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June 24, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Gary Taverman
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
Antidumping Duty New Shipper Reviews; 2011-2012

SUMMARY

The Department of Commerce (“the Department”) has analyzed the comments submitted by Petitioners¹ and Respondents² in these new shipper reviews of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam (“Vietnam”). Following the *Preliminary Results*³ 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.

BACKGROUND

On January 30, 2013, the Department published the *Preliminary Results* of these new shipper reviews.⁴ We invited interested parties to comment on the *Preliminary Results*.⁵ Between March 5, 2013 and March 19, 2013, interested parties submitted surrogate value data for consideration for the final results. On March 22, 2013, the Department extended the deadline for

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

² The new shipper respondents are Quang Minh Seafood Co., Ltd. (“Quang Minh”), Dai Thanh Seafoods Company Limited (“Dathaco”), Fatifish Company Limited (“Fatifish”), and Hoang Long Seafood Processing Co., Ltd. (“Hoang Long”), collectively “Respondents”.

³ See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty New Shipper Reviews; 2011-2012*, 78 FR 6297 (January 30, 2013) (“*Preliminary Results*”).

⁴ *Id.*

⁵ *Id.*, 78 FR at 6297.

the final results to June 24, 2013.⁶ Between April 2, 2013 and April 12, 2013, interested parties submitted case and rebuttal briefs.

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.

⁶ See Memorandum to Gary Taverman, Senior Advisor, through James Doyle, Office Director, from Jerry Huang, International Trade Compliance Analyst, “Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Deadline for Final Results of Antidumping Duty New Shipper Reviews,” dated March 22, 2013.

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 as noted in the Surrogate Country List⁸.

Respondents

- The Surrogate Country List 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 (the “Court” or “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
- Analysis of economic comparability does not end with the issuance of the surrogate country memo. The Court held in *Dupont Teijin Films*¹⁰ that the Department should consider other surrogate country memos issued in more recent cases where the GNI data are for a similar period of review (“POR”).

Department’s Position: Because the Department considers Vietnam to be an NME for antidumping duty purposes, 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.¹¹

Section 773(c)(4)(A) of the Act is silent with respect to how the Department may determine whether 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

⁸ See Letter to Interested Parties, from Paul Walker, Acting Program Manager, “Antidumping Duty New Shipper Reviews of Frozen Fish Fillets (“Fish”) from the Socialist Republic of Vietnam (“Vietnam”): Surrogate Country List,” dated April 12, 2012 (“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 *Dupont Teijin Films v. United States*, 896 F. Supp. 2d 1302 (CIT 2013) (“*Dupont Teijin Films*”).

¹¹ See Surrogate Country List.

development similar to Vietnam in terms of GNI data available in the *World Development Report* provided by the World Bank.¹² The annual GNI levels for the list of potential surrogate countries range from \$640 to \$2,580.¹³ Also consistent with the Department's long-standing practice is our finding 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.

The Department has found that the selection of the range of economically-comparable countries based on GNIs is reasonable and consistent with the Act.¹⁴ Identifying potential surrogate countries based on GNI data has been affirmed by the CIT.¹⁵ 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."¹⁶

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.¹⁷ To ensure sufficient time was provided in selection of potential surrogate countries for this proceeding, including time for gathering potential surrogate value data, 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.¹⁸ All interested parties were provided five months, from April 24, 2012, through September 7, 2012, to submit any information the Department should consider when selecting the surrogate country.¹⁹ Then, based on the comments and information submitted during this five-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 Thus, the Surrogate Country List which the Department released on April 24, 2012 contained the most up-to-date information accessible from the World Bank regarding countries economically comparable to Vietnam. In contrast, the 2011 World Bank GNI/GDP data submitted by Respondents was not available on the record of this review for the Department to use at the time when we constructed the Surrogate Country List, as it is dated March 14, 2013.

¹² 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.

¹³ See Surrogate Country List.

¹⁴ See *Magnesium from the PRC*, and accompanying Issues and Decision Memorandum at Comment 4.

¹⁵ See *Fujian Lianfu Forestry Co., Ltd. v. United States*, 638 F. Supp. 2d 1325, 1347-50 (CIT 2009).

¹⁶ See Surrogate Country List.

¹⁷ 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.

¹⁸ See Surrogate Country List.

¹⁹ See Memorandum to the File, from Jerry Huang, Case Analyst "New Shipper Reviews of Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Deadlines to Submit Comments on Surrogate Country Selection and Publicly Available Information to Value Factors of Production," dated July 24, 2012.

²⁰ See *Preliminary Results*, 78 FR at 6297.

It is crucial to the administration of NME proceedings and the timely completion of segments in those cases that the Surrogate Country List be established as early as possible in the relevant segment so that interested parties can focus their efforts on building an adequate record with SV data from one or more of the potential surrogate countries identified.

Regarding Respondents' argument that, in accordance with *Dupont Teijin Films*, the Department must reconsider its surrogate country selection once new GNI data and surrogate country lists become available in proceedings, we disagree. 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 new shipper reviews. Yet, the Department notes that at no time during the surrogate country comment period did any party, including Respondents, submit any new information to contest the Surrogate Country List. Dathaco and Fatifish did not submit new GNI/GDP data until March 13, 2013, 11 months after the Department issued the Surrogate Country List and just three months prior to the fully extended deadline for issuing final results, 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 April 12, 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 data collection and 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 Respondents' argument that, in accordance with *PRC Shrimp Remand*, the Department must weigh relative 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

Regarding the *PRC Shrimp Remand*, the Department disagrees that the statute requires it to compare relative GNI in its surrogate country analysis. In these reviews, the Department met its statutory obligation by fully considering economic comparability, whether or not potential

²¹ See Dathaco and Fatifish's March 13, 2013 submission for updated GNI/GDP data; see also Dathaco and Fatifish's April 12, 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.

surrogate countries were significant producers, and data considerations amongst the surrogate country candidates. Therefore, we view the scenario that the Court addressed in *PRC Shrimp Remand* is distinct from the instant reviews.

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.
- 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. 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.

Respondents

- The Department is mandated to examine the production data of whole live fish based on the species that are listed in the scope.²⁵ 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.²⁶
- 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 prior reviews, compare the quantity produced, by Bangladesh, Indonesia and the Philippines, of whole *pangasius hypophthalmus*, the most significant single input factor.²⁷
- Bangladesh is a significant producer of identical merchandise *pangasius hypophthalmus*. In contrast, there is no separately reported production data specifically for Indonesia which

²⁵ 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).

²⁶ 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.

²⁷ 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).

cultivates five separate species of *pangasius*, while the reported data from the Philippines is commercially negligible.

- 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.
- The production experiences of *pangasius* producers in Bangladesh replicates those of the Vietnamese respondents in that they 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.
- 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.

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 Respondents 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 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.”²⁸ In the *Preliminary Results* we noted, as we have in prior segments of this proceeding, 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.²⁹

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.³⁰ 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

²⁸ See *Policy Bulletin* at 2.

²⁹ See *Preliminary Results*, and accompanying Decision Memorandum at 7; see also *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2010–2011*, 78 FR 17350 (March 21, 2013), (“8th AR Fish Final”), and accompanying Issues and Decision Memorandum at Comment 1.

³⁰ See *Policy Bulletin* at 3.

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.³¹

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.³²

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.”³³ And, while the legislative history 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 merchandise³⁴, 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.³⁵ As a result, this ambiguous provision of the Act does not compel the Department to define “significant producer” in any particular manner.³⁶

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 of the subject species 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

³¹ *Id.*

³² We made an identical finding in the last review. *See 8th AR Fish Final*, and accompanying Issues and Decision Memorandum at Comment 1.

³³ *See* section 773(c)(4)(B) of the Act; *accord Policy Bulletin*.

³⁴ *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).

³⁵ *Id.*

³⁶ *See* [Dorbest Ltd. v. United States](#), 462 F. Supp. 2d 1262, 1274 n.5 (CIT 2006).

industry.³⁷ In this case, we note that Bangladesh, Indonesia and the Philippines produce fish *via* aquaculture methods. Consequently, we do not find Respondents' 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 Petitioners' argument that the FAO data shows a precipitous decline for Bangladeshi exports, 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.³⁸ 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.³⁹ 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.⁴⁰

C. Data Considerations

As noted above, we have concluded for these final results that Bangladesh, India, Indonesia, Nicaragua, Pakistan, and the Philippines are both economically comparable to Vietnam and significant producers of comparable merchandise. The *Policy Bulletin* states that, if more than 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."⁴¹ 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."⁴²

³⁷ 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).

