



A-552-801
AR 8/1/11 - 7/31/12
NSR 8/1/11 - 7/31/12
Public Document
E&C/V: AJM, JEH, PW

March 28, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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 the
Ninth Administrative Review and Aligned New Shipper Review

SUMMARY

The Department of Commerce (the “Department”) analyzed the comments submitted by the Petitioners¹ and the Respondents² in the ninth administrative review and aligned new shipper review of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of

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

² Vinh Hoan Corporation, or “Vinh Hoan” (which includes its affiliates Van Duc Food Export Joint Company and Van Duc Tien Giang), the Hung Vuong Group, or “HVG” (which includes An Giang Fisheries Import and Export Joint Stock Company, Asia Pangasius Company Limited, Europe Joint Stock Company, Hung Vuong Joint Stock Company, Hung Vuong Mascato Company Limited, Hung Vuong – Vinh Long Co., Ltd., and Hung Vuong – Sa Dec Co., Ltd.), Golden Quality Seafood Corporation, or “Golden Quality,” the Vietnam Association of Seafood Exporters and Producers, or “VASEP,” and the following companies which provided separate rate applications or certifications: An My Fish Joint Stock Company, Anvifish Co., Ltd. (aka Anvifish Joint Stock Company or Anvifish JSC), Asia Commerce Fisheries Joint Stock Company, Binh An Seafood Joint Stock Co., Cadovimex II Seafood Import-Export and Processing Joint Stock Company, Cantho Import-Export Seafood Joint Stock Company (also known as CASEAMEX), Cuu Long Fish Joint Stock Company (aka CL-Fish), Cuu Long Fish Import-Export Corporation (aka CL Panga Fish), East Sea Seafoods Limited Liability Company (aka East Sea Seafoods LLC or ESS), Green Farms Seafood Joint Stock Company, Hiep Thanh Seafood Joint Stock Company, Hoa Phat Seafood Import-Export and Processing JSC, International Development & Investment Corporation (also known as IDI), NTSF Seafoods Joint Stock Company, QVD Food Company, Ltd., Saigon Mekong Fishery Co., Ltd., Seafood Joint Stock Company No.4 Branch Dongtam Fisheries Processing Company, Southern Fishery Industries Company, Ltd. (also known as South Vina), Sunrise Corporation, Thien Ma Seafood Co., Ltd. (also known as THIMACO), To Chau Joint Stock Company, Viet Phu Food & Fish Corporation and Vinh Quang Fisheries Corporation; collectively the “Respondents.”



Vietnam (“Vietnam”). Following the *Preliminary Results*³ and the analysis of the comments received, we 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 September 11, 2013, the Department published the *Preliminary Results* of this administrative review and aligned new shipper review.⁴ On January 7, 2014, the Department extended the final results to March 8, 2014.⁵ Between January 22 and February 10, 2014, interested parties submitted case and rebuttal briefs. On February 25, 2014, the Department extended the final results to March 28, 2014.⁶ On March 6, 2014, the Department held a hearing.

SCOPE OF THE ORDER

The product covered by the order is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti*, *Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*) and *Pangasius Micronemus*.

Frozen fish fillets are lengthwise cuts of whole fish. The fillet products covered by the scope include boneless fillets with the belly flap intact (“regular” fillets), boneless fillets with the belly flap removed (“shank” fillets) and boneless shank fillets cut into strips (“fillet strips/finger”), which include fillets cut into strips, chunks, blocks, skewers, or any other shape.

Specifically excluded from the scope are frozen whole fish (whether or not dressed), frozen steaks, and frozen belly-flap nuggets. Frozen whole, dressed fish are deheaded, skinned, and eviscerated. Steaks are bone-in, cross-section cuts of dressed fish. Nuggets are the belly-flaps.

The subject merchandise will be hereinafter referred to as frozen “basa” and “tra” fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under tariff article codes 0304.29.6033, 0304.62.0020, 0305.59.0000, 0305.59.4000, 1604.19.2000, 1604.19.2100, 1604.19.3000, 1604.19.3100, 1604.19.4000, 1604.19.4100, 1604.19.5000, 1604.19.5100, 1604.19.6100 and 1604.19.8100 (Frozen Fish Fillets of the species

³ See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results of the Antidumping Duty Administrative Review and New Shipper Review; 2011-2012*, 78 FR 55676 (September 11, 2013) (“*Preliminary Results*”).

⁴ *Id.*

⁵ See Memorandum to Gary Taverman, Senior Advisor, through James Doyle, Office Director, from Julia Hancock, Senior International Trade Compliance Analyst, “Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Deadline for Final Results of Administrative Review, and Aligned New Shipper Review,” dated January 7, 2014.

⁶ See Memorandum to Gary Taverman, Senior Advisor, through James Doyle, Office Director, from Julia Hancock, Senior International Trade Compliance Analyst, “Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Deadline for Final Results of Administrative Review, and Aligned New Shipper Review,” dated February 25, 2014.

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 specifications, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

COLLAPSING

Consistent with 19 CFR 351.401(f)(1), in the *Preliminary Results* we collapsed An Giang Fisheries Import and Export Joint Stock Company, Asia Pangasius Company Limited, Europe Joint Stock Company, Hung Vuong Joint Stock Company, Hung Vuong Mascato Company Limited, Hung Vuong – Vinh Long Co., Ltd. and Hung Vuong – Sa Dec Co., Ltd., collectively the Hung Vuong Group, or “HVG.”⁸ Since the *Preliminary Results* no information has been placed on the record which would cause us to reconsider this decision, nor has any party commented on this in their case or rebuttal briefs. For these final results, we continue to collapse the members of HVG.

SEPARATE RATES

In the *Preliminary Results*, we determined that the following 23 companies, in addition to Vinh Hoan, HVG and Golden Quality, met the criteria for separate rate status: (1) An My Fish Joint Stock Company, (2) Anvifish Co., Ltd. (aka Anvifish Joint Stock Company or Anvifish JSC), (3) Asia Commerce Fisheries Joint Stock Company, (4) Binh An Seafood Joint Stock Co., (5) Cadovimex II Seafood Import-Export and Processing Joint Stock Company, (6) Cantho Import-Export Seafood Joint Stock Company (also known as CASEAMEX), (7) Cuu Long Fish Joint Stock Company (aka CL-Fish), (8) Cuu Long Fish Import-Export Corporation (aka CL Panga Fish), (9) East Sea Seafoods Limited Liability Company (aka East Sea Seafoods LLC or ESS), (10) Green Farms Seafood Joint Stock Company, (11) Hiep Thanh Seafood Joint Stock Company, (12) Hoa Phat Seafood Import-Export and Processing JSC, (13) International Development & Investment Corporation (also known as IDI), (14) NTSF Seafoods Joint Stock Company, (15) QVD Food Company, Ltd., (16) Saigon Mekong Fishery Co., Ltd., (17) Seafood Joint Stock Company No.4 Branch Dongtam Fisheries Processing Company, (18) Southern Fishery Industries Company, Ltd. (also known as South Vina), (19) Sunrise Corporation, (20) Thien Ma Seafood Co., Ltd. (also known as THIMACO), (21) To Chau Joint Stock Company, (22) Viet Phu Food & Fish Corporation and (23) Vinh Quang Fisheries Corporation (collectively, the “Separate Rate Respondents”).⁹ We have not received any information since the issuance of the *Preliminary Results* that provides a basis for reconsideration of these

⁷ Until July 1, 2004 these products were classifiable under HTSUS 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). Until February 1, 2007 these products were classifiable under HTSUS 0304.20.6033 (Frozen Fish Fillets of the species *Pangasius*, including basa and tra). On March 2, 2011 the Department added two HTSUS numbers at the request of U.S. Customs and Border Protection (“CBP”): 1604.19.2000 and 1604.19.3000. On January 30, 2012 the Department added eight HTSUS numbers at the request of CBP: 0304.62.0020, 0305.59.0000, 1604.19.2100, 1604.19.3100, 1604.19.4100, 1604.19.5100, 1604.19.6100 and 1604.19.8100.

⁸ See *Preliminary Results*, and accompanying Decision Memorandum at 5-7.

determinations. Therefore, the Department continues to find that the Separate Rate Respondents meet the criteria for a separate rate.

DISCUSSION OF THE ISSUES

Comment I: Selection of the Surrogate Country

A. *Economic Comparability*

Respondents

- While Indonesia appeared on the surrogate country list in the *Eighth AR*,¹⁰ Indonesia is conspicuously missing from the Surrogate Country List in this POR.¹¹ The Department did not exercise reasonable discretion in finding that Indonesia and Vietnam are at comparable levels of economic development, despite the fact that the Surrogate Country List states the contrary. The Department did not explain why the criteria of economic comparability was sacrificed in this review, or what its concerns are regarding special, or unique, factors of production (“FOPs”).
- Bangladesh (770 U.S. Dollars (“USD”) per capita) is more economically comparable to Vietnam (1,260 USD per capita) than the Philippines (2,210 USD per capita), because its gross national income (“GNI”) is much closer to Vietnam’s than is the Philippines’ GNI.¹² As a result, Bangladesh should be selected as the surrogate country.

Petitioners

- The Department consistently relies on the legal principles and analytical tools set forth in the *Policy Bulletin*¹³ to guide its surrogate country selection, and the soundness of this approach has been repeatedly upheld by the United States Court of International Trade (the “CIT,” or the “Court”).¹⁴ The *Policy Bulletin* specifically recognizes that the Department is not required by statute to use a surrogate country that is at a level of economic development most comparable to the non-market economy (“NME”) country, or which is the most significant producer of comparable merchandise; instead, the statute only requires the Department to select a surrogate market economy (“ME”) country that “is at a level of economic

⁹ *Id.* at 8.

¹⁰ *See 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) (“*Eighth AR*”) and accompanying Issues and Decision Memorandum at Comment I.A.

¹¹ *See* the Department’s Letter to All Interested Parties, “9th Administrative Review of Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Country List,” dated November 8, 2012 (“*Surrogate Country List*”).

¹² *Id.*

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

¹⁴ *See, e.g., Jinan Yipin Corp. v. United States*, 800 F. Supp. 2d 1226, 1235 (CIT 2011); *Taian Ziyang Food Co., Ltd. v. United States*, 783 F. Supp. 2d 1292, 1301 (CIT 2011).

development comparable to that of the NME country and that is a commercially meaningful producer of comparable merchandise . . . to the extent possible.”¹⁵

- The Department should select Indonesia as the surrogate country. Indonesia continues to be economically comparable to Vietnam, just as it has in every review since the *First AR* in 2005.¹⁶ World Bank GNI data show Indonesia’s GNI to be 2.3 times Vietnam’s GNI in 2010, precisely the same relationship shown by the 2011 World Bank data used in this review.¹⁷ In fact, in all antidumping proceedings involving Vietnamese imports covering the same review periods, the Department relied on these same GNI figures and consistently found Indonesia’s level of economic development to be comparable to that of Vietnam.¹⁸
- The *World Bank Development Report* classifies Indonesia, the Philippines and Vietnam as “lower-middle-income” economies, and Bangladesh as a “low-income” economy.¹⁹ In *Vietnam Shrimp*, the Respondents and VASEP argued against selecting the country with the closest GNI to the NME (unlike they have in this case), and in advocating for Indonesia, asserted that the Department should “treat a group of countries within a certain per capita GNI range, who are significant producers of comparable merchandise, equally until it determines which countries have the best data.”²⁰ Thus, the position that VASEP adopted in these reviews - that Indonesia is not economically comparable to Vietnam - is directly at odds with the position taken by VASEP in *Vietnam Shrimp*.²¹
- Should the Department not choose Indonesia as the surrogate country, the Philippines is economically comparable to Vietnam.

