petitioners' margin program corrections, the Department disagrees. The Department has the discretion to correct any errors in the *Preliminary Results* that it deems necessary to calculate accurate dumping margins and has done so for these final results.³⁵³

Comment XVI: GODACO's and DOCIFISH's Revised Databases

GODACO/DOCIFISH/Vinh Hoan

- October 18, 2012, the Department issued a post-Preliminary Determination questionnaire, asking for various revisions to GODACO's Section C and D databases.
- Revised databases were timely submitted on November 9, 2012, and these databases should be used by the Department to calculate GODACO's and DOCIFISH's antidumping margin in the final results.

Department's Position: We agree with GODACO, DOCIFISH, and Vinh Hoan. The Department will use the revised Section C and D databases submitted by GODACO and DOCIFISH on November 9, 2012, to calculate the companies' antidumping margin in the final results.³⁵⁴

³⁴⁹ See Petitioners' Vinh Hoan Ver. Case Brief at 79 – 81.

³⁵⁰ See Vinh Hoan's Case Brief at 8 – 11.

³⁵¹ See Vinh Hoan's Vinh Hoan Ver. Rebuttal Brief at 45 – 46.

³⁵² See Vinh Hoan Final Analysis Memo.

³⁵³ See *NTN Bearing Corp. v. United States*, 74 F.3d 1204, 1208 (Fed. Cir. 1995) (explaining that preliminary results "are 'preliminary' precisely because they are subject to change"); *Nat'l Candle Ass'n v. United States*, 366 F. Supp. 2d 1318, 1325 (Ct. Int'l Trade 2005) ("Commerce 'need not reach the same result' in the final results as it did in the preliminary results since '[t]he purpose of publishing preliminary results is to discover inaccuracies and correct them before coming to a final decision.'") (citation omitted).

³⁵⁴ See GODACO's November 8, 2012, Post-Preliminary Results Section C-D Supplemental Questionnaire at Exhibit 2 and Exhibit 5; DOCIFISH's November 8, 2012, Post-Preliminary Results Section C-D Questionnaire Response at Exhibit 2 and Exhibit 3; Memorandum to File, from Alexander Montoro, through Scot T. Fullerton, "Antidumping Duty New Shipper Reviews of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam:

Comment XVII: An Phu's Tape and Strap Calculation

An Phu

- The Department should correct the units of measure in calculating the cost of the strap and tape packing inputs used in An Phu's production of subject merchandise because the NVs used in the *Preliminary Results* incorrectly over value these inputs.
- The Department stated in its supplemental questionnaire to An Phu that it "advertently applied a kilogram per kilogram SV to the meter per kilogram consumption ratio of strap and tape reported by An Phu."
- An Phu provided a conversion factor for the Department to correctly value the tape and strap consumed by the company.

Department's Position: We agree with An Phu. We will use the conversion factors provided by An Phu³⁵⁵ to correct the units of measure in calculating the strap and tape values in the final results.³⁵⁶

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above 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



Paul Piquado
Assistant Secretary
for Import Administration

13 MARCH 2013
Date

GODACO Seafood Joint Stock Company ("GODACO") Final Results Analysis Memorandum, " dated March 13, 2013, at 1; Memorandum to File, from Seth Isenberg, through Scot T. Fullerton, "Antidumping Duty New Shipper Reviews of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: DOCIFISH Corporation ("DOCIFISH") Final Results Analysis Memorandum, " dated March 13, 2013, at 1.

³⁵⁵ See An Phu's October 10, 2012, Section D Post-Preliminary Results Supplemental Questionnaire at Question 1.

³⁵⁶ See Memorandum to the File, from Alexander Montoro, through Scot T. Fullerton, "Antidumping Duty New Shipper Reviews of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: An Phu Seafood Corporation ("An Phu") Final Results Analysis Memorandum, " dated March 13, 2013 at 1.