³⁸ See *Policy Bulletin* at 3.

³⁹ See Petitioners' March 14, 2013 submission at Exhibit 14. Specifically, in 2008-09 Bangladesh produced 19,294 mt of frozen fish fillets and in 2010-11, 16,743 mt of frozen fish fillets.

⁴⁰ See Memorandum to the File, from Jerry Huang, Case Analyst, "10th New Shipper Reviews of Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results," dated January 24, 2013 at Attachment 11.

⁴¹ See *Policy Bulletin* at 3.

⁴² *Id.*

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 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.⁴³ The Department’s preference is to satisfy the breadth of the aforementioned selection criteria.⁴⁴ 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.⁴⁵ 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.⁴⁶

1) Whole Live Fish

We have examined the available data on the record with respect to Bangladesh, India, Indonesia, Nicaragua, Pakistan, and the Philippines to determine which constituted the best available information for valuing the key inputs to the subject merchandise. 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 the record, which contains *pangasius* prices for 2009 - 2011.⁴⁷ In addition, the record now contains the *Indonesian Aquaculture Statistics* (“*Indonesian AS*”), which contains *pangasius* prices for 2011 and 2010.⁴⁸ 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.

⁴³ 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.

⁴⁴ 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.

⁴⁵ 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.

⁴⁶ See, e.g., *Mushrooms*, and accompanying Issues and Decision Memorandum at Comment 1.

⁴⁷ See Petitioners’ March 14, 2013 submission at Exhibit 1.

⁴⁸ *Id.* at Exhibits 5 and 6.

In evaluating the data from Bangladesh, Indonesia, and the Philippines, we note that we are, as in the preceding administrative 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,⁴⁹ 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 accounted for in the *DAM Data*, and Respondents use live fish in the production of subject merchandise.
- Information submitted by Dathaco and Fatifish 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. Statements from DAM indicate that there are several varieties of *pangas* in Bangladesh.
- The total country-wide *pangasius* production in Bangladesh during 2011 was approximately 156,000 mt, which is 32 percent less than the Indonesian country-wide production of approximately 229,000 mt during the same year. When comparing 2011 *pangasius hypophthalmus* production reported in *Fisheries Statistical Yearbook of Bangladesh* with the districts which reported prices in the *DAM Data*, the *DAM Data* only covers 23 percent of Bangladeshi production of *pangasius*.⁵⁰ In addition, the number of districts reporting *pangasius* prices dropped from 27 to 24. Notably, the *DAM Data* did not include prices from Mymensingh, which is the largest provincial producer of *pangasius* in Bangladesh.⁵¹
- DAM surveyors do not employ statistically valid sampling procedures 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.
- Dathaco and Fatifish have 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.⁵²

⁴⁹ 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).

⁵⁰ In 2011 the *Fisheries Statistical Yearbook of Bangladesh* shows that the districts providing data to DAM produced 42,000 mt of the country-wide production of 183,502. See Petitioners’ March 14, 2013 submission at Exhibit 14.

⁵¹ In 2011 the *Fisheries Statistical Yearbook of Bangladesh* shows that Mymensingh produced 64 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.*

⁵² 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.

- The DAM wholesale price listing excluded nearly as many weekly price points (296) as it included (328), and many of the price points that were included did not fluctuate during the POR. 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.

Respondents

- 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. 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 hypophthalmus* species accounts for nearly the entire production of *pangasius* in Bangladesh.
- 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.
- 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 24 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.⁵³ 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. 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*.
- 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.

⁵³ See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results and Partial Rescission of the Seventh Antidumping Duty Administrative Review*, 77 FR 15039 (March 14, 2012), (“7th *AR Fish Final*”), and accompanying Issues and Decision Memorandum, at Comment I.C.

- The Department relied on *DAM Data* with even fewer districts in 8th *NSR Fish Final*, and the *DAM Data* for the POR covers a higher percentage of price points than the data did in 8th *AR Fish Final*.⁵⁴
- The Department erred in 8th *AR Fish Final* concerning the extent of dead fish in *DAM Data*. The affidavit of interview between Petitioner’s consultant and DAM official should not be relied upon equally as the letter from the DAM official affirming that *DAM Data* is for live fish.

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*.
- The Department’s observation in the 7th *AR Fish Final* that some prices in the *Philippines FS* may reflect further processed fish is incorrect. Several affidavits from BAS officials, who are directly responsible for the collection and publication of the *Philippines FS*, indicate that the *Philippines FS* represent data for whole live fish.
- 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.
- 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.⁵⁵ Moreover, production volume is not a determinative factor of the broad market average criterion.⁵⁶ There is no record evidence which suggests that the data is inaccurate or does not reflect actual commercial transactions in the reporting periods.

Respondents

- 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.
- Record evidence indicates that *Philippines FS* includes data for processed fish, which explains the wide price fluctuations in the BAS data.
- 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.

⁵⁴ See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the New Shipper Review*, 77 FR 27435 (May 10, 2012), (“8th *NSR Fish Final*”); see also 8th *AR Fish Final*, and accompanying Issues and Decision Memorandum at Comment I.C.

⁵⁵ See 7th *AR Fish Final*, and accompanying Issues and Decision Memorandum at Comment I.C.

⁵⁶ 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.

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 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 *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.⁵⁷
- According to the *Philippines FS*, *pangasius* production in the Philippines is non-commercial and in decline, especially as compared to Bangladesh. The Department has held that prices derived from small quantities should also be disregarded when they conflict with other record information.⁵⁸
- BAS is not contemporaneous and the lists used to survey fish farms are from 2009.
- 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.*

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.
- 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.
- 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.”⁵⁹ The fact that *FAO FIGIS Data* consists of total aggregated national

⁵⁷ 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).

⁵⁸ 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.

⁵⁹ See 7th *AR Fish Final*, and accompanying Issues and Decision Memorandum at Comment I.C.

quantity and value data, rather than a list of the individual price observations which were then aggregated, does not disqualify the data as the Department frequently relies on aggregated volume and value data to calculate SVs.⁶⁰

- The *Fisheries Statistical Yearbook of Bangladesh* indicates that *DAM Data* covers districts accounting for approximately 42,000 mt and *FAO FIGIS Data* account for approximately 128,000 mt.

Respondents

- FAO does not collect the data itself, but rather relies on the national surveying agency and only checks outlier values. 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.
- *FAO FIGIS Data* is not contemporaneous.
- 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.

(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.⁶¹ 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*.
- *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 *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.

⁶⁰ 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.

⁶¹ See 7th *AR Fish Final*, and accompanying Issues and Decision Memorandum at Comment I.C.

- *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 42,000 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.

Respondents

- The 2011 *Indonesian AS* is not as contemporaneous as *DAM Data*, as the 2011 *Indonesian AS* only covers five months of the POR.
- *Indonesian AS* is overly broad and covers several types of *pangasius*. 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. 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.
- Record evidence indicates that some *jambal* may be grown in ponds.
- *Indonesian AS* from 2010 contains errors, and IAS data in general show greater price volatility than the *DAM Data*.
- 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.
- *The IAS* price represents an extrapolated national average price for an entire year; therefore it is not actual point of sale pricing as in *DAM Data*. The level of inaccuracies, fluctuations, and inconsistencies in *IAS* data outweigh data problems with *DAM Data*.
- *Indonesian AS* data reflects dead fish prices, and the Department erred when it overlooked this fact in 8th *AR Fish Final*.

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.⁶² Below, we have used these criteria to evaluate 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 with the exception of the *FAO FIGIS Data*, the remaining three data sources (*DAM Data*, *Indonesian AS*, and *Philippines FS*) all overlap the POR to varying degrees. Although Respondents have argued that the *DAM Data* represents data that is contemporaneous with the

⁶² See, e.g., *CLPP*, and accompanying Issues and Decision Memorandum at Comment 3.

POR, and other data sources only overlap the POR by several months, we consistently have recognized that data sources which overlap part of the POR are considered contemporaneous.⁶³

Moreover, as discussed below, factors other than the whole fish 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 almost all SVs submitted for Indonesia are contemporaneous to the POR, whereas the majority of Bangladeshi SVs are five years outside the POR.