Department’s Position: Because Vietnam is being treated as an NME country, when calculating normal value (“NV”), section 773(c)(4) of the Tariff Act of 1930, as amended (“the

¹⁵ See *Policy Bulletin* at 2-3. The *Policy Bulletin* also recognizes that, in some instances, “it is more appropriate for the team to address economic comparability only after the significant producer of comparable merchandise criteria is met.” It adds that cases where emphasis on the “significant producer” criterion is warranted are generally those that involve subject merchandise that is “produced by only a few countries,” or where “major inputs are not widely traded internationally.” See *Policy Bulletin* at “Exceptions to Sequencing Procedure.”

¹⁶ See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 54007, 54011 (September 13, 2005) (“*First AR*”).

¹⁷ Indonesia and Vietnam’s relative levels of per capita GNI remained the same over the past several review periods. See Petitioners’ February 10, 2014 submission at 16.

¹⁸ See, e.g., *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2011-2012*, 78 FR 56211 (September 12, 2013) (“*Vietnam Shrimp 11-12*”) and accompanying Issues and Decision Memorandum at Comment 1; *Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Critical Circumstances in the Antidumping Duty Investigation*, 77 FR 46044, 46046 (August 2, 2012), unchanged in 77 FR 75980 (December 26, 2012); *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 56158 (September 12, 2011) (“*Vietnam Shrimp 09-10*”) and accompanying Issues and Decision Memorandum at Comment 2.E; *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) (“*Vietnam Shrimp 08-09*”) and accompanying Issues and Decision Memorandum at Comment 9.

¹⁹ See Petitioners’ May 24, 2013 submission at Exhibit 2.A, xii.

²⁰ See Petitioners’ December 6, 2013 submission at Exhibit 15.

²¹ In that review, which covered a very similar period, February 2011 – January 2012, where the economic comparability analysis was based on 2010 GNI data, the Respondents and VASEP argued vigorously that Indonesia and Vietnam were economically comparable. See *Vietnam Shrimp 11-12*, and accompanying Issues and Decision Memorandum at Comment 1; see also Petitioners’ December 6, 2013 submission at Exhibit 15.

Act”), requires the Department to value the 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.²²

Section 773(c)(4)(A) of the Act is silent with respect to how the Department may determine that a country is at a level of economic development comparable to the NME country. As such, the Department’s long standing practice has been to identify those countries which are at a level of economic development similar to Vietnam based on GNI data reported in the *World Development Report* provided by the World Bank.²³ Using 2011 GNI data, the Department provided parties with a list of potential surrogate countries found to be at Vietnam’s level of economic development, including Bangladesh, Bolivia, India, Nicaragua, Pakistan, and the Philippines.²⁴ Given that the surrogate country list is non-exhaustive, as explained in the surrogate country memo, interested parties identified another surrogate country, Indonesia, for consideration. In the *Preliminary Results*, the Department found Indonesia to be at a “higher and, thus, less comparable level of economic development than that represented by the six countries on the initial surrogate country candidate list, but still comparable to that of Vietnam.”²⁵

Respondents argue that the Department “relied on nothing except its discretion” in finding that Indonesia is at a level of economic development comparable to Vietnam. The Department disagrees. In the *Preliminary Determination*, the Department explained that the decision was based on a consideration of Indonesia’s GNI in relation to Vietnam and the six countries selected.²⁶ The Department has not received any information since the *Preliminary Determination* that undermines this finding or the reliance on GNI as the basis for this finding. Moreover, the Court has upheld the Department’s use of GNI as “a reasonable interpretation of the statutory mandate to identify and select a primary surrogate country ‘at a level of economic development comparable’ to the nonmarket economy country.”²⁷

As explained in the Department’s Policy Bulletin 04.1, “[t]he surrogate countries on the list are not ranked.”²⁸ This lack of ranking reflects the Department’s long-standing practice that, for the purpose of surrogate country selection, the countries on the list “should be considered equivalent”²⁹ from the standpoint of their level of economic development based on GNI as compared to Vietnam’s level of economic development and recognition of the fact that the concept of “level” in an economic development context necessarily implies a range GNI, not a specific GNI. This long-standing practice of providing a non-exhaustive list of countries at the

²² See also *Policy Bulletin*.

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

²⁴ See *Surrogate Country List*.

²⁵ See *Preliminary Results*, and accompanying Decision Memorandum at 14.

²⁶ *Id.*

²⁷ See *Jiaxing Brother Fastener Co., Ltd. v. United States*, Court No. 12-00384, Slip Op. 14-12 (CIT 2014) (the Department’s utilization of GNI is a consistent, transparent, and objective metric to identify and compare a country’s level of economic development, and is a reasonable interpretation of the statute).

²⁸ See *Policy Bulletin*.

²⁹ *Id.*

same level of economic development as the NME country fulfills the statutory requirement to value factors of production using data from “one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country. . . .”³⁰ In this regard, “countries that are at a level of economic development comparable to that of the nonmarket economy country” necessarily includes countries that are at the same level of economic development as the NME country. Because the non-exhaustive list is only a starting point for the surrogate country selection process, the Department also considers other countries at the same level of economic development that interested parties propose, as well as other countries that are not at the same level of economic development as the NME country, but nevertheless still at a level comparable to that of the NME country, such as Indonesia in this review. The latter countries are considered when data or significant producer considerations potentially outweigh the fact that these countries are not at the same level of economic development as the NME country.

Indonesia satisfies the statute’s requirement that the surrogate country be at a comparable level of economic development. Further, the data considerations, explained in greater detail below, weigh in favor of Indonesia’s selection over any of the countries that were initially identified. In contrast to the position taken in this review, we note that in *Vietnam Shrimp 11-12*, VASEP acknowledges that other considerations, such as the quality of surrogate data available from each country, may warrant the use of a surrogate country that is at a different, although still comparable, level of economic development as the NME country.

As explained in the *Preliminary Determination*, data concerns related to the primary input of the subject merchandise – whole live fish – support the Department’s determination to select Indonesia as the primary surrogate country because these data considerations outweigh the fact that Indonesia is not at the same level of economic development as Vietnam. As we noted in the *Preliminary Results*, few countries in the world produce *pangasius* fish;³¹ consequently, whole live *pangasius* fish is a special or unique input.³² Of this small set of countries, only three were included in the Surrogate Country List, Bangladesh, India, and the Philippines, none of which we found in the *Eighth AR* provided the best available information with which to calculate surrogate values (“SVs”), such that any of those countries should be selected as the surrogate country.³³ Petitioners placed information on the record which addresses the Department’s surrogate country selection criteria, including voluminous amounts of information concerning SVs in Indonesia.³⁴ The Respondents also placed Indonesian SVs on the record, including values for whole, live *pangasius*.³⁵

³⁰ See section 773(c)(4) of the Act.

³¹ Different countries use different names for *pangasius*. For example, in Indonesia *pangasius* is referred to as patin, and in Bangladesh it is referred to as pangas. For ease of reference, rather than using local names, throughout this memo the Department used *pangasius*.

³² See *Preliminary Results*, and accompanying Decision Memorandum at 17; see also Petitioners’ May 24, 2013 submission at Exhibit 8.

³³ See, e.g., *Eighth AR*, and accompanying Issues and Decision Memorandum at Comment I.

³⁴ See Surrogate Country List at 2; see also Petitioners submissions of May 24, 2013, June 14, 2013, December 6, 2013 and January 10, 2014.

³⁵ See generally Respondents’ submissions of December 6, 2013 and January 10, 2014.

Regarding Respondents' argument that the Department should select Bangladesh because it is more economically comparable than the Philippines, we disagree. As explained above, the "statute does not require that the Department use a surrogate country that is at a level of economic development *most* comparable to the NME (emphasis added)."³⁶ Within a given range, differences in per-capita GNI between the countries do not imply any difference in level of economic development.³⁷ Once a country is determined to be at the same level of economic development as the NME country, it is not the Department's practice to pick the surrogate country closest to the NME country *solely* based on GNI.³⁸ In such instances, the Court upheld the Department's practice to not select the country with the closest GNI to the NME.³⁹

Regarding Petitioners' argument concerning the World Bank's classification of economies, and Petitioners' argument concerning relative GNIs of Vietnam and Indonesia in past administrative reviews, we disagree. The Department consistently rejects parties' arguments to use the World Bank's reported upper-middle or lower-middle income thresholds or categories for the purposes of determining the level of economic development. The band of countries that the Department selected in this review, in absolute terms, is a reasonable range of countries given the entire worldwide range of GNIs. Simply because a small subset of the band lies above or below the World Bank's threshold for an income group is not a basis to reject it for factor valuation purposes.⁴⁰ Furthermore, in past cases the Department rejected the use of relative measures of GNI comparison.⁴¹ Neither the statute nor the Department's surrogate country selection criteria include, or consider, whether countries have been selected in previous and unrelated proceedings. The Department selects the primary surrogate country for each proceeding based on the record facts of that individual proceeding, regardless of whether the potential surrogate countries under consideration have been previously selected as surrogate countries.⁴² In other words, it is the Department's practice to treat each segment of an antidumping proceeding as independent proceedings with separate records which lead to independent determinations.⁴³ As a

³⁶ See *Policy Bulletin*; see also section 773(c)(4) of the Act.

³⁷ See *Vietnam Shrimp 11-12*, and accompanying Issues and Decision Memorandum at Comment 1.A.

³⁸ For example, in *Hangers* the Department determined that, although Thailand's GNI was closest in absolute terms to China's GNI, Thailand was not the most appropriate surrogate country because the data it provided were inferior to the data from the selected surrogate country, the Philippines. See *Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2010-2011*, 78 FR 11682 (May 16, 2013), and accompanying Issues and Decision Memorandum at Comment 1.A (quoting the *Policy Bulletin*).

³⁹ See *Fujian Lianfu Forestry Co., Ltd., et. al. v. United States*, 638 F. Supp. 2d 1325 (CIT 2009) (the Department selected India as the primary surrogate country even though there were other economically comparable countries with GNIs closer to the GNI of China).

⁴⁰ See *Wooden Bedroom Furniture from the People's Republic of China: Final Results and Final Rescission in Part*, 75 FR 50992 (August 18, 2010) ("*Furniture from China*").

⁴¹ See *Vietnam Shrimp 11-12*, and accompanying Issues and Decision Memorandum at Comment 1.A.

⁴² See *Hardwood and Decorative Plywood from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013) ("*Plywood*") and accompanying Issues and Decision Memorandum at Comment 7 ("The surrogate country selection criteria do not include or consider whether countries have been selected in previous and unrelated proceedings. The Department selects the primary surrogate country for each proceeding based on the facts of that individual proceeding, regardless of whether the potential surrogate countries under consideration have been previously selected as surrogate countries.").

⁴³ See, e.g., *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47551 (September 16, 2009) and accompanying Issues and Decision Memorandum at Comment 8.

result, we have not considered decisions in past segments of this case in considering whether Indonesia is at a level of economic development comparable to Vietnam in this review.

Given the above, the Department will continue to consider all countries on the list and Indonesia as at levels of economic development comparable to Vietnam for these final results.

B. Significant Producer of Comparable Merchandise

Respondents

- The purpose of this statutory criterion is to ensure that the country selected as the primary surrogate country provides the Department with price data for the inputs used in producing comparable merchandise. The production of a broad category of products, such as “frozen fish fillets,” does not ensure that the surrogate country selected will replicate the specific production experience and characteristics of *pangasius* frozen fillets. Put another way, a country may be a significant producer of frozen tilapia fillets, while having no reliable SV data for the single most important input – whole, live *pangasius* fish.
- Since the record contains numerous production data relating to *pangasius hypophthalmus*, one of three *pangasius* species covered by the scope, the Department should compare the quantity of whole, live *pangasius hypophthalmus* produced by Bangladesh, Indonesia, and the Philippines.⁴⁴ Bangladesh is a significant whole, live *pangasius* producer, which produced 260,990 metric tons (“mt”) of whole, live *pangasius* in 2011-12, while the Philippines only produced 72 mt in 2011.⁴⁵
- Although the Department found Indonesia to be a significant producer of frozen fish fillets in the *Preliminary Results*,⁴⁶ as noted above, Indonesia fails to meet the first and most critical statutory criterion, economic comparability.

Petitioners

- In the absence of reliable, worldwide *pangasius* frozen fillet production data, and consistent with established agency practice in this proceeding, the Department defined comparable merchandise more broadly to encompass frozen fish fillets.⁴⁷ Based on this criterion, Indonesia is a significant producer of comparable merchandise.⁴⁸
- The 2009 FAO data, upon which the Department relied to measure significant production of comparable merchandise, shows that Indonesia and the Philippines remained substantial exporters of frozen fish fillets through 2009, while Bangladesh did not. In the *Eighth AR*, the Department acknowledged that the 2009 FAO data evidenced a decline in Bangladesh’s

⁴⁴ Respondents note that, in a prior review, the Department determined that for purposes of surrogate country selection the comparable merchandise is whole *pangasius* fish used to produce the frozen fish fillets. See Memorandum to the File, from Michael Holton, Senior Case Analyst, “3rd Antidumping Duty Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Selection of a Surrogate Country,” dated August 31, 2007, at 5.

⁴⁵ See *Preliminary Results*, and accompanying Decision Memorandum at 17.

⁴⁶ *Id.*, at 15.

⁴⁷ See, e.g., *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results and Partial Rescission of the Seventh Antidumping Duty Administrative Review*, 77 FR 15039 (March 14, 2012) (“*Seventh AR*”) and accompanying Issues and Decision Memo at Comment I.B; *Eighth AR*, and accompanying Issues and Decision Memorandum at Comment I.B.

⁴⁸ See Petitioners’ February 10, 2014 submission at 27.

exports, but relied on other record evidence, specifically the *Fisheries Statistical Yearbook of Bangladesh*, which suggested that Bangladesh “produced large quantities of frozen fish fillets in 2009 and during the POR, to conclude Bangladesh was a significant producer of comparable merchandise.”⁴⁹ However, in this review the record contains no evidence whatsoever that Bangladesh was, in fact, an exporter or producer of frozen fish fillets during the POR.⁵⁰

- If the Department, as Respondents propose, were to consider whole, live *pangasius* fish to be comparable merchandise to frozen *pangasius* fillets, it must still find that Indonesia is a significant producer of *pangasius*, given that it is the second largest *pangasius* producer in the world after Vietnam.⁵¹
- Should the Department not choose Indonesia as the surrogate country, the Philippines is a significant producer of comparable merchandise.

Department’s Position: Section 773(c)(4)(B) of the Act requires the Department to value FOPs to the extent possible 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. Respondents argue that the Department should select whole, live *pangasius hypophthalmus*, 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’s *Policy Bulletin* provides 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.”⁵² In the *Preliminary Results* and in past reviews, we noted 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.⁵³

⁴⁹ See *Eighth AR*, and accompanying Issues and Decision Memorandum at Comment I.B.

⁵⁰ Although it contains statistics on frozen whole fish, the *Fisheries Statistical Yearbook of Bangladesh* covering the 2011-2012 period contains no data on the volume of frozen fish fillets produced in Bangladesh during the POR. See Petitioners’ June 14, 2014 submission at Exhibit 46. The record does not even contain evidence of *pangasius* processing. The various website pages included in the Respondents’ January 10, 2014 submission, at Tab I.D, identify various suppliers of *pangasius* fish or fillets, but provide no basis to conclude that the products offered were produced in Bangladesh. See Petitioners’ December 6, 2013 submission at Exhibit 3 (affidavit reporting the statement of Mr. K. Saha, Chief Fisheries Extension Officer of the Bangladesh Department of Fisheries, indicating no *pangasius* processing in Bangladesh).

⁵¹ The 2011 and 2012 *IAS* reports of record substantiate the significant scale of *pangasius hypophthalmus* production in Indonesia, and specifically show that Indonesia produced 206,340 mt of *pangasius hypophthalmus* in 2011 and 312,301 mt in 2012. See Petitioners’ May 24, 2013 submission at Exhibit 9.A; Respondents’ December 12, 2013 submission at Exhibit 3.A.

⁵² See *Policy Bulletin* at 2.

⁵³ See, e.g., *Preliminary Results*, and accompanying Decision Memorandum at 17; *Seventh AR*, and accompanying Issues and Decision Memorandum at Comment I.B; *Eighth AR*, and accompanying Issues and Decision Memorandum at Comment I.B.

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.⁵⁴ The *Policy Bulletin* also states that:

The extent to which a country is a significant producer should not be judged against the NME country's production level or the comparative production of the five or six countries on {the Office of Policy's} surrogate country list. Instead, a judgment should be made consistent with the characteristics of world production of, and trade in, comparable merchandise (subject to the availability of data on these characteristics). Since these characteristics are specific to the merchandise in question, the standard for "significant producer" will vary from case to case. For example, if there are just three producers of comparable merchandise in the world, then arguably any commercially meaningful production is significant. Intermittent production, however, would not be significant . . . In another case there may not be adequate data available from major producing countries. In such a case, "significant producer" could mean a country that is a net exporter, even though the selected surrogate country may not be one of the world's top producers.⁵⁵

We continue to find that frozen fish fillets are a more suitable product to consider as comparable merchandise than whole, live *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 because it allows for the selection of surrogate financial ratios from producers of similar products with similar capital structures.⁵⁶

Regarding Petitioners' argument that the FAO data show a precipitous decline for Bangladeshi imports, and thus Bangladesh is not a significant producer, we disagree. The *Policy Bulletin* states that there may not be adequate data available from major producing countries.⁵⁷ As noted above, we relied on FAO data concerning frozen fish fillet exports in 2009, the latest available data. The FAO data indicate that Bangladesh, India, Indonesia, Nicaragua, Pakistan, and the Philippines are exporters of fish fillets, and thus, significant producers of comparable merchandise.⁵⁸ Petitioners speculate that should the frozen fish fillet production trend for Bangladesh continue, Bangladesh would have produced no frozen fish fillets during the POR, and note that the 2011-2012 publication of the *Fisheries Statistical Yearbook of Bangladesh* does not contain frozen fish fillet data. Petitioners' extrapolation, based on 2009 FAO data, that Bangladesh exported no frozen fish fillets during the POR, is mere speculation and is not supported by record evidence. Moreover, because frozen fish fillet production is not included in the latest *Fisheries Statistical Yearbook of Bangladesh*, there would be nothing in that source that would demonstrate whether Bangladesh produced any frozen fish fillets during the POR. In any event, as noted above, the Department relied on 2009 FAO data, the latest data available, to

⁵⁴ See *Policy Bulletin*, at 3.

⁵⁵ *Id.*

⁵⁶ We made an identical finding in the last two reviews. See *Eighth AR*, and accompanying Issues and Decision Memorandum at Comment I.B; *Seventh AR*, and accompanying Issues and Decision Memorandum at Comment I.B.

⁵⁷ See *Policy Bulletin*, at 3.

⁵⁸ See *Preliminary Results*, and accompanying Decision Memorandum at 14-15.

make this determination. Thus, as in previous reviews, we consider Bangladesh to be a significant producer of comparable merchandise.

In summary, given the above, we continue to find that Bangladesh, India, Indonesia, Nicaragua, Pakistan, and the Philippines are exporters of frozen fish fillets and, therefore, significant producers of comparable merchandise.⁵⁹ Because Bolivia was not a producer of comparable merchandise, we have not considered it for surrogate country selection purposes.

C. Data Considerations

Respondents

- The quality of SV data from Bangladesh is vastly superior to that of Indonesia or the Philippines. For example, the Bangladeshi *DAM Data* are detailed, comprehensive, species specific, and is corroborated by multiple independent sources, primary and secondary government and academic reports, studies, and research projects.
- Bangladesh offers the best SV choices for factors other than whole, live *pangasius* fish, such as farming factors.
- Finally, Bangladesh is a tried and tested source of SV data. Since the inception of this case until the last administrative review, the Department consistently found that Bangladesh satisfies all of the statutory criteria and affords the best publicly available, contemporaneous, and reliable SV data.

Petitioners

- The *Policy Bulletin* recognizes that data quality is a “critical consideration affecting surrogate country selection” and, hence, the search for countries that provide reliable data may necessitate a need to “go off” the list “in search of a viable primary surrogate country.” The ability to go “off the list” affords the Department with the needed flexibility to find the “best available” SV information to calculate the most reliable and accurate dumping margins possible.⁶⁰ The record reflects that Indonesia offers the most robust and reliable SVs for Respondents’ reported FOPs, including the key inputs of whole live fish, fish feed, fingerlings, and surrogate financial ratios.⁶¹

Department’s Position: We agree with the Petitioners that Indonesia offers the best available SV information. As noted above, we conclude for the final results that Bangladesh, Indonesia, India, Nicaragua, Pakistan, and the Philippines are 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.”⁶² Importantly, the *Policy Bulletin* explains further that “data quality is a

⁵⁹ See Memorandum to the File, from Paul Walker, Case Analyst, “Ninth Administrative Review, and Aligned New Shipper Review, of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results,” dated September 3, 2013 at Exhibit 9 (“Prelim SV Memo”).

⁶⁰ See *Policy Bulletin*; *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990) (noting the Department’s statutory goal of determining dumping margins as accurately as possible).

⁶¹ See, generally, Petitioners’ May 24, 2013 submission.

⁶² See *Policy Bulletin*.

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.”⁶³

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. When considering what constitutes the best available information, the Department considers several criteria, including whether the SV data are contemporaneous, publicly available, tax and duty exclusive, represents a broad market average, and is specific to the input in question.⁶⁴ The Department’s preference is to satisfy the breadth of the aforementioned selection criteria.⁶⁵ 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 FOPs.⁶⁶ 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.⁶⁷

No party argued for valuing inputs from India, Nicaragua, or Pakistan, no party argued that one of these countries be selected as the surrogate country, nor has the Department any information suggesting any of these three countries would be appropriate surrogate countries for this case. Therefore, we have not considered them for surrogate country selection purposes. As a consequence, the Department will examine the available record evidence from Bangladesh, Indonesia, and the Philippines.