Publicly Available

In past administrative reviews, we have found the *DAM Data* available online (as opposed to the *DAM Worksheets* addressed further on page 20 below), *FAO FIGIS Data*, and *Philippines FS* to be publicly available.⁶⁴ No record evidence or arguments made have been presented which would lead us to 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.⁶⁵ We further note that the 2010 and 2011 *Indonesian AS* prefaces state that they are the 12th and 13th publication of these books and that 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.⁶⁶ 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.⁶⁷ Neither record evidence nor parties' arguments support a reversal of our finding with respect to these three data sources. Regarding the *Indonesian AS*, record evidence indicates that its prices are tax and duty exclusive.⁶⁸ Therefore, we find that all four sources are tax and duty exclusive.

⁶³ 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).

⁶⁴ See, e.g., *8th AR Fish Final*, and accompanying Issues and Decision Memorandum at Comment I.C.

⁶⁵ See Petitioners' March 14, 2013 submission at Exhibit 6.

⁶⁶ *Id.*

⁶⁷ See, e.g., *8th AR Fish Final*, and accompanying Issues and Decision Memorandum at Comment I.C.

⁶⁸ See Petitioners' March 14, 2013 submission at Exhibit 8.

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 subsidies constituted subsidies found countervailable by the U.S. government in a trade remedy proceeding.⁶⁹ In this case, as in prior segments,⁷⁰ there is no record evidence that the alleged subsidies are countervailable.

Broad Market Average

In the most recently completed administrative review, the Department rejected the *Philippines FS* because it was not as robust as other whole live fish data sources on the record.⁷¹ We note that the latest *Philippines FS* indicates that *pangasius* production in the Philippines decreased from 83 mt in 2010 to 71 mt in 2011.⁷² This quantity compares unfavorably with the quantities represented by the *DAM Data* (42,000 mt), *FAO FIGIS Data* (128,000 mt), and *Indonesian AS* (196,000 mt). We disagree with Respondents' 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.⁷³ 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 the production data may be understated.⁷⁴ 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 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 recognize that the *FAO FIGIS Data* only contain one price observation for the whole country, this one price observation represents a significant volume (128,000 mt).⁷⁵ In addition, the FAO states that it issues customized national questionnaires, demonstrating that such questionnaires are meant to capture all-encompassing whole country data.⁷⁶ We disagree with Respondents' 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

⁶⁹ 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.

⁷⁰ See, e.g., *8th AR Fish Final*, and accompanying Issues and Decision Memorandum at Comment I.C.; *7th AR Fish Final*, and accompanying Issues and Decision Memorandum at Comment I.C.

⁷¹ See, e.g., *8th AR Fish Final*, and accompanying Issues and Decision Memorandum at Comment I.C.

⁷² See Petitioners' March 14, 2013 submission at Exhibit 1.

⁷³ 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.

⁷⁴ See Dathaco and Fatifish's September 27, 2012 submission at Exhibits 6b-c and 7a.

⁷⁵ See Petitioners' September 7, 2012 submission at Exhibit 28.

⁷⁶ *Id.*

determine the SVs for certain raw materials, by-products, and packing material inputs, which represents cumulative quantities and values for the applicable POR.⁷⁷ Therefore, we continue to find that the *FAO FIGIS Data* reflect a broad-market average.

With respect to *Indonesian AS*, we note that the 2011 data contain 98 data points specific to *pangasius hypophthalmus* from 27 of 33 districts in Indonesia.⁷⁸ We note that this data represents a significant quantity of *pangasius*, 196,000 mt.⁷⁹ In addition, the IAS states that it issues customized national questionnaires, demonstrating that they are meant to capture all-encompassing whole country data.⁸⁰ Therefore, we find that the *Indonesian AS* represents a broad-market average.

With respect to the *DAM Data*, we noted our concerns in the *8th AR Fish Final* and they remain with respect to the *DAM Data* submitted for these reviews. For one, there are even fewer districts covered in this POR's *DAM Data* as compared to last year's. Specifically, in the last review there the data covered 27 of 68 districts; however, in these reviews the data cover only 24 of 68 districts.⁸¹ Put another way, the district coverage has dropped from 40 to 35 percent. As noted above, this compares unfavorably with the *Indonesian AS*, which has district coverage of 82 percent (27 of 33). While Respondents argue that in *8th NSR Fish Final* the Department found the DAM data to be the best available information even though the district coverage was less than the coverage found in these reviews, we note that the Department made that determination without IAS data available for consideration.⁸² Any determination as to what constitutes the best available information must be made on a record-specific basis.⁸³ Moreover, within the DAM data, while Respondents argue that the weekly price data coverage for the POR has improved from the *8th AR Fish Final*, we still note that almost as many weekly price points (296) were omitted from the DAM wholesale price listing as were included (328), and as discussed above, this coverage is based on a smaller subset of districts.⁸⁴

Another significant concern noted by the Department regarding the *DAM Data* in the last administrative review also remains -- that the *DAM Data* submitted for these new shipper reviews omitted the largest *pangasius* producing district, Mymensingh. According to the *Fisheries Statistical Yearbook of Bangladesh*, Mymensingh produced 66 percent of all *pangasius* produced in Bangladesh.⁸⁵ The record is replete with articles which indicate the importance of

⁷⁷ 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.

⁷⁸ See Petitioners' March 14, 2013 submission at Exhibit 6.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ See *8th AR Fish Final*, and accompanying Issues and Decision Memorandum at Comment I.C.; see also generally Quang Minh's September 7, 2012 submission at Exhibit 1.

⁸² See *8th NSR Fish Final* and accompanying Issues and Decision Memorandum at Comment 1.

⁸³ See, e.g., *Nucor Corp. v. United States*, 414 F.3d 1331, 1340 (Fed. Cir. 2005) (holding that each agency determination "is *sui generis*, involving a unique combination and interaction of . . . variables"); accord *Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 783 F. Supp. 2d 1343, 1352 (Ct. Int'l Trade 2011) (same); *U.S. Steel Corp. v. United States*, 637 F. Supp. 2d 1199, 1218 (Ct. Int'l Trade 2009) (same).

⁸⁴ See *8th AR Fish Final*, and accompanying Issues and Decision Memorandum at Comment I.C.; see also generally Quang Minh's September 7, 2012 submission at Exhibit 1.

⁸⁵ See Petitioners' March 14, 2013 submission at Exhibit 14.

Mymensingh in Bangladesh's *pangasius* industry, which is akin to the Mississippi delta in the United States with regard to catfish production.⁸⁶ Importantly, as a result of the omission of Mymensingh from the *DAM Data*, the *DAM Data* only represent 42,000 mt.⁸⁷ While this sum is not an insignificant amount of *pangasius*, it is several times smaller than the amount represented in the data used in the 7th *AR Final* (124,000 mt) and several times smaller than the amount represented by the *Indonesian AS*.⁸⁸ Consequently, we consider the *DAM Data* to not represent as broad of a market average as the *Indonesian AS*.

Respondents note that some 2010 data for Mymensingh is available in the record in the form of the DAM Worksheets. While Respondents 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.⁸⁹ Nevertheless, as the DAM Worksheets provided by Respondents concern data not contemporaneous with the POR, we have not considered any data from the DAM Worksheets in our SV selection process, moreover, we considered and rejected the source in prior reviews.⁹⁰

Specific to the Input

Respondents have all indicated that they only consume whole live fish when sourcing fish for processing.⁹¹ 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.⁹²

However, the Department remains concerned that a significant portion of 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 percent⁹³), vendors sell live and dead fish at the markets side-by-side, and dead fish are sold at lower prices than live fish.⁹⁴ 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.⁹⁵ Information placed on the record by Dathaco and Fatifish 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

⁸⁶ See, e.g., Dathaco and Fatifish's September 7, 2012 submission at Exhibit 15a-c.

⁸⁷ When comparing the *DAM Data* and the *Fisheries Statistical Yearbook of Bangladesh*, the districts reporting DAM Data prices account for 42,000 mt in the *Fisheries Statistical Yearbook of Bangladesh*. See Petitioners' March 14, 2013 submission at Exhibit 14.

⁸⁸ See 7th *AR Fish Final*, and accompanying Issues and Decision Memorandum at Comment I.C; see also Petitioners' March 14, 2013 submission at Exhibits 5 and 6.

⁸⁹ See Petitioners' September 27, 2012 submission at Exhibits 26, 29 and 45.

⁹⁰ See 7th *AR Fish Final*, and accompanying Issues and Decision Memorandum at Comment I.C.

⁹¹ See Dathaco's May 31, 2012 submission at 31; Fatifish's May 31, 2012 submission at 28; Hoang Long's May 29, 2012 submission at 3; Quang Minh's May 17, 2012 submission at 12;

⁹² See, e.g., Dathaco and Fatifish's September 7, 2012 submission at Exhibit 24a-f.