Respondents contend that Bangladesh offers the best available information for SVs, while the Petitioners argue for Indonesia, and in the event Indonesia is not selected, the Philippines. In the comments below, we analyze each of the parties’ comments on SVs in detail. We incorporate our analysis in those comments into our data availability analysis in this section, where we provide some general comments on SV quality and some illustrative examples from the comments below, both of which serve to underscore the quality of the Indonesia data as a whole as the best available information.

⁶³ *Id.*

⁶⁴ 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.

⁶⁵ 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) (“China Shrimp”) and accompanying Issues and Decision Memorandum at Comment 2.

⁶⁶ 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.

⁶⁷ See, e.g., *Mushrooms*, and accompanying Issues and Decision Memorandum at Comment 1.

In past administrative reviews, the Department stated that the whole, live fish SV and financial ratios accounted for the vast majority of NV.⁶⁸ However, in the *Eighth AR*, we examined each FOP's contribution to a representative respondent's NV calculation, and determined that "factors other than the whole fish and surrogate ratios account for a significant portion of direct materials and NV, and we have taken this into account in selecting the primary surrogate country."⁶⁹ The increased vertical integration of producers and exporters in the Vietnamese industry caused the Department to consider the effect of other factors on NV.⁷⁰ In this review, for both mandatory respondents, *i.e.*, HVG and Vinh Hoan, we performed a similar examination of FOP's contribution to the respective company's NV calculations, and came to the same conclusion we did in the *Eighth AR*; specifically, that FOPs other than whole, live *pangasius* and the financial ratios account for significant portions of the Respondents' NV.⁷¹

In many cases, and as noted below especially this one, the Department, to the extent possible, values FOPs using import statistics because they fulfill the Department's SV selection criteria, *i.e.*, import statistics are publicly-available, represent a broad market average, are contemporaneous, sufficiently specific, and tax and duty exclusive.⁷² Since the *Fifth AR*, no party submitted contemporaneous import statistics for Bangladesh, including this review. However, contemporaneous import statistics have been submitted for Indonesia and the Philippines in this review. All other things being equal, we prefer contemporaneous SV information to non-contemporaneous SV information.⁷³ In this review, we note that we are able

⁶⁸ See *Seventh AR*, and accompanying Issues and Decision Memorandum at Comment I.C.

⁶⁹ See *Eighth AR*, and accompanying Issues and Decision Memorandum at Comment I.C.

⁷⁰ Because its production of whole live fish increased, Vinh Hoan had to spend more on other factors, *i.e.*, to feed and raise the fish used in its production process, than it had in the past. See *Eighth AR*, and accompanying Issues and Decision Memorandum at Comment I.C. We also note that HVG, Vinh Hoan, and many of the separate rate respondents, submitted information which indicates that they are "substantially" integrated. See Vinh Hoan's January 22, 2013 submission.

⁷¹ Because these calculations are proprietary in nature, we included these calculations in the relevant analysis memos. See Memo to the File, through Scot T. Fullerton, Program Manager, from Julia Hancock, Senior International Trade Analyst, "Ninth Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Analysis Memo for Vinh Hoan Corporation," dated March 28, 2014 ("Vinh Hoan Analysis Memo"); Memo to the File, through Scot T. Fullerton, Program Manager, from Paul Walker, Case Analyst, "Ninth Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Analysis Memo for Hung Vuong Group," dated March 28, 2014 ("HVG Analysis Memo"). We also note that HVG, Vinh Hoan and many of the separate rate respondents submitted information which indicates that they are "substantially" integrated. See Vinh Hoan's January 22, 2013 submission.

⁷² For example, in *Carbon*, we found that Global Trade Atlas data fulfilled all of these criteria. See, *e.g.*, *Certain Activated Carbon from the People's Republic of China; 2010-2011; Final Results of Antidumping Duty Administrative Review*, 77 FR 67337 (November 9, 2012) ("*Carbon*") and accompanying Issues and Decision Memorandum at Comment I.C.A. In past segments of this case we found that United Nations ComTrade data fulfilled all of the Department's SV criteria. 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) ("*Fifth AR*") and accompanying Issues and Decision Memorandum at Comment II.F.

⁷³ See *Frontseating Service Valves from the People's Republic of China; 2010-2011 Antidumping Duty Administrative Review; Final Results*, 77 FR 67334 (November 9, 2012) and accompanying Issues and Decision Memorandum at Comment 2 (the Department's general practice and preference is to use contemporaneous SV information when it is available over non-contemporaneous information); *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 36168 (June 17, 2013) and accompanying Issues and Decision Memorandum Comment 6 (the Department prefers contemporaneous data over non-contemporaneous data, all other factors being equal).

to value 80 percent (34 of 43)⁷⁴ of the Respondents' FOPs using import statistics if we select Indonesia.⁷⁵ Consequently, due to the large number of FOPs valued using import statistics in this review, Bangladesh is a much less desirable choice for surrogate country selection than is either Indonesia or the Philippines.⁷⁶

In addition to examining the contemporaneous nature of Indonesian and Philippine SVs, as compared to Bangladeshi SVs, we examined the specificity of each country's data. One example, which has significant impact on the Respondents' NV, are fingerlings. As noted above, both HVG and Vinh Hoan are significantly integrated, *i.e.*, they purchase *pangasius* fingerlings which grow in ponds until they are ready to be harvested and processed, rather than purchasing all of the whole, live *pangasius* they consume from suppliers. As explained in Comment 3 below, the Indonesian choices for this SV are more specific than their Bangladeshi counterparts. Because the Respondents purchase fingerlings on a size-specific basis, and only the Indonesian government data provides values based on multiple fingerling sizes, we find that the Indonesia data is much more specific than the Bangladeshi data, which does not provide size-specific fingerling data.

Moreover, we examined whether Indonesian or Bangladeshi SVs are representative of a broad market average. An illustrative example is fish feed, which also has a significant impact on the Respondents' NV, since they are integrated producers. As explained in Comment 4 below, the Indonesian data for this SV represents country-wide data covering two years, 2011 and 2012, whereas the Bangladeshi data is from a limited *pangasius* aquaculture survey, which covers two months in 2007. As such, we find the country-wide Indonesian data to represent a contemporaneous broad market average, whereas the Bangladeshi data is neither a broad market average or contemporaneous.

As a final example, we examined the three sources on the record that parties propose to value the whole, live *pangasius* fish – *Indonesian Aquaculture Statistics* (“*Indonesian AS*”), online data from the Bangladeshi Department of Agriculture Marketing (“*DAM Data*”), and the *Philippines Fishery Statistics* (“*Philippines FS*”). In sum, as explained below in Comment 2, after examining whether these three sources are contemporaneous with the POR, publicly available, free of taxes and duties, representative of a broad market average, and specific to the input, we find that the *Indonesian AS* is the *only* data source to meet the breadth of the Department's SV criteria. In contrast, as explained below, the *DAM Data* is of poorer quality than that submitted in past segments of this proceeding.

⁷⁴ The following FOPs are not valued using import statistics: fingerlings; fish feed; live, whole *pangasius* fish; labor; water; electricity; purchased ice; truck freight; fresh broken fillets; and some fish wastes. See Final SV Memo. Of these FOPs, fingerlings, fish feed, and live, whole *pangasius* fish have the largest impacts on NV. See HVG Analysis Memo and Vinh Hoan Analysis Memo.

⁷⁵ See Final SV Memo.

⁷⁶ In *Shakeproof*, the Court stated that, all other factors being equal, contemporaneous data shall be selected over non-contemporaneous data. See *Shakeproof Assembly Components Division of IL Tool Works, Inc. v. United States*, Court No. 05-00404, Slip Op. 06-129 (CIT 2006) (“*Shakeproof*”). In *Magnesium 11-12*, in selecting the Philippines over Ukraine for the surrogate country, the Department stated that the contemporaneous and complete Philippines data were “particularly desirable” over the Ukraine data which provided non-contemporaneous and incomplete data. See *Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 94 (January 2, 2014) (“*Magnesium 11-12*”) and accompanying Issues and Decision Memorandum at Comment 1.

Based on the totality of the circumstances, the record evidence leads us to find that Indonesia offers the best available information for SVs. Consequently, we selected Indonesia as the primary surrogate country because it is at a level of economic development comparable to Vietnam, is a significant producer of comparable merchandise, and provides the best available information with which to value Respondents' FOPs.

Comment II: Surrogate Value for Whole, Live *Pangasius* Fish

A. Indonesian AS

Respondents

- *Indonesian AS* does not provide the type of price detail that the *DAM Data* does. *Indonesian AS* is an estimated, annual figure of quantities and values, of all sizes and species of *pangasius* cultivated, based on periodic sample surveys of a small group of selected respondents. *Indonesian AS* does not capture the actual prices of *pangasius* fish sold from ponds and other types of aquaculture areas, which are spread out over large geographic regions. *Indonesian AS* is not a broad market average of whole, live *pangasius* pricing, but a broad market survey of aquaculture.
- Should the Department continue to select Indonesia as the surrogate country, it should value whole, live *pangasius* using 2011 and 2012 *Indonesian AS* pond data.
- The Department should continue to exclude *Indonesian AS* floating net and paddy data as it did in the *Preliminary Results*.
- Although the Department included *Indonesian AS* cage data in the *Preliminary Results*, post-*Preliminary Results* record information indicates that non-subject *pangasius jambal* is primarily grown in cages.⁷⁷
- In prior administrative reviews, the Department declined to take into account the production process of a proposed surrogate in determining whether it was specific to the input being valued.⁷⁸ While this practice may be appropriate when there is insufficient record evidence about the manufacturing process of an input, this is not the situation here. In this review, the Department should take into account the particular aquaculture method used by Vietnamese farmers to produce *pangasius* fillets - pond culture - which matches the Respondents' production methodology.⁷⁹

Petitioners

- The Department should continue to value the whole, live *pangasius* using *Indonesian AS* because it is publicly available, contemporaneous, tax and duty exclusive, specific to the input in question and representative of a broad market average.

⁷⁷ See Respondents' December 6, 2013 submission at Exhibit 3.B. In Indonesia, *pangasius hypophthalmus* is primarily raised in ponds, and *pangasius jambal* is primarily raised in cages. *Jambal* needs higher dissolved oxygen for their growth, which means that cage production is preferred method. *Hypophthalmus*, raised in ponds, do not need the higher dissolved oxygen as delivered in cage production. *Id.*

⁷⁸ See *Eighth AR*, and accompanying Issues and Decision Memorandum at Comment I.B.

⁷⁹ As the Department is aware, numerous reviews and on-site verifications state that in Vietnam whole, live *pangasius* are raised in ponds. See, e.g., Petitioners' May 2, 2013 submission at Exhibit 7 (Memorandum to the File, from Susan Pulongbarit, International Trade Compliance Analyst, "Verification of the Sales and Factors of Production Response of Vinh Hoan Corporation," dated December 14, 2010 ("Vinh Hoan Verification Report").

- *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 which represents countrywide values and production volumes.
- *Pangasius hypophthalmus* comprises 90 percent of the *pangasius* grown in Indonesia,⁸⁰ and the prices gathered are for whole, live fish and, therefore, is specific.⁸¹
- The Department should continue to include cage culture in the SV calculation. Record evidence indicates that *pangasius hypophthalmus* is grown in Indonesia through cage culture in addition to pond culture.⁸² Petitioners agree with Respondents that pond culture is the predominant form of *pangasius* aquaculture in Indonesia. However, because *pangasius hypophthalmus* is also grown in cages, the Department should continue to include both the pond culture and cage culture in its SV calculation to capture as much *pangasius hypophthalmus* production as possible.

B. Bangladeshi DAM Data

Respondents

- The fact that *DAM Data* does not contain the quantities of sale is irrelevant to the breadth and coverage of the dataset. The *DAM Data* contains actual weekly point of sale prices.
- Because Mymensingh is not listed as a discreet district in the *DAM Data*, that does not mean that significant quantities of fish cultured in Mymensingh are not included in the data from other districts. The record confirms that the absence of a separate reporting of the Mymensingh data may not be important because the fish produced in that district may be sold in other markets and, thus, are represented in the *DAM Data*.⁸³ DAM officials explained that the apparent missing Mymensingh data can be explained by the survey methods and resale methods of this seasonal product.⁸⁴ The record contains several independent surveys and research papers reporting farmgate prices of whole, live *pangasius* from Mymensingh.⁸⁵
- An official letter issued by the Deputy Director of DAM states that the wholesale prices of *pangasius* in the *DAM Data* refer to the price of whole, live *pangasius* sold in the marketplace.⁸⁶ An affidavit concerning an interview with a DAM official further reiterates this point.⁸⁷ Even though both live and dead *pangasius* 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.
- Moreover, the Department's reliance on the Petitioners' affidavit concerning the DAM data is misplaced because this affidavit is not from a DAM official, but from Petitioners' paid consultant, which recites alleged conversations with DAM officials.⁸⁸
- Since the *Preliminary Results*, the record contains a comprehensive field survey of *pangasius* farming and trading, which notes that a minor percentage of fish are dead at the time of

⁸⁰ See Petitioners' January 10, 2014 submission at at Exhibit 1.E.

⁸¹ See, e.g., Petitioners' May 24, 2013 submission at Exhibit 9.C, Attachment 5.

⁸² See Petitioners' January 10, 2014 submission at Exhibit 1.E.

⁸³ See Respondents' January 10, 2014 submission at Exhibit 1.A.

⁸⁴ *Id.*

⁸⁵ See Respondents' May 24, 2013 submission at Exhibits 14B, 15, 16 & 17.

⁸⁶ *Id.*, at Exhibit 13.B.

⁸⁷ See Respondents' January 10, 2014 submission at Exhibit 1.A.

⁸⁸ See Petitioners' December 6, 2013 submission at Exhibit 3.

arrival to the wholesale market, a smaller percentage are less fresh (sluggish), but the vast majority are whole, live fish.⁸⁹ These data provide a quantitative basis to refute Petitioners' dead fish arguments. The survey is further supported by an affidavit from the Respondents' counsel, based on his interview with a DAM official, confirming that the fish sold in the wholesale markets are either live or sluggish, rather than dead. This affidavit states that DAM surveyors are instructed to take prices on fresh live fish, in order to avoid distortions.⁹⁰

- In the *Preliminary Results*, the Department's statement that Respondents had admitted that the *DAM Data* contains errors is incorrect. In a prior new shipper review, Respondents argued that aberrationally high price data reported from one district was not supported by record evidence, and that a DAM official confirmed that there was an error in the data.⁹¹ The Department misconstrued this isolated aberration to imply that the *DAM Data*, in general, contained errors.
- In the *Preliminary Results*, the Department stated that it was unclear how DAM collects or vets the information it publishes.⁹² Record evidence elaborates on the methodologies used by DAM field officials to gather data and vet the data collected.⁹³

Petitioners

- The *DAM Data* contains no pricing information from Mymensingh, the largest *pangasius* producing district in Bangladesh. Although Respondents claim that Mymensingh's data is included in other districts, there is no record evidence to support this assertion. Compared to *Indonesian AS*, the *DAM Data* represent a substantially smaller quantity of *pangasius*.
- The Respondents only consume live fish.⁹⁴ The record indicates that a significant percentage of dead fish are represented in the *DAM Data*, and dead fish sell for less than live fish.⁹⁵ Respondents' own consultant stated that when the fish arrive at the market a substantial number are dead, or near dead.⁹⁶
- There are numerous conflicting statements by Bangladeshi officials concerning the content of the *DAM Data* with respect to the inclusion of dead fish. In past reviews DAM failed to respond to the Department's request for information concerning whether the *DAM Data* fish prices represented live or dead fish.⁹⁷
- Although Respondents describe certain affidavits submitted by Petitioners as self-serving because local Bangladeshi counsel performed research activities on Petitioners' behalf, many of the affidavits relied upon by the Respondents arguably also are self-serving because they were researched by Respondents' local Bangladeshi counsel.
- 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. DAM failed to respond to the Department's request for information concerning DAM's data collection methods.

⁸⁹ *Id.*

⁹⁰ See Respondents' January 10, 2014 submission at Exhibit 1.A.

⁹¹ *Id.*

⁹² See *Preliminary Results*, and accompanying Decision Memorandum at 18.

⁹³ See Respondents' May 24, 2013 submission at Exhibit 30.

⁹⁴ See HVG's July 8, 2013 submission at 13; Vinh Hoan's July 12, 2013 submission at 22.

⁹⁵ See, e.g., Petitioners' June 14, 2013 submission at Exhibit 31.

⁹⁶ See Respondents' December 6, 2013 submission at Exhibit 1.B.

⁹⁷ See, e.g., *Eighth AR*, and accompanying Issues and Decision Memorandum at Comment I.C.

C. *Philippines FS*

Respondents

- *Philippines FS* do not provide the type of price detail that the *DAM Data* does. The *Philippines FS*, like *Indonesian AS*, is an estimated, annual figure of quantities and values, of all sizes and species of *pangasius* cultivated, based on periodic sample surveys of a small group of selected respondents. The *Philippines FS* do not capture the actual prices of fish sold from ponds and other farming places, which are spread out over large geographic regions. The *Philippines FS* is not a broad market survey of *pangasius* pricing, but a broad market survey of fishpond aquaculture.

Petitioners

- *Philippines FS* provide a broad market average SV that is contemporaneous, publicly available, and specific to whole, live *pangasius hypopthalmus*.

Department’s Position: The record contains three sources to value the whole, live *pangasius* fish: *Indonesian AS*, *DAM Data* from Bangladesh, and *Philippines FS*. In evaluating the data from Bangladesh, Indonesia, and the Philippines, we note that we are, as in the preceding two reviews, 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 *pangasius* fish. While we typically do not scrutinize official government statistics in such detail,⁹⁸ the necessity to respond to the comments raised by interested parties, and to select one of the sources, compels us to do so in this case. We also note that at various points in their case and rebuttal briefs, both Respondents and Petitioners referred to affidavits submitted from other parties as “self-serving.”⁹⁹ The CIT rejected such claims by parties in past segments of this case, explaining that “if an affidavit is made from personal knowledge and sets forth specific facts, then whether it is ‘self-serving’ is beside the point.”¹⁰⁰ The Department agrees and we considered the merits of such affidavits submitted by both parties. Below, we 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.

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.¹⁰¹ Below, we used these criteria to examine the *DAM Data*, *Indonesian AS*, and

⁹⁸ 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) (“*Garlic*”) and accompanying Issues and Decision Memorandum at Comment 2.B (the Department typically finds that official government data and publications to be reliable and credible sources of information).

⁹⁹ See, e.g., Petitioners’ February 10, 2014 submission at 162; Respondents’ January 22, 2014 submission at 11.

¹⁰⁰ See *Catfish Farmers of Am. v. United States*, 35 I.T.R.D. 1491, Slip Op. 13-63 (CIT 2013) at *13 (citing *Caterpillar Inc. v. Sturman Industries, Inc.*, 387 F.3d 1358, 1374-75 (Fed. Cir. 2004); *Payne v. Pauley*, 337 F.3d 767 (7th Cir. 2003)).

¹⁰¹ See, e.g., *CLPP*, and accompanying Issues and Decision Memorandum at Comment 3.

Philippines FS, and to determine which of these sources represents the best available data to value Respondents' whole, live *pangasius* fish input.

Contemporaneous

We note that the *DAM Data*, *Indonesian AS*, and *Philippines FS* all overlap the POR to varying degrees. Although the Respondents contend that the *DAM Data* matches the POR (August 2011 to July 2012), and *Indonesian AS* and *Philippines FS* are yearly data (all of 2011 and 2012), which contain non-contemporaneous months, the Department consistently recognizes that data sources which overlap part of the POR are considered contemporaneous.¹⁰²

Consequently, we continue to find the *DAM Data*, *Indonesian AS*, and *Philippines FS* to be contemporaneous.

Publicly Available

In the last administrative review, we found the *DAM Data* (which is available online), *Indonesian AS*, and *Philippines FS* to be publicly available.¹⁰³ All three sources are published by the respective governments for public consumption. No record evidence in this review points to the contrary, nor has any party argued these sources are not publicly available. Therefore, we continue to find the *DAM Data*, *Indonesian AS*, and *Philippines FS* to be publicly available.

Tax and Duty Exclusive

In the last administrative review, we found the *DAM Data*, *Indonesian AS*, and *Philippines FS* to be tax and duty exclusive.¹⁰⁴ No record evidence in this review points to the contrary, nor has any party argued these sources are not tax and duty exclusive. Therefore, we continue to find all three sources be tax and duty exclusive.

Broad Market Average

In the last two administrative reviews, the Department rejected using *Philippines FS* to value whole, live *pangasius* because it was not as robust of a broad market average as other data sources on the record.¹⁰⁵ We note that the *Philippines FS* data indicates that *pangasius* production in the Philippines was only 72 mt in 2011.¹⁰⁶ This quantity compares unfavorably with the quantities represented by the *DAM Data* (39,000 mt) and *Indonesian AS* (490,000 mt).¹⁰⁷ We disagree with Respondents' assertion that, because the *Philippines FS* contains annual data, it is somehow not representative of a broad market average. We also disagree with Respondents' contention that because *Philippines FS* is national data that it is less of a broad market average, as it 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.¹⁰⁸ On a routine basis, the Department values FOPs using, for example, Global Trade Atlas ("GTA") to determine the SVs for certain inputs, which represents annualized, cumulative quantities and values for the applicable POR.¹⁰⁹ However, given that *Philippines FS* does not represent as robust a data

¹⁰² 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 (the Department found that SV data from a period that overlaps a part of the POR is contemporaneous with that review period).

¹⁰³ See *Eighth AR*, and accompanying Issues and Decision Memorandum at Comment I.C.

source as *Indonesian AS*, we find that the *Philippines FS* does not represent the best available information for valuing the Respondents' whole fish input, in light of the suitability of the remaining sources on the record.

With respect to *Indonesian AS*, we note that the 2011 and 2012 data contain 154 data points from 31 of 33 districts in Indonesia.¹¹⁰ We also note that this data represents a significant quantity of *pangasius*, 490,000 mt.¹¹¹ In addition, the *Indonesian AS* states that it issues customized national questionnaires, indicating that they are meant to capture all-encompassing, species-specific whole country data.¹¹² Therefore, we find that the *Indonesian AS* represents a broad-market average.