⁹³ See Petitioners' March 14, 2013 submission at Exhibit 12.

⁹⁴ In addition, Petitioners placed color photographs to support the statements in the affidavit. See Petitioners' March 14, 2013 submission at Exhibit 12.

⁹⁵ See Dathaco and Fatifish's March 14, 2013 submission at Exhibit 16, "Market Study on Some Freshwater Farmed Fish: Tilapia and Pangas (Mekong River Catfish)," dated March 2011.

fish; and (2) that live and dead fish are sold in wholesale markets.⁹⁶ Moreover, there are two competing affidavits on the record based on statements of DAM officials concerning whether dead fish are included in the *DAM Data*. Respondents submitted affidavits on statements made by DAM officials in 2010 that concern 2008-2009 DAM Worksheets, which the Department did not rely upon in the *Preliminary Results*, attesting that the prices in that dataset are for live fish.⁹⁷ Petitioners submitted an affidavit that attests that DAM officials in a 2012 interview stated that a substantial portion of the prices in the wholesale prices collected and reported on the DAM website, the data source used in the *Preliminary Results*, reflects dead fish prices.⁹⁸ We disagree with Respondents that we cannot rely upon Petitioners' affidavit. Petitioners submitted this data based on statements duly sworn and notarized and, thus, we regard the information contained therein as reliable. Therefore, these conflicting affidavits pertaining to statements made by Bangladeshi government officials on the *DAM Data* prevent us from discerning with certainty whether and to what extent the *DAM Data* represents prices only for whole live fish. Consequently, in light of the above, we do not find the *DAM Data* to be as specific as another source on the record.

While Respondents argue that dead fish is also sold on Indonesian markets, we find that record evidence supports that *Indonesian AS* represents quantities and values of whole live fish. In particular, we find that the explanatory notes contained in *Indonesian AS* publication itself, and the statements of current director general responsible for the publication, to have the most probative value as to what the *Indonesian AS* data represent. *Indonesian AS* states that discarded fish, whether because of poison, pollution, disease, and age are not included in the statistics.⁹⁹ 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, and the value represents the landed live value of the fish.¹⁰⁰ Respondents claim that statements from the former director responsible for *IAS 2010* indicate that dead fish is included in the *Indonesian AS* data. However, statements from the current director whose signature appears in the *Indonesian AS* from 2011, which is the data source used by the Department in these reviews, corroborates the notes on the publication itself that states the IAS takes specific steps to ensure that the *Indonesian AS* data is specific to whole live fish.¹⁰¹ Moreover, while Respondents argue that *Indonesian AS* does not contain size data, we note that none of Respondents indicated 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.¹⁰² We also note that while Respondents argue that *DAM Data* is superior to other alternatives in providing size-specific prices, the *DAM Data* placed on the record and recommended by Respondents is for a single size.¹⁰³ Finally, and contrary to Respondents' claims that the Department cannot use the *Indonesian AS* data because it represents *pangasius* grown using

⁹⁶ See Dathaco and Fatifish's March 19, 2013 submission at Exhibit 13.

⁹⁷ See Dathaco and Fatifish's September 7, 2012 submission at Exhibit 13B. Notably, in the 7th AR Fish Final, we found that the 2008-2009 DAM Worksheets were not publicly available. See 7th AR Fish Final, and accompanying Issues and Decision Memorandum at Comment I.C.

⁹⁸ See Petitioners' September 27, 2012 submission at Exhibit 45.

⁹⁹ See Petitioners' March 14, 2013 submission at Exhibit 6.

¹⁰⁰ *Id.*

¹⁰¹ See Petitioners' March 14, 2013 submission at Exhibit 8.

¹⁰² See, e.g., Dathaco's May 31, 2012 submission at 3 and 31; Fatifish's May 31, 2012 submission at 28.

¹⁰³ See Quang Minh's September 7, 2012 submission at Exhibit 1.

distinct techniques, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.¹⁰⁴

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.¹⁰⁵ In this review, IAS officials have stated that there are only two types of *pangasius* commonly grown in Indonesia, *hypophthalmus* and *jambal*, with *hypophthalmus* being the predominant species grown.¹⁰⁶ In addition, IAS officials have stated that *hypophthalmus* grows in ponds and cages, while *jambal* grows in rivers.¹⁰⁷ 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,¹⁰⁸ 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. While Dathaco and Fatifish provided academic papers dating several year prior to the POR discussing the efforts and techniques of growing *jambal* in ponds, the record does not contain evidence that *jambal* actually was grown in ponds or cages during the POR such that it would distort the data. Rather, the information submitted by Dathaco and Fatifish confirmed the difficulties of *jambal* farming in ponds and an IAS official's statement that *jambal* is grown in rivers, as attempts to breed *jambal* have not been very successful due to low fecundity, unstable fingerling production, and high mortality in static water ponds.¹⁰⁹

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.¹¹⁰ 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

¹⁰⁴ 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).

¹⁰⁵ See *8th AR Fish Final*, and accompanying Issues and Decision Memorandum at Comment I.C.

¹⁰⁶ 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' March 14, 2013 submission at Exhibit 8.

¹⁰⁷ See Petitioners' March 14, 2013 submission at Exhibit 8.

¹⁰⁸ *Id.* at Exhibit 6.

¹⁰⁹ See Dathaco and Fatifish' March 19, 2013 submission at Exhibit 7K.

¹¹⁰ See Dathaco and Fatifish's March 19, 2013 submission at Exhibit 6.

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 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.¹¹¹ 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.¹¹² Therefore, whether the *FAO FIGIS Data*, *DAM Data*, *Philippines FS* or *Indonesian AS* represents wholesale prices or farmgate prices is not critical 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,¹¹³ 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.¹¹⁴ Although Dathaco and Fatifish 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.¹¹⁵ 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*.

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.¹¹⁶ However, this is to be expected in different markets with different supply, demand, and logistical characteristics. Dathaco and Fatifish cites to a shrimp from the PRC review as evidence that the Department conducts standard deviation tests when comparing SVs.¹¹⁷ 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.¹¹⁸ However, we did not rely upon the standard deviation in the *PRC Shrimp Final*.¹¹⁹ Moreover, the data problems

¹¹¹ See 8th AR Fish Final, and accompanying Issues and Decision Memorandum at Comment I.C.

¹¹² *Id.*

¹¹³ See Petitioners' September 7, 2012 submission at Exhibits 8 and 12.

¹¹⁴ See 7th AR Fish Final, and accompanying Issues and Decision Memorandum at Comment I.C.

¹¹⁵ See the "Scope of the Order" section above.

¹¹⁶ See Petitioners' March 14, 2013 submission at Exhibit 6; see also Quang Minh's June 23, 2012 submission at Exhibits 1.

¹¹⁷ Dathaco and Fatifish citing *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).

¹¹⁸ *Id.*

¹¹⁹ 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*

noted by Dathaco and Fatifish were limited to IAS 2010, which does not apply to this POR. 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.¹²⁰ We note that Respondents argue that *DAM Data* we used for the *Preliminary Results* contain data for the district of Khagrachari that are aberrantly high and therefore should be omitted.¹²¹ While Respondents note a sharp spike in price from that district for November 2011 to May 2012 and argue that it must be a simple conversion error, we note that Respondents provided no evidence from DAM officials acknowledging this in fact is the reason for the spike, or any information that indeed this is an error that DAM has reviewed and resolved.

With regard to *Indonesian AS*, the Department does not harbor similar concerns over its reliability. The *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.¹²² Moreover, IAS officials indicate that they do make revisions and corrections to data when necessary.¹²³

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, specific to the input, and reliable. Moreover, the *Indonesian AS* data does not give rise to the unanswered questions posed by the extent to which dead fish are represented in the *DAM Data* and 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.

2) *Farming and Other FOPs*

Respondents

- In prior segments of these proceedings, the Department dismissed Petitioners' arguments concerning the valuation of other FOPs beside the whole fish because those inputs are minor.¹²⁴

Department's Position: Regarding the argument that the valuation of FOPs other than the whole fish input are minor, we disagree. While in prior administrative reviews, the Department

Part, 77 FR 53856 (September 4, 2012) ("*PRC Shrimp Final*"), and accompanying Issues and Decision Memorandum at Comment 10.

¹²⁰ See Petitioners' September 27, 2012 submission at Exhibits 26, 29 and 45.

¹²¹ See Dathaco and Fatifish's April 2, 2013 case brief at 15-17.

¹²² See Petitioners' March 14, 2013 submission at Exhibit 8.