With respect to the *DAM Data*, we note that the quality of this data source declined over the past several reviews. In the *Seventh AR*, where we selected the *DAM Data* to value whole, live *pangasius*, the *DAM Data* represented 31 of 68 districts in Bangladesh, contained 767 price observations, which, according to the *Fisheries Statistical Yearbook of Bangladesh 2009-2010*, represented approximately 115,000 mt.¹¹³ Moreover, data from the district with the largest production of *pangasius*, Mymensingh, was included in the *DAM Data*.¹¹⁴ In the *Eighth AR*, the *DAM Data* represented 27 of 68 districts in Bangladesh, contained 491 data points, and according to the *Fisheries Statistical Yearbook of Bangladesh 2010-2011*, represented approximately 52,000 mt.¹¹⁵ Importantly, no data from Mymensingh was reported in the *DAM Data* on the record in that review, despite the fact that Mymensingh produced two thirds of all *pangasius* produced in 2010-2011.¹¹⁶ These dramatic changes in the *DAM Data* between consecutive reviews led the Department to find that "the *DAM Data* do not represent as broad a market average as it did in the last administrative review and not as broad of a market average as the *Indonesian AS*."¹¹⁷ Turning to this review, we note that the *DAM Data* represents only 25 of

¹⁰⁴ See, e.g., *Id.*

¹⁰⁵ See *Seventh AR*, and accompanying Issues and Decision Memorandum at Comment I.C.; *Eighth AR*, and accompanying Issues and Decision Memorandum at Comment I.C.

¹⁰⁶ See *Preliminary Results*, and accompanying Decision Memorandum at 17

¹⁰⁷ See Petitioners' May 24, 2013 submission at Exhibit 9.A; Respondents' December 12, 2013 submission at Exhibit 3.A.

¹⁰⁸ 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.

¹⁰⁹ 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. In addition, the Department based whole live fish for many segments of this proceeding on the aggregated sales quantity and value data reported in financial statements. 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.

¹¹⁰ See Petitioners' May 24, 2013 submission at Exhibit 9.A; Respondents' December 12, 2013 submission at Exhibit 3.A.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ See *Seventh AR*, and accompanying Issues and Decision Memorandum at Comment I.C.

¹¹⁴ *Id.*

¹¹⁵ See *Eighth AR*, and accompanying Issues and Decision Memorandum at Comment I.C.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

68 districts in Bangladesh, contains 730 data points, and according to the *Fisheries Statistical Yearbook of Bangladesh 2011-2012*, represented approximately only 39,000 mt.¹¹⁸ Again, the *DAM Data* on the record of this review contains no information from Mymensingh.¹¹⁹ As noted above, the *Indonesian AS* contains data for 31 of 33 districts in Indonesia, and represents 490,000 mt. As the differences between the *DAM Data* and *Indonesian AS* have become even greater in this review than the last, the Department drew the same conclusion in this review, namely that the *DAM Data* do not represent nearly as much of a broad market average as *Indonesian AS*.

Respondents argue data from Mymensingh is captured by data from other districts because *pangasius* grown in Mymensingh may be sold in other areas. As evidence, Respondents point to an affidavit which recounts a conversation between Respondents' counsel and a DAM official.¹²⁰ Regarding the fact that the *DAM Data* contains data from fewer districts than in previous reviews, the DAM official provided a variety of reasons, notably that not every district produces or sells *pangasius* each day or week, that there are sometimes technical difficulties in transmitting data from the wholesale markets to DAM headquarters, that certain types of markets are preferred in data gathering, or that there may not be significant sales.¹²¹ Further elaborating on why data is missing from Mymensingh, the DAM official stated "fish from this district *may* be sold in other markets, thus the prices of fish from this district *could* be included in other districts (emphasis added)."¹²²

While this DAM official provided reasons why some districts may not have reported data for any given week, he did not directly address the much larger question of why the *DAM Data* covered less and less of Bangladesh's production of *pangasius* over the last three years, when in fact the production of *pangasius* rose dramatically. In 2009-2010 Bangladesh produced 125,000 mt of *pangasius*, in 2010-2011 it produced 184,000 mt, and during the current POR, 2011-2012, Bangladesh produced 250,000 mt of *pangasius*.¹²³ It stands to reason that as the national production of *pangasius* doubled over a two year period, there would be some increase in the reporting of *pangasius* prices reflected in the *DAM Data*. In addition, while the DAM official speculates that *pangasius* fish from Mymensingh *may* be sold in other districts which *could* reflect Mymensingh's prices, he did not address why there has been *no* data for *any pangasius* sales for two years in Bangladesh's largest *pangasius* producing district. This is an especially important question given that, according to this DAM official, DAM sends surveyors to farms to gather data, and larger districts have more surveyors.¹²⁴ Accordingly, we would expect Mymensingh to have a large number of DAM surveyors visiting farms and markets and reporting prices. While this DAM official does not address these concerns, the Petitioners submitted an affidavit from another DAM official who, when asked about the lack of data from Mymensingh, stated that the DAM's website is "still operated on an experimental basis," and due to technical difficulties and logistical limitations, it is not possible for DAM to consistently publish price data from all districts in Bangladesh during any given year.¹²⁵ As a consequence, the affidavits

¹¹⁸ See Respondents' May 14, 2013 submission at Exhibits 1 & 14.A.

¹¹⁹ *Id.*

¹²⁰ See Respondents' January 10, 2013 submission at Exhibit 1.A.

¹²¹ *Id.*

¹²² *Id.* (emphasis added).

¹²³ See Petitioners' February 10, 2014 submission at 52.

¹²⁴ See Respondents' January 10, 2013 submission at Exhibit 1.A.

¹²⁵ See Petitioners' December 6, 2013 submission at Exhibit 3.

submitted by parties which recount conversations with DAM officials further support the Department's finding that the *DAM Data* do not represent as broad a market average as *Indonesian AS*.

Specific to the Input

As noted above, we find that *Philippines FS* does not represent as robust a data source as compared to the *DAM Data* and *Indonesian AS*. An additional concern is the specificity of the *Philippines FS*. We find, as we did in the *Eighth AR*, that although record evidence indicates that *Philippines FS* is specific to *pangasius hypophthalmus*, record evidence also indicates that this data source includes prices for fish that may be further processed, which the Department finds causes price distortions and is not specific to whole, live *pangasius*.¹²⁶

We continue to find, as we did in the last review, that substantial quantities of dead fish may be included in the *DAM Data*. Respondents only consume live fish in their production process.¹²⁷ Multiple sources on the record indicate that dead fish may be included in the *DAM Data*. Two affidavits, submitted by Petitioners, which detail interviews with DAM officials, indicate that the *DAM Data* contains prices for both live and dead fish.¹²⁸ 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 percent), that vendors sell live and dead fish at the markets side-by-side, that the fish are kept in little or no water, and that dead fish are sold at lower prices than live fish.¹²⁹ A *pangasius* market survey, submitted by Respondents, provides similar evidence that 18 percent of fish are dead or sluggish upon arrival at the market.¹³⁰ Record evidence also indicates that *pangasius* cannot survive more than three to four hours without sufficient water.¹³¹ An affidavit, submitted by Respondents, which details an interview with DAM officials, indicates that both live and dead fish are sold in Bangladeshi markets.¹³² Also, an article published by the U.S.

¹²⁶ See, e.g., *Seventh AR*, and accompanying Issues and Decision Memorandum at Comment I.C; see also Respondents' June 14, 2013 submission at Exhibit 2.A, which contains letters from Philippine government officials that indicate *Philippines FS* contains further processed fish).

¹²⁷ See HVG's July 8, 2013 submission at 13; Vinh Hoan's July 12, 2013 submission at 22; Petitioners' May 2, 2013 submission at Exhibit 7 (Vinh Hoan Verification Report). The Vinh Hoan Verification Report states that Vinh Hoan pays less for fish which are sluggish, or near dead. See Vinh Hoan Verification Report at 27. This lends further evidence that the *DAM Data* may undervalue the live whole fish price as fish die throughout the day at the wholesale markets. The Vinh Hoan Verification Report indicates that on each invoice there are two prices for two quantities from the same supplier. *Id.* Company officials indicated that this is because towards the end of each incoming batch, the remaining fish on the delivery boat are worn out and not moving around as much, and they pay the farmer less for these fish. *Id.*

¹²⁸ See Petitioners' June 14, 2013 submission at Exhibit 23 (the prices collected by DAM refer to whole *pangasius*, but not exclusively to live *pangasius*, as many of the fish are dead when sold at the market); see also Petitioners' December 6, 2013 submission at Exhibit 3 (DAM market surveyors collect prices of whole fish, both live and dead, live and dead fish are sold side by side in wholesale markets, and DAM prices are an average price that includes the prices for live and dead fish).

¹²⁹ See Petitioners' June 14, 2013 submission at Exhibit 31.

¹³⁰ See Respondents' December 6, 2013 submission at Exhibit 1.A.

¹³¹ See Petitioners' June 14, 2013 submission at Exhibit 45.

¹³² See Respondents' January 10, 2014 submission at Exhibit 1 (fish brought to and sold in the wholesale markets are typically dead, but may also be alive depending on the distance traveled in transporting the fish from farms).

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.¹³³ Respondents argue that while live and dead fish may be sold at wholesale markets, DAM surveyors are instructed to only report the prices of live *pangasius* fish.¹³⁴ As evidence, Respondents cite to an affidavit which recounts an interview with a DAM official.¹³⁵ Respondents also cite to letters submitted by a DAM official, on government letterhead, which indicates that DAM prices are for whole, live *pangasius*.¹³⁶ However, these letters also state that certain off-line DAM data, considered in a prior review, was publicly available; however, the Department previously determined that this data was not publicly available.¹³⁷ Because this letter was not specific to the *DAM Data* on the record of this review and contained a statement that we found to be false, we assigned little probative value to this letter, as we have in past reviews.¹³⁸

In the past two reviews, the Department issued questionnaires to DAM in order to clarify conflicting information on the record. With regard to the contradictory information on the record as to whether the *DAM Data* includes prices for dead fish, we stated the following in the *Eighth AR*:

It is precisely because of this conflicting information that the Department requested that DAM clarify this issue. However, although provided two opportunities in this administrative review, DAM did not respond to the Department's questions, nor did DAM respond to the Department's questions in the last review. In this case, because DAM has not responded to the Department's questions concerning whether dead fish are included in the *DAM Data*, we cannot discern with certainty whether and to what extent the *DAM Data* represents prices only for whole live fish.

Due to the robustness of the *Indonesian AS* submitted in this review, the Department did not issue questionnaires to DAM. However, the preponderance of the information noted above leads us to the conclusion that the inclusion of dead fish in the *DAM Data* distorts the SV for whole, live *pangasius*, thus rendering it not as specific as *Indonesian AS*.

In contrast to the *DAM Data*, *Indonesian AS* represents quantities and values of whole, live *pangasius*. *Indonesian AS* states that discarded fish, whether because of poison, pollution, disease, and age are not included in the statistics.¹³⁹ In addition, *Indonesian AS* states that the quantities represent the wet weight at landed harvest time, and any fish which may have been processed are converted to the initial live weight.¹⁴⁰ Moreover, the value represents the landed value of the whole, live fish.¹⁴¹ Thus, specific steps are taken to ensure that the *Indonesian AS*

¹³³ See Petitioners' June 14, 2013 submission at Exhibit 63.

¹³⁴ See Respondents May 24, 2013 submission at Exhibit 13.B.

¹³⁵ See Respondents' January 10, 2014 submission at Exhibit 1.A.

¹³⁶ See Respondents' May 24, 2013 submission at Exhibit 13.B.

¹³⁷ See *Seventh AR*, and accompanying Issues and Decision Memorandum at Comment I.C.

¹³⁸ *Id.*; see also *Eighth AR*, and accompanying Issues and Decision Memorandum at Comment I.C.

¹³⁹ See Petitioners' May 24, 2013 submission at Exhibit 9.A; Respondents' December 12, 2013 submission at Exhibit 3.A.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

data is specific to whole, live fish, which is corroborated by a statement from its director whose signature appears in the *Indonesian AS* from 2011.¹⁴² We note that neither Respondents nor Petitioners argue that *Indonesian AS* contains prices for dead fish or, at least with respect to pond data, is not specific to *pangasius hypophthalmus*. Consequently, we find *Indonesian AS* to be specific to the input in question - whole, live *pangasius*.

Indonesian AS reports data for four types of *pangasius* aquaculture areas: pond, cage, floating net, and paddy.¹⁴³ Both Respondents and Petitioners are in agreement that floating net and paddy data found in *Indonesian AS* should be excluded, and that pond data should be included. Respondents argue cage data should not be included in the SV calculation as it is primarily comprised of *pangasius jambal*, as opposed to the in-scope *pangasius hypophthalmus*, and *jambal* is more expensive, which would distort the SV. Indonesian government officials state that there are only two types of *pangasius* commonly grown in Indonesia, *hypophthalmus* and *jambal*, with *hypophthalmus* being the predominant species grown, *i.e.*, 90 percent of all *pangasius* is *hypophthalmus*.¹⁴⁴ Moreover, record evidence indicates that *pangasius hypophthalmus* is grown in cages.¹⁴⁵ Record evidence also indicates that *pangasius jambal* is grown in cages; however, the Department finds that there is no record evidence that the inclusion of some *jambal* in the cage data has any distortion on the prices.¹⁴⁶ In fact, *hypophthalmus* and *jambal* sell at nearly identical prices. We note that the 2012 cage data is *lower* than 2011 and 2012 pond data.¹⁴⁷ Although the average 2011 cage data is higher than the average pond data, it is within the range of pond data prices.¹⁴⁸

Respondents also argue that the Department should only use pond data because they only grow *pangasius* in ponds. We addressed similar arguments in prior segments of this case, and came to the same conclusion here.¹⁴⁹ All Vietnamese-origin *pangasius* fish fillets fall within the scope of the order, regardless of the aquaculture process used to grow the fish from which they are made.¹⁵⁰ Furthermore, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.¹⁵¹ In this case, we note that Bangladesh, Indonesia, and the Philippines produce fish *via* aquaculture

¹⁴² See Petitioners' May 24, 2013, submission at Exhibit 9.C.

¹⁴³ See Petitioners' May 24, 2013 submission at Exhibit 9.A; Respondents' December 12, 2013 submission at Exhibit 3.A.

¹⁴⁴ See Petitioners' January 10, 2014 submission at Exhibit 1.E.

¹⁴⁵ *Id.*

¹⁴⁶ See *Eighth AR*, and accompanying Issues and Decision Memorandum at Comment I.C (when discussing a different Indonesian data source for whole, live *pangasius* that the inclusion of other *pangasius* species do not distort the Indonesian price); see also Final SV Memo..

¹⁴⁷ See Final SV Memo.

¹⁴⁸ *Id.*

¹⁴⁹ See, *e.g.*, *Eighth AR*, and accompanying Issues and Decision Memorandum at Comment I.B.

¹⁵⁰ *Id.*

¹⁵¹ See, *e.g.*, *Vietnam Shrimp 08-09*, 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) 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).

methods. Consequently, we do not find Respondents' argument that fish produced in a pond culture are more specific than fish produced in a cage culture.

Data Reliability

As noted above, the Department issued three questionnaires to DAM over the course of two administrative reviews. DAM did not respond to these questionnaires. As a result, the Department must parse various contradictory affidavits submitted by parties in order to ascertain certain facts of this case.

An affidavit recounting an interview with a DAM official, submitted by Respondents, indicates that DAM has six data reviewers that provide manual reviews of the DAM data, and an internal check conducted by DAM software.¹⁵² Also, to correct an error in the system, an administrator accesses the computer coding level to correct the error.¹⁵³ However, this same official also admitted that there can be technical difficulties with the program, the software filter does not always work, and anomalies may be missed.¹⁵⁴ These statements lend support to affidavits recounting interviews with DAM officials, submitted by Petitioners, that indicates that DAM does not regularly vet its data for errors.¹⁵⁵

Further supporting this premise, in the Respondents' affidavit, the same DAM official was asked about data from the Khagracharia district, and indicated that this must be an error, or typo.¹⁵⁶ In the Khagracharia example, the anomalous data noted by the DAM official first appeared in the *DAM Data* in November 2011, and DAM officials continued to enter such apparently anomalous data in the system for a total of six months, until April 2012.¹⁵⁷ In two separate affidavits recounting interviews with DAM officials, submitted by Respondents, the officials noted that the data was anomalous, the last one in May 14, 2013.¹⁵⁸ Thus, for at least eighteen months, data which DAM admits is anomalous was included in the *DAM Data*.¹⁵⁹ In addition to the Khagracharia data, Narail district's data is three times lower than the *DAM Data* POR average, and Munshigonj district's data is ten times lower than the *DAM Data* POR average.¹⁶⁰ The DAM official did not comment on the data from these districts. Accordingly, we find the affidavit submitted by Respondents concerning the vetting process DAM undertakes, which we do not dispute, to be of limited value in supporting the *DAM data*. Indeed, this affidavit lends further credence to the affidavits submitted by Petitioners that indicate DAM does not regularly vet its data for errors. While we normally find government data such as the *DAM Data* to be reliable, the above-detailed concerns lead us to find that the *DAM Data* is not reliable.¹⁶¹

¹⁵² See Respondents' January 10, 2014 submission at Exhibit 1.A.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ See Petitioners' June 14, 2013 submission at Exhibit 23; Petitioners' December 6, 2013 submission at Exhibit 3.

¹⁵⁶ See Respondents' January 10, 2014 submission at Exhibit 1.A.

¹⁵⁷ See Respondents' May 24, 2103 submission at Exhibit 14.A.

¹⁵⁸ See Respondents' January 10, 2014 submission at Exhibit 1.A; *see also* Respondents' May 24, 2103 submission at Exhibit 14.A.

¹⁵⁹ See Respondents' May 14, 2013 submission at Exhibit 1.

¹⁶⁰ *Id.*

¹⁶¹ See, e.g., *Garlic*, and accompanying Issues and Decision Memorandum at Comment 2.B (the Department typically finds that official government publications to be reliable and credible sources of information).

The Department does not have the same concerns with regard to *Indonesian AS*. Data for *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.¹⁶² Moreover, revisions and corrections are made to *Indonesian AS* data when necessary.¹⁶³ Indeed, Respondents do not contest the reliability of the *Indonesian AS*.

In sum, given the analysis above, we find that *Indonesian AS* represents data that are contemporaneous, publicly available, tax and duty exclusive, a broad market average, and specific to the input. Moreover, the *Indonesian AS* data does not give rise to the unanswered questions posed by the extent to which dead fish 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 Respondents' whole, live *pangasius* input.

Comment III: Surrogate Value for Fingerlings

Respondents

- The record contains a highly credible study, published in 2011, on the aquaculture farming of *pangasius* in Bangladesh (“Bangladeshi Aquaculture Study”), which contains pricing data for *pangasius* fingerlings that was used to value fingerlings in the *Seventh AR*.¹⁶⁴ The record contains additional sources which corroborates this study.¹⁶⁵ The Court of International Trade’s opinions and the Department’s consistent and longstanding policy direct the Department to prefer more specific prices over overly broad price data sources, such as import data.¹⁶⁶
- In the event the Department continues to use Indonesia as the primary surrogate country, fingerlings should be valued using an affidavit from an Indonesian government official, Dodi Sudenda, Head of Centre for Fresh Water Aquaculture Development (“Sudenda Affidavit”).¹⁶⁷ Information has been placed on the record which corroborates the Sudenda Affidavit.¹⁶⁸
- The Department should not use either of the fingerling values placed on the record by Petitioners, as the size values, when converted to a weight basis, result in prices that are aberrational. Converting the pricing information from a price per piece to a price per kilogram (“kg”), results in a very wide range of per kg prices for the same input. Put simply, Respondents believe that some sort of error was reported/created when the fish lengths were

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

¹⁶³ *Id.*

¹⁶⁴ See Respondents’ May 24, 2013 submission at Exhibit 28; *see also Seventh AR*, and accompanying Issues and Decision Memorandum at Comment II.D.1.

¹⁶⁵ See Respondents’ December 6, 2013 submission at Exhibit 1.A; *see also* Respondents’ May 24, 2013 submission at Exhibit 10.

¹⁶⁶ See *Jinan Yipin Corp. v. United States*, 31 CIT 1901, 1937,526 F. Supp. 2d 1347, 1378-79 (2007) (“*Yipin*”); *Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People’s Republic of China*, 68 FR 47538 (August 11, 2003) (“*PVA*”) and accompanying Issues and Decision Memorandum at Comment 5; *Sebacic Acid from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Determination To Revoke Order in Part*, 67 FR 69719 (November 19, 2002) (“*Sebacic Acid*”) and accompanying Issues and Decision Memorandum at Comment 2.

¹⁶⁷ See Respondents’ December 6, 2013 submission at Exhibit 4.H.

¹⁶⁸ *Id.* at Exhibits 4.J, 4.K, & 4.M; Respondents’ May 24, 2013 submission at Exhibit 28.

converted into weights. Accordingly, Petitioners' fingerling data cannot be used as either a SV source or as benchmark prices.

- Should the Department have concerns with the Sudenda Affidavit, either the U.S. Department of Agriculture ("USDA") data or the Indonesian GTA data used in the *Preliminary Results*, HTS 0301.10.1000, could be used.