¹²³ *Id.*

¹²⁴ 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.

stated that the whole fish SV and financial ratios accounted for the vast majority of NV,¹²⁵ we note that in these NSRs all Respondents are substantially integrated, meaning that these companies produce an increasingly significant volume of whole fish for use in the production of subject merchandise, and an increasingly large percentage of their NV was composed of farming factors, rather than whole live fish purchases.¹²⁶ In these reviews, we examined what each FOP accounted for in Respondents' NV calculation in the *Preliminary Results*. Our findings have confirmed our statement from the last administrative review concluding that factors other than the whole fish and surrogate ratios, *e.g.*, farming FOPs, account for a significant portion of direct materials and NV, and we have taken this into account in selecting the primary surrogate country.¹²⁷ Moreover, we note that these factors were valued at the *Preliminary Results* using non-contemporaneous SVs from Bangladesh.¹²⁸ Consequently, for these final results, we have considered the contemporaneous nature of all key SVs, including the whole fish SV, in the surrogate country selection process. A review of the record indicates that while available Bangladeshi and Indonesian SVs similarly meet many of the Department's selection criteria for surrogate values, Indonesian SVs submitted by Petitioners are more contemporaneous with the POR than the majority of Bangladeshi SVs submitted by Respondents that are five years outside the POR.¹²⁹ 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.¹³⁰

Consequently, in view of the totality of circumstances, we have 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 all key inputs into the subject merchandise.

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"), which processes frozen seafood products, including frozen fish fillets. DSFI's statements are complete, prepared 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").

¹²⁵ See 7th AR Fish Final, and accompanying Issues and Decision Memorandum at Comment 1.

¹²⁶ See *e.g.*, Memorandum to the File, from Jerry Huang, through Scot T. Fullerton, "Tenth New Shipper Reviews of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results Analysis Memorandum for Dathaco," dated June 24, 2013 ("Dathaco Final Analysis Memo").

¹²⁷ *Id.*

¹²⁸ See Memorandum to the File, through Scot T. Fullerton, Program Manager, Office 9, from Jerry Huang, Case Analyst, "Tenth New Shipper Reviews of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results," dated January 30, 2013.

¹²⁹ See Final SV Memo at Attachment 1.

¹³⁰ 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*").

- The Department has previously found that contemporaneity is not required for accepting a particular surrogate producer's financial statements,¹³¹ 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.
- Because Respondents all reported that they are integrated fish fillet producers using a significant amount of self-farmed whole live fish, the Department should calculate financial ratios based on the experience of integrated producers of comparable merchandise, such as DSFI.

Respondents

- DSFI's business is not comparable to the business activities of Respondents, as DSFI's operations include catching, processing, selling, and trading different ocean fishery products. All subject merchandise comes from pond-raised fish and none of Respondents catch their fish. Therefore, DSFI's operations cannot be compared to Respondents' operations.
- DSFI was not profitable from 2008-2010, has a history of securities violations, and its debt restructuring and restrictive covenants raise concerns about the company's future viability.
- CP Prima is involved in the production and sale of shrimp fry and shrimp feeds. Therefore, CP Prima's operations cannot be compared to Respondents' operations.
- The CP Prima financial statement submitted by Petitioners is for 2007, so the statement is not contemporaneous. Also, CP Prima was not profitable from 2008-2010 and has experienced significant financial distress.

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."¹³² 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.¹³³ 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.¹³⁴ 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.¹³⁵ However, the Department is not required to

¹³¹ 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.

¹³² 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.

¹³³ 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.

¹³⁴ 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.

¹³⁵ 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.”¹³⁶

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 August 1, 2011, through December 31, 2011 of the POR, the statements are publicly available and certified by independent auditors to conform to Indonesian accounting standards, the company is based in Indonesia and is a fish producer.¹³⁷ We disagree with Respondents that because DSFI’s fish are ocean fish, the company’s activities are not comparable to Respondents. As noted above, the Department is not required to duplicate the exact production experience of Respondents, and as DSFI processes fresh fish, we find it to be a producer of comparable merchandise, which the Department determined to be frozen fish fillets in the above section on significant producer.¹³⁸ Moreover, the Department finds that the statements of integrated producers like DSFI better capture the experience of Respondents who are all integrated producers of fish fillets.

The income statement in DSFI’s 2011 financial statements also show that the company made both a gross and net profit.¹³⁹ We disagree with Respondents that DSFI’s past activities preclude the Department from using DSFI’s financial statements. As stated above, the record demonstrates that contrary to Respondents’ arguments, DSFI was profitable during the POR, and we do not consider past unprofitable business cycles alone to be indicative of future performance. DSFI’s securities violations were not related to the accuracy of the statement itself. Moreover, we note this 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. Therefore, the Department will use DSFI’s 2011 financial statements to calculate the surrogate financial ratios in the final results.

The Department agrees with Respondents that the non-contemporaneity of CP Prima’s 2007 statements, at a minimum, makes them less qualified relative to the contemporaneous DSFI statements.¹⁴⁰ Therefore, the 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.¹⁴¹ However, because we have a surrogate financial statement from the primary surrogate country which meets the Department’s SV selection criteria, consistent with the

¹³⁶ 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).

¹³⁷ See Petitioners’ September 7, 2012 submission at Exhibit 36.

¹³⁸ *Id.*, Trade-Seafood Industry Directory.

¹³⁹ *Id.*, Consolidated Statements of Comprehensive Income.

¹⁴⁰ 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.

¹⁴¹ See, e.g., Petitioners’ Case Brief at 49-55, 87-89; Quang Minh’s Rebuttal Brief at 40-44.

preference stated in our regulations, we will not consider surrogate financial statements from other countries.¹⁴²

Comment III: Surrogate Value for Labor

Petitioners

- Although the Department typically uses International Labor Organization (“ILO”) Yearbook Chapter 6A as its primary source,¹⁴³ in this case, the only Indonesian labor data on the record comes from Chapter 5B. The Department should value labor using Chapter 5B from 2008 because it still comes from the Department’s preferred source, ILO.

Respondents

- 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.¹⁴⁴ Moreover, there is no indication that the data is inclusive of duties and taxes. With respect to specificity, we disagree with Respondents that the Indonesian ILO data is overly-broad. In a prior segment 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.¹⁴⁵ Finally, while the Indonesian ILO data is not as contemporaneous as other sources on the record, we note that the Indonesian data unquestionably satisfies the other SV criteria, and our practice as stated in *Labor Methodologies* has been that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country.¹⁴⁶ Therefore, the Department will use ILO Chapter 5B Indonesian data to calculate the labor SVs in the final results.

¹⁴² See 19 CFR 351.408(c)(2).

¹⁴³ See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (“*Labor Methodologies*”).

¹⁴⁴ *Id.*

¹⁴⁵ 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 (finding data sourced from ISIC Rev. 3 Sub-Classification 15 for the manufacture of food products and beverages to be reliable).

¹⁴⁶ See *Labor Methodologies*; *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”).

Parties have raised issues concerning surrogate labor information from Bangladesh and the Philippines.¹⁴⁷ We have declined to use data from these countries pursuant our practice as stated in *Labor Methodologies*.

Comment IV: Surrogate Value for Rice Husk

Dathaco and Fatifish

- The surrogate value for rice husk used in the *Preliminary Results* was aberrational as it was more than the price of the whole fish, represented a weight of only .98 MT, and was from Germany. Therefore, it must not be specific to rice husk, which is a waste product.
- The Indonesia data used by the Department in AR8 suffer from same problems of higher price than whole fish and low volume of 1.7 MT from the U.S.
- Instead, rice husk should be valued using a simple average of price quotes from Seraph International, Chittagong, and SR Apparels Dhaka from Bangladesh.
- 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 Dhaka are misguided because they placed information on the record for a different company, SR Apparels Limited.

Petitioners

- Rice husk is a wholly separate product from whole fish and bears no relationship to its pricing.
- The Department should continue to value rice husk using either the Philippine or Indonesian import data because they are contemporaneous and reliable.
- The Bangladeshi 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 Dhaka 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.

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.¹⁴⁸ Additionally, 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 on a case-by-case basis.¹⁴⁹ As there is no hierarchy for applying the above-mentioned

¹⁴⁷ See, e.g., Petitioners’ Case Brief at 93-94; Dathaco and Fatifish’s Rebuttal Brief at 171-174 .

¹⁴⁸ 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).

¹⁴⁹ See, e.g., *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), and accompanying Issues and Decision Memorandum at Comment 1.

principles, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the “best” available surrogate value is for each input.¹⁵⁰

We find that Indonesian GTA import data under HTS 1213.00 provide the best information available on the record for valuing rice husk. In applying the Department’s surrogate value selection criteria, the Department has found in numerous NME cases that import data are reliable information for valuation purposes because they consist of average import prices, are representative of prices within the POR, and are both product-specific and tax-exclusive.¹⁵¹ As noted above, the Department has previously found that data from GTA, such as that on the record for this input, is publicly-available, reliable, represents a broad market average, and is tax and duty exclusive.¹⁵² While the Indonesian import data for this HTS category is not available for the instant six-month POR, the record contains the import data from the immediately-preceding POR which we used in the 8th *AR Fish Final*.¹⁵³ 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 waste product rice husk FOP reported by 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.

While Respondents claim that the Philippine or Indonesian import data for rice husk are aberrational, we disagree. Respondents have failed to explain how, if at all, the price for whole live fish bears upon the price for rice husk, considering that these two products face different markets with distinct supply and demand pressures. Moreover, the average unit price for rice husk is on a per kilogram basis, and only a small quantity of rice husk by weight is introduced into production, whereas nearly all of the whole live fish is (and, in fact, multiple fish are) used in the production of subject merchandise. With regards to Respondents’ argument that because the imports came from Germany or United States they must be higher-end products than the waste product used by Respondents, we note that the record contains no evidence demonstrating that such further processed products entered and distorted the Indonesian import data. Finally, while Respondents equated low import volumes with aberrational values, the Department has found in numerous cases that small quantities of imports should not be considered inherently distortive.¹⁵⁴ As the Court has indicated in the past, an interested party must introduce record evidence in support of any claim that a value is aberrational or distortive,¹⁵⁵ and Respondents

¹⁵⁰ See, e.g., *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), and accompanying Issues and Decision Memorandum at Comment 1.

¹⁵¹ See, e.g., *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 59217 (September 27, 2010), and accompanying Issues and Decision Memorandum at Comment 19.

¹⁵² See, e.g., *Mushrooms*, 77 FR 55808 and accompanying Issues and Decision Memorandum at Comment 3.

¹⁵³ The CIT has held that contemporaneity is not a compelling factor where the alternative data is only a year-and-a-half distant from the POR. See *Hebei Metals & Minerals Import & Export Corp. v. U.S.*, 366 F. Supp. 2d 1264, 1275 (CIT March 10, 2005).

¹⁵⁴ See, e.g., *Mushrooms*, 77 FR 55808 and accompanying Issues and Decision Memorandum at Comment 3.

¹⁵⁵ See *Trust Chem. Co. v. United States*, 791 F. Supp. 2d 1257, 1264-65 (CIT 2011) (“*Trust Chem*”).

have not done so in this case. Accordingly, for these final results, the Department has valued rice husk using GTA Indonesian import data for HTS 1213.00.

Finally, we do not view the Bangladeshi price quotes on the record as the best information available for this input because, among other reasons, it is not a value from the primary surrogate country selected by the Department for these reviews.¹⁵⁶

Comment V: Surrogate Value for Inland Freight

Petitioners:

- In the *Preliminary Results*, the Department relied on World Bank publication *Doing Business 2011: Bangladesh* to value brokerage and handling charge and foreign inland freight charge. However, the Department used different cargo weights as the denominators for the calculation of the brokerage and handling charge relative to inland freight.
- The Department should be consistent in these calculations and use the same standard weight. Moreover, the Philippine or Indonesian surrogate value for movement expenses should be used.

Dathaco and Fatifish:

- The calculation of the brokerage and handling charge and inland freight bear no relationship with each other and it is reasonable to use different weights as denominators for different factors.

Department's Position: In valuing the FOPs, 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.¹⁵⁷

We find that, of the information available on the record, *Doing Business 2012: Indonesia*, published by the World Bank, is the best available source for valuing Respondents’ movement costs.¹⁵⁸ The data from the World Bank study are publicly available, specific to the costs in question, and represent a broad-market average. Specifically, the Department previously has regarded the prices in this publication as publicly available, reflective of tax and duty-free prices, and representative of broad market averages.¹⁵⁹ Moreover, the prices used by the Department are specific to the types of movement costs incurred by respondents, namely truck freight and brokerage and handling fees. We also find that the data are contemporaneous because they overlap the POR. Therefore, this data source meets the Department’s criteria for selecting SV.

¹⁵⁶ See 19 CFR 351.408(c)(2); *Clearon*, 2013 WL 646390 at *6.

¹⁵⁷ See *Carbazole Violet* at Comment 4; see also 19 CFR 351.408(c)(2).

¹⁵⁸ See Petitioner’s September 7, 2012 submission at Exhibit 35.

¹⁵⁹ See, e.g., *Steel Wire Garment Hangers from the People’s Republic of China: Antidumping Duty Administrative Review; 2010-2011*, 77 FR 66952 (Nov. 8, 2012), and accompanying Preliminary Decision Memorandum at “Factor Valuations”.

We agree with Respondents that brokerage and handling and inland freight costs are two distinct items, and thus the numerators of the SVs of the two are different. However, to calculate per unit values, because these SVs are based on the same *Doing Business 2012* data, we find that it is appropriate to use the same weight of 10 MT for a standard container, as described in the methodology section of *Doing Business* publication, as denominators for both calculations. Respondents have not argued or demonstrated that this calculation yields a distorted result.

Comment VI: Surrogate Values for 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.¹⁶⁰ Respondents have claimed they produce and sell various by-products in their respective production processes. We address each below.

A. Fish Waste, Fish Skin and Broken Meat

Respondents

- Fish waste, fish skin, and broken meat should be valued based on the Asian Seafood price quotes from Bangladesh, instead of the Philippine Vitarich price quote.
- 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 sixth and seventh administrative reviews because there was no official company stamp, it was not obtained as an actual business transaction, there were no terms of payment, and it did not list the person who provided the price.¹⁶¹
- In *8th AR Fish Final*, the Department did not address its concerns from prior reviews where it rejected the Vitarich price quote and thought that the Vitarich information on record was supplemented with new info; however, it was not.
- As the Philippines is not a significant producer of subject merchandise, Philippine price quotes are not reliable.
- The Asian Seafood price quotes from Bangladesh are reliable and free from defects because they are signed, list the name of the issuing company, are specific to *pangasius* fish waste, belly, and skin, and are from the primary surrogate country.
- The Department erred in the *8th AR Fish Final* when it determined that the Bangladeshi Asian Seafood quote is only for *pangasius* fish waste.
- Petitioners' argument against using the Asian Seafood price quotes is contradicted by the above evidence and fails to discredit its authenticity.

Petitioners

- The Department should continue to value fish waste, fish skin, and broken meat 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 Department has found in this and prior segments that the Philippines is a significant producer of comparable merchandise.

¹⁶⁰ 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).

¹⁶¹ See *7th AR Fish Final*, and accompanying Issues and Decision Memorandum at Comment II.B.1.

- The Asian Seafood price quote is not specific to *pangasius* fish waste, as the single quote covers multiple kinds of *pangasius* fish waste products. The Asian Seafood price quote does not contain a price for trimmings, and the price for skin is the same as for waste, so the quote is “broader and less specific” than the Vitarich quote.
- 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. As Asian Seafood is the only *pangasius* processor in Bangladesh and does not normally sell *pangasius* waste, the quotes do not represent actual market prices in Bangladesh.

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.¹⁶²

We agree with Petitioners. 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, such as in *Vietnam Shrimp 5th AR*,¹⁶³ 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. We recognize that we have used import statistics to value these by-products in prior reviews. Upon further consideration of the evidence and argument on this record, we have revised our view as we find that valuing fish waste using import statistics illogically results in a fish waste SV which is higher than that of the whole fish, the by-products’ main input. Consequently, the use of import statistics to value fish waste would distort the NV calculation. Furthermore, based on the description of Indonesian GTA data under HTS 0511.91.9000, “Animal Products Nesoi; Dead Animals, Unfit for Human Consumption, Other Product of Fish or Crustaceans, Molluscs or Other Aquatic Invertebra,” we cannot determine whether fish waste is included in this HTS category. Therefore, we find that HTS 0511.91.9000 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. The Vitarich Philippine price quote is for *pangasius* fish waste products that specifically identifies head and belly waste, fat and intestines, bone and tails waste, and skin and trimmings.¹⁶⁴ Contrary to Respondents’ argument, as explained above, the Philippines, the country in which Vitarich is based, is a significant producer of comparable merchandise as discussed above. Moreover, the Vitarich price quote is specific to the by-product inputs reported by Respondents of fish waste, fish skin, and broken meat. In contrast, the Asian Seafood price quote from Bangladesh lists only a single price covering multiple types of *pangasius* fish waste, instead of specific prices for multiple kinds of fish waste

¹⁶² See *Carbazole Violet* at Comment 4; see also 19 CFR 351.408(c)(2).

¹⁶³ 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*.

¹⁶⁴ See Petitioners’ September 7, 2012, SV Submission at Exhibit 19.

products, and therefore is broader and less specific than the Vitarich quote.¹⁶⁵ Moreover, Asian Seafood's quote was not made in the normal course of business because an Asian Seafood official stated that the company does not ordinarily sell specific types *pangasius* fish waste.¹⁶⁶ Notably, neither the Vitarich price quote nor the Asian Seafood quote is contemporaneous with the POR. Moreover, there is no appreciable difference in their lack of contemporaneity.

The Vitarich price quote also satisfies the Department's criteria as to 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 Respondents' claim that the quote does not include terms of payment, is not publicly 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 publicly available information pertaining to the production and sales of *pangasius* fish in the Philippines.¹⁶⁷ The affidavit also details the payment terms, the party offering the price, and the manner in which the price quote was obtained.¹⁶⁸ The affidavit also states that the price quotes were requested on an ex-factory and tax-exclusive basis.¹⁶⁹

We dispute 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. We note that 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.¹⁷⁰ As a result, the record 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.¹⁷¹ While respondents are correct that the information petitioners placed on the record concerning Vitarich in 8th AR Fish Final was not new, on further consideration of that evidence, we continue to find that the Vitarich price quote is the best available information on the record to value fish waste, fish skin, and broken meat.

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 skin, and broken meat by-products with the Vitarich price quote for the final results.

B. Fish Oil and Fish Meal

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 \$1.86/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 \$0.65/kg.

¹⁶⁵ See Dathaco/Fatfish's March 14 2013, Post-Preliminary SV Submission at Exhibit 2A.

¹⁶⁶ See Petitioners' March 19, 2013, SV Rebuttal Submission at Exhibit 2A.

¹⁶⁷ See Petitioners' September 7, 2012, SV Submission at Exhibit 19.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

- 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 include imports predominantly from countries where there is no evidence of commercial production or exportation of *pangasius*.
- Fish oil and fish meal are minimally processed and normally sold at much lower prices, and fish oil should not be valued at 168 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 59 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.
- Regardless of the Department's choice of surrogate value, it should cap the fish oil value in the same manner it did in the eighth administrative review.

Respondents

- 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.
- The Department should continue to use the uncapped Indonesian import data under HTS 1504.20. The concept of a cap is new and unwarranted.
- The Department should continue to reject the Yahdi price quotes for fish oil and fish meal, as the Department has in the seventh and eighth administrative reviews because they are issued by a reseller from Indonesia, a country that does not satisfy the primary or secondary surrogate country requirements.
- 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 is influenced by 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: 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.¹⁷²

¹⁷² See *Carbazole Violet* at Comment 4; see also 19 CFR 351.408(c)(2).

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.”¹⁷³ There is no evidence on record to show that respondents’ fish oil is refined or even 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 with which to value Respondents’ fish oil, given that by its terms it may include refined fish oil. Similarly, the other two Indonesian HTS categories on record may also include refined fish oil. In particular, these HTS categories – HTS 1504.20.1000 “Fats & Oil Of Fish, Not Liver Oils Solid Fraction, Not Chemically Modified” and HTS 1504.20 “Fish Fats And Oils And Their Fractions (Other Than Liver Oils), Whether Or Not Refined, But Not Chemically Modified” – would, by their terms, also include refined fish oil. Notably, these concerns apply with respect to the surrogate value for these by-products because, unlike the surrogate value for rice husk (which, as explained above, bears no relation to the surrogate value for whole fish), we find it unreasonable that the surrogate value for these by-products derived from whole fish would be higher than their main input (*i.e.*, whole fish).

Nevertheless, we will continue to value fish oil using the Indonesia HTS 1504.20.9000 because it is the more specific of the available Indonesian HTS categories and by its terms it 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 Quang Minh 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.¹⁷⁴

However, while Quang Minh’s data can be used for such a cap, Hoang Long was unable to break out its materials, labor, and energy for by-product production.¹⁷⁵ The Department finds that the use of facts otherwise available is warranted with respect to Hoang Long’s consumption of material, labor, and energy for by-product production, pursuant to section 776(a) of the Act. In general, section 776(a)(1) of the Act states that the Department may use facts otherwise available in reaching the applicable determination if the “necessary information is not available on the record” Pursuant to section 776(a)(1) of the Act, the Department determines that the use of partial facts otherwise available is warranted for this final determination with respect to capping Hoang Long’s fish oil by-product offset because the information necessary to calculate a company-specific by-product offset cap for Hoang Long is not available on the record of this review. Therefore, we will apply Quang Minh’s publicly available capped price to Hoang Long as facts available.

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.¹⁷⁶ The Yahdi price quote is from Agromaret, which appears to be an online agricultural commodities search engine site, instead of

¹⁷³ See Preliminary Results SV Memo at 5.

¹⁷⁴ See 8th AR Fish Final, and accompanying Issues and Decision Memorandum at Comment VII.B (where the Department capped the surrogate value for fish oil); see also Memorandum to the File, from Seth Isenberg, International Trade Analyst, “Tenth New Shipper Reviews of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results Analysis Memorandum for Quanh Minh Co. Ltd.,” dated June 24, 2013, at Attachment 2.

¹⁷⁵ Dathaco and Fatifish did not report fish oil as a by-product.

¹⁷⁶ See Petitioners’ September 7, 2012, SV Submission at Exhibit 34.

an official issued price quote directly from the company with a signed affidavit. No record information indicates how this price is sourced, constructed or whether it reflects a market price.

Turning to the surrogate value for the fish meal by-product, we agree with Respondents with continuing to value fish meal with the Bangladesh HTS 2301.20 used at the *Preliminary Results*.¹⁷⁷ After reviewing the price quote from Indonesian supplier Yahdi, we have determined that it is not a reliable source for valuing fish meal.¹⁷⁸ 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 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 2301.20 “Flours, Meals & Pellets Of Fish, Crust, Mol Or Other Aqua Invert, Unfit Human Cons,” is specific to the meal produced by respondents, namely fish meal.¹⁷⁹ Moreover, the Department previously has regarded the UN Comtrade data source to reflect publicly-available prices that represent broad-market averages and are net of duties and taxes.¹⁸⁰ While it is not contemporaneous with the POR, for the reasons mentioned above, we regard it as the best available information on the record for this review. 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.

Comment VII: Zeroing

Dathaco and Fatifish

- The Department should not zero in the final results.

Department’s Position: Consistent with the *Preliminary Results*,¹⁸¹ and the Department’s practice as announced in *Final Modification for Reviews*, we have not applied the zeroing methodology in these final results.¹⁸²

¹⁷⁷ See Preliminary Results SV Memo at 5.

¹⁷⁸ See Petitioners’ September 7, 2012, SV Submission at Exhibit 34.

¹⁷⁹ See Quang Minh’s May 17, 2012 submission at 27.

¹⁸⁰ See, e.g., *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty New Shipper Review*, 77 FR 1053, 1057 (Jan. 9, 2012).

¹⁸¹ In the *Preliminary Results*, the Department applied the margin 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.

¹⁸² 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*”).

Company-Specific Issues

Comment VIII: Valuation of Dathaco and Fatifish's River Water

Dathaco and Fatifish

- The record shows that Dathaco and Fatifish consumed free river water, and numerous articles indicate that river water is accessible free of charge in Bangladesh.
- Under similar circumstances, the Department's policy is to not value the free water. Instead, the Department values the energy inputs consumed to pump the water, and the Department has already valued the energy consumed by Dathaco and Fatifish to do so.
- In *Taian Ziyang*,¹⁸³ the Court found that because Indian garlic producers in the primary surrogate country had free well water similar to the Chinese garlic producers under review, it was not reasonable to value water as a separate FOP.

Petitioner

- The Department's practice is to value all inputs consumed in the production of the merchandise under consideration.
- With regard to *Taian Ziyang*, because Indonesia or the Philippines should be used as the primary surrogate country and Dathaco and Fatifish have not provided record evidence that river water is free in these countries, the Department should value water as a separate FOP.

Department's Position: It is the Department's practice to value FOPs, even if a respondent obtains those FOPs at no cost.¹⁸⁴ However, in prior segments of review for this case and in similar cases, instead of valuing water separately as a FOP, the Department has found that the water consumed by an integrated producer in aquaculture farming has been properly captured as an overhead cost in financial statements and, in those cases, has valued only the energy inputs consumed in pumping the water.¹⁸⁵ The Department takes this approach to avoid any double-counting of expenses incurred for water.

Consistent with our practice, we find that Dathaco and Fatifish's river water consumption as a part of their farming process should not be separately valued as a FOP. We regard the expenses reported in the DFSI financial statement to appropriately capture any overhead cost associated with the consumption of water because DFSI and Respondents are fully integrated producers of comparable merchandise and, thus, share common types of expenses in their respective operations. Because record evidence indicates that Dathaco and Fatifish have consumed energy for pumping water, the Department has valued their energy consumption for pumping river

¹⁸³ See *Taian Ziyang Food Co. v. United States*, 783 F. Supp. 2d 1292, 1306 (Ct. Int'l Trade 2011) ("*Taian Ziyang*").

¹⁸⁴ See, e.g., *Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review*, 70 FR 54361 (September 14, 2005) and accompanying Issues and Decision Memorandum, at Comment 13.

¹⁸⁵ See e.g., *7th AR Fish Final* and accompanying Issues and Decision Memorandum at Comment IV.C; *Third Administrative Review of Frozen Warmwater Shrimp from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 46565 (Sept. 10, 2009) and accompanying Issues and Decision Memorandum at Comment 3.b.

water.¹⁸⁶ Finally, we note in *Taian Ziyang* the Department followed this practice and valued the energy used to pump well water, instead of valuing well water as a separate FOP, and the Court sustained the Department's determination.¹⁸⁷

Comment IX: Valuation of Hoang Long's Other By-Products

Hoang Long

- The Department failed to value its bone and fish head by-products, as well as its dead fish by-products, in the *Preliminary Results*.
- The dead fish by-product reported by Hoang Long should be valued using the *Indonesian IAS* value for whole fish submitted by Dathaco and Fatifish because the *Indonesian IAS* value includes fish that were sold dead on ice at market.
- The fish bone and fish head by-products should be valued using the Indonesian value for fish waste.¹⁸⁸
- Hoang Long reported all the FOPs consumed in production, and its by-products should not be limited by any type of cap.

Petitioners

- Hoang Long reported that it processed fish head and bones into fish oil. If the Department valued the fish head and bones and the fish oil by-products, then the Department would double-count Hoang Long's by-product offset.
- The Department should either value Hoang Long's fish oil by-product or the fish bones and fish head by-products separately because Hoang Long did not separately report its factors of production consumed in producing the fish oil that it sold.
- Because Hoang Long did not report the factors of production it consumed in producing fish oil separately, the Department should cap its fish oil by-product offset using Quang Minh's calculated fish oil by-product cap.
- The Department should not provide Hoang Long with a dead fish by-product offset because the dead fish were never entered into production of subject merchandise.
- If the Department does value dead fish, it should use the fish waste prices reported in the Vitarich price quote from the Philippines.
- The Department should correct a typographical error in Hoang Long's reporting of its dead fish by-product.

Department's Position: As explained above, the Department may offset production costs incurred by a respondent with the sale of by-products generated during the production process when calculating NV.¹⁸⁹

¹⁸⁶ See Petitioners' September 7, 2012 submission at Exhibit 36; see also Memorandum to the File, from Jerry Huang, International Trade Analyst, "Tenth New Shipper Reviews of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results Analysis Memorandum for Fatifish Co. Ltd.," dated June 24, 2013.

¹⁸⁷ See *Taian Ziyang*, 783 F. Supp. 2d at 1306-08.

¹⁸⁸ Hoang Long does not specify which fish waste value for Indonesia should be used to value these particular by-products.

¹⁸⁹ 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).

With respect to its dead fish by-product offset, the Department agrees with Hoang Long that we inadvertently failed to value that by-product offset in the *Preliminary Results*. As an integrated producer of subject merchandise and the farmer of all the fish that were ultimately processed into subject merchandise, farming is a step in Hoang Long's production process, and dead fish represent a by-product of production.¹⁹⁰ We disagree with Petitioners' claim that we should not value the dead fish because they were never entered into production. Therefore, by-products generated from farming are, in fact, by-products of the ultimate production of frozen fish filets. Consequently, we have included a by-product offset for dead fish in these final results.

Regarding the appropriate value for the dead fish by-product, we disagree with Hoang Long that we should value this by-product using the value in *Indonesian IAS* for whole fish. Similar to the fish bones and skin, fish that died in farming and were sold as a waste product generated in the production of subject merchandise are distinct from whole live fish. Indeed, the record is replete with examples that demonstrate that dead fish are viewed as possessing lower quality and are priced lower.¹⁹¹ Thus, the source that Hoang Long advances would not be specific to the by-product at issue and would lead to the unreasonable result whereby the Department assigns the same value to the lower-quality by-product that would be assigned to the main input. Notably, Hoang Long has provided no evidence that any processing was performed on these dead fish before they were sent to market for sale that might explain why such a lower-quality by-product would have the same value as its main input. Therefore, we have valued dead fish using the value for fish waste contained in the Vitarich price quote from the Philippines. As we explained above, the Vitarich price quote satisfies all but one of the Department's surrogate value criteria.

Finally, the Department agrees with Petitioners that Hoang Long's dead fish by-product was not accurately reported in the database used to calculate its antidumping duty margin. All supporting documentation and calculations, as well as earlier iterations of Hoang Long's FOP database, report a different amount of dead fish by-product production.¹⁹² Therefore, we have corrected the amount of dead fish by-product produced to reflect the production reported in Hoang Long's questionnaire response and supporting documentation and calculations.

With respect to Hoang Long's production of the fish bones and fish heads by-products, we agree with Petitioners that Hoang Long reported that these were further processed into fish oil and fish powder. The record demonstrates further that Hoang Long reintroduced the fish powder into the production of subject merchandise and ultimately sold the fish oil.¹⁹³ The Department's practice is to grant by-product offsets only for those by-products with demonstrated commercial value.¹⁹⁴ The Department considers by-products reintroduced into production as evidence that the by-products have commercial value.¹⁹⁵ Because Hoang Long reported that its fish head and fish bones by-products were further processed into other by-products, namely fish oil and fish powder, the Department considers these by-products to have commercial value. However, the

¹⁹⁰ See Hoang Long's May 29, 2012, Section D Questionnaire Response at 58.

¹⁹¹ See Petitioners' March 14, 2013 Surrogate Value Submission at Exhibit 12.

¹⁹² See Hoang Long's May 29, 2012, Section D Questionnaire Response at Exhibit D-3-E.

¹⁹³ *Id.* at 57.

¹⁹⁴ 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 18.

¹⁹⁵ *Id.*

Department will not provide separate by-product offsets for Hoang Long's fish head and fish bones, but instead determines that any commercial value generated by these by-products will be captured by the fish oil by-product offset and by not valuing the self-produced fish powder reintroduced into the production of subject merchandise in the NV calculation. As explained above, Hoang Long reported that it produced fish oil as a by-product in the production of the subject merchandise and sold that resulting by-product.¹⁹⁶ Accordingly, we have allowed an offset for this by-product. With respect to fish powder, which was produced from fish bones and fish heads and then reintroduced into the production process, we have accounted for this by-product by not granting a separate offset and by not including fish powder as an FOP in the NV calculation.

While it reported that it produced the fish oil by-product, as explained above, Hoang Long did not separately report its consumption of FOPs to produce fish oil. Therefore, the Department cannot determine the extent of any energy and labor specifically consumed in the production of the fish oil by-product. Nevertheless, Hoang Long reported that the fish oil was produced in its feed mill and reported FOPs for the company's feed mill operation.¹⁹⁷ In light of this record data, the Department concludes that the FOPs consumed in producing the fish oil by-product are accounted for in Hoang Long's reported FOPs for its feed mill operation.

As for the value assigned to the fish oil by-product, we agree with Petitioners. As explained above, in the absence of separately-reported FOPs from Hoang Long for fish oil production, we have capped the allowable by-product offset for fish oil for Hoang Long using Quang Minh's calculated by-product offset cap.

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

24 JUNE 2017
Date

¹⁹⁶ See Hoang Long's May 29, 2012, Section D Questionnaire Response at 57.
¹⁹⁷ *Id.* at 3-62.