Petitioners

- A careful review the Bangladeshi Aquaculture Study proposed by Respondents to value fingerlings indicates that this value is on a per piece basis, whereas Respondents reported their fingerling usage on a per kg basis.¹⁶⁹ This renders the Bangladeshi Aquaculture Study per piece price unusable as an SV.
- For the final results, the Department should rely only on fingerling prices that include both per piece and per kg prices. Without both pieces of information, the Department cannot reasonably determine whether a particular value is reasonable, or what fingerling size the price relates to. Further, because the number of fingerlings per kg grows exponentially as the size of the fingerlings decrease, converting per piece prices to a per kg basis requires precise fingerling measurements.¹⁷⁰
- HVG and Vinh Hoan reported purchasing fingerlings of specific sizes.¹⁷¹ For the final results, the Department should assign size specific fingerling SVs to Respondents' fingerling inputs.
- The Sudenda Affidavit, and additional Indonesian benchmark data provided by Respondents, are for only one size of fingerling and are not based on reasonable size to weight ratios.¹⁷² Petitioners submitted two additional affidavits from Indonesian government officials, one of which Respondents argue corroborates the Sudenda affidavit.¹⁷³ The affidavits are from two Indonesian government officials, Dr. Djumbuh Rukmono ("Rukmono Affidavit") and Mr. Soetrisno ("Petitioners' Soetrisno Affidavit").¹⁷⁴ The Department should value fingerlings using the Rukmono and Soetrisno Affidavits because these sources provide multiple size specific prices and also provide a detailed size to weight conversion methodology.
- The per piece prices in the Rukmono and Soetrisno Affidavits are corroborated by the values reported by the Respondents and, in fact, are generally in the lower end of the range reported by Respondents; thus, the prices in these affidavits reflect a conservative valuation of *pangasius* fingerlings in Indonesia.¹⁷⁵
- On a per piece basis, the smaller the fingerling, the lower the price. On a per kg basis, smaller fingerlings are higher priced because the smaller the fingerling, the more fingerlings there are per kg.¹⁷⁶ Respondents argue this leads to aberrational prices for smaller

¹⁶⁹ See Respondents' May 24, 2103 submission at Exhibit 28.

¹⁷⁰ See Petitioners' January 10, 2014 submission at Exhibit 3.

¹⁷¹ See Vinh Hoan's July 12, 2013 submission at Exhibit 15; see also HVG's July 8, 2013 submission at Exhibit 1.

¹⁷² One of Petitioners' affiants states that the Respondents' size to weight ratios cannot be correct. See Petitioners' January 10, 2014 submission at Exhibit 5.B.

¹⁷³ Respondents submitted an affidavit from Mr. Soetrisno. Petitioners contacted Mr. Soetrisno after the Respondents, requesting he clarify some of his statements to the Respondents.

¹⁷⁴ See Petitioners' January 10, 2014 submission at Exhibit 3, Attachment 3.

¹⁷⁵ See Petitioners' February 11, 2014 submission at 151; see also Respondents' December 6, 2013 submission at Exhibit 4.M.

¹⁷⁶ One kg of very small 0.5 to 1 inch long fingerlings contains tens of thousands of fish, while a kg of larger fingerlings may contain only a few hundred fish. See Petitioners' January 10, 2104 submission at Exhibit 3.

fingerlings. Of course, the higher number of fingerlings eventually results in a higher number of adult fish; thus, it is not surprising that one dense kg of incredibly small fingerlings can command a higher price.

- By merely pointing to the high values reported by two separate officials for smaller sized fingerlings, without specific and objective record evidence to support their position that the values are aberrational, Respondents failed to meet their burden of providing a “colorable claim” that the data is not reliable.¹⁷⁷
- The Department should not value fingerlings using USDA data because the United States is not economically comparable to Vietnam and because the data is representative of catfish, not *pangasius*.
- Petitioners provide several alternative methods of calculating fingerlings using the Rukmono and the Soetrisno Affidavits.

Department’s Position: We agree with the Petitioners that the Rukmono Affidavit provides the best available information to value Respondents’ *pangasius* fingerling input. 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 are specific to the input, representative of broad market averages, net of taxes and import duties, contemporaneous with the POR, publicly-available, and from a single surrogate ME country.¹⁷⁸

The Rukmono Affidavit is a response to the Petitioners’ letter to the Indonesian government, specifically the Directorate General of Aquaculture (“DGA”), which is a part of the Ministry of Marine Affairs and Fisheries of the Republic of Indonesia. This is the same department that publishes *Indonesian AS*. The Rukmono Affidavit is signed and on Ministry of Marine Affairs and Fisheries letterhead.¹⁷⁹ Thus, we find the prices in the affidavit to be reliable.

According to the Rukmono Affidavit, the *pangasius* fingerling prices it provides are publicly available, contemporaneous, and tax exclusive.¹⁸⁰ The fingerling prices in the affidavit are from the largest three (of five) *pangasius* producing areas in Indonesia, Sumatera (Jambi), Java (Sukabumi), and Kalimantan (Mandiangan).¹⁸¹ As such, we find that this data sufficiently represents a broad market average. We also find that the Rukmono Affidavit provides the most specific *pangasius* fingerling prices on the record. Vinh Hoan and HVG reported purchasing fingerlings of specific sizes.¹⁸² The Rukmono Affidavit provides fingerling prices based on eight size bands.¹⁸³ Although the Petitioners’ Soetrisno Affidavit provides all of the information the Rukmono Affidavit provides, we note that the Petitioners’ Soetrisno Affidavit only contains

¹⁷⁷ See, e.g., *Tapered Roller bearings and Parts Thereof, Finished and Unfinished, from the People’s Republic of China*, 75 FR 844 (January 6, 2010) and accompanying Issues and Decision Memo at Comment 2.

¹⁷⁸ 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).

¹⁷⁹ See Petitioners’ January 10, 2014 submission at Exhibit 3.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*; see also Final SV Memo.

¹⁸² See Vinh Hoan’s July 12, 2013 submission at Exhibit 15; see also HVG’s July 8, 2013 submission at Exhibit 1.

¹⁸³ *Id.*

seven size bands and, therefore, is less specific than the Rukmono Affidavit.¹⁸⁴ For these reasons we find that the Rukmono Affidavit meets the Department's SV criteria and, consequently, represents the best available information to value Respondents' *pangasius* fingerling input.

Regarding Respondents' proposed Indonesian SV and benchmark data, we find that the affidavits provided by the Respondents do not provide prices which are as specific as the Rukmono Affidavit. Notably, Respondents' affidavits provide prices for only a single size of fingerling,¹⁸⁵ whereas Respondents consume a variety of sizes of fingerling. Moreover, the relationship of the size to price in Respondents' data is at odds with other record information.¹⁸⁶ For example, the Soetrisno affidavit submitted by the Respondents indicates that one kg of fingerlings, sized 1.5 to 2.0 inches, is made up of 200 individual fingerlings.¹⁸⁷ We note that the Soetrisno affidavit submitted by the Respondents does not indicate whether this size is the height, width or length.¹⁸⁸ However, the Petitioners' Soetrisno Affidavit indicates that fingerlings approximately 4.0 inches in length would be equal to 200 fingerlings per kg.¹⁸⁹ Moreover, Respondents did not submit the correspondence with the Indonesian government officials which led to the resulting affidavits. As the Department does not know what questions were asked of the government officials, there is no way to put the Respondents' affidavits in context. For example, we do not know if the single size refers to length (the unit of measure which Respondents purchase fingerlings), height or width. A comparison of the Rukmono Affidavit and the Sudenda Affidavit indicates that Respondents' proposed prices may be based on height, rather than length. This would explain why the same Indonesian government official, Mr. Soetrisno, would give seemingly different answers with respect to the price of certain sized fingerlings.

Although Respondents argue that the Rukmono Affidavit provides prices for smaller fingerlings which are aberrational, to discern whether a particular value is aberrational, the Department typically compares the prices for an input from all countries found to be at a level of economic development comparable to the NME whose products are under review.¹⁹⁰ In this review, with data points from only two such countries, and Indonesian data which are not on the same basis, it is not possible to draw any reasonable conclusions as to whether the Rukmono Affidavit is aberrational relative to the other Indonesian prices, whether it is aberrational relative to the

¹⁸⁴ *Id.*

¹⁸⁵ See Respondents' December 6, 2013 submission at Exhibits 4.H-K, M.

¹⁸⁶ The Rukmono and Soetrisno Affidavits provide piece to weight (*i.e.*, kg) conversion ratios which are promulgated by the National Standardization Agency of Indonesia and known as Indonesian National Standard (abbreviated SNI). As these conversion ratios are official Indonesian government data, we find them to be reliable. See, *e.g.*, *Garlic*, and accompanying Issues and Decision Memorandum at Comment 2.B (the Department typically finds that official government data and publications to be reliable and credible sources of information).

¹⁸⁷ See Respondents' December 12, 2013 submission at Exhibit 4.J.

¹⁸⁸ *Id.*

¹⁸⁹ See Petitioners' January 10, 2014 submission at Exhibit 3, Attachment 3.

¹⁹⁰ See, *e.g.*, *Certain Preserved Mushrooms from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 55808 (September 11, 2012) ("*Mushrooms 2012*") and accompanying Issues and Decision Memorandum at Comments 3 & 4.

Bangladeshi price, or whether the Indonesian data falls near the average of such values.¹⁹¹ In any event, the Department has not used the lower end of the per kg fingerling prices the Respondents argue is aberrational.¹⁹²

Regarding Respondents' proposed Indonesian HTS, we note that record information indicates that this HTS is comprised of ornamental fish fingerlings, and *pangasius* is not an ornamental fish.¹⁹³ As a result, we do not find this value to be specific to the input in question.

Regarding Respondents' Bangladeshi Aquaculture Study, we find this source to be non-contemporaneous. Although published in 2011, the data was gathered in September and October of 2007.¹⁹⁴ Like the Rukmono Affidavit, the data was gathered from three of the larger *pangasius* producing regions in Bangladesh (Bogra, Mymensingh and Jessor); however, it only covers two months of data, whereas the Rukmono Affidavit covers two years of data.¹⁹⁵ Consequently, we do not find that this data represents as broad of a market average as the Rukmono Affidavit. Moreover, this data does not provide size specific values for fingerlings; thus, the Department finds that it is not as specific as the Rukmono Affidavit. In sum, we find that the Bangladeshi Aquaculture Study does not fulfill the SV selection criteria as well as the Rukmono Affidavit.

In support of the Bangladeshi Aquaculture Study, Respondents contend that the CIT's opinions and the Department's policy require the Department to select more specific price quotes over broad price data, such as import statistics. We disagree. 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.¹⁹⁶ The Department's preference is to satisfy the breadth of the aforementioned selection criteria, not one alone.¹⁹⁷ Moreover, on many occasions, the Court sustained the Department's use of broader basket HTS categories for SVs as supported by substantial evidence.¹⁹⁸

¹⁹¹ See *Shandong Huarong Gen. Corp. v. United States*, 159 F. Supp. 2d 714, 719 (CIT 2001) (holding that if plaintiff does not provide sufficient data for the Department to use, the Department has much latitude in choosing the best available information); see also *QVD Food Co. v. United States*, 658 F.3d 1318, 1324 (Fed. Cir. 2011) (citations omitted) (explaining that "the burden of creating an adequate record lies with {interested parties} and not with Commerce").

¹⁹² Because the discussion of the size of fingerlings consumed by Respondents, and the application of those sizes to the Soetrisno affidavit are proprietary, we provided more explanation in the Final SV Memo. See Final SV Memo.

¹⁹³ See Respondents' December 6, 2013 submission at Exhibit 4.A & B.

¹⁹⁴ See Respondents' May 24, 2013 submission at Exhibit 28.

¹⁹⁵ *Id.*; see also Petitioners' January 10, 2014 submission at Exhibit 3, Attachment 3.

¹⁹⁶ See, e.g., *CLPP*, and accompanying Issues and Decision Memorandum at Comment 3.

¹⁹⁷ See, e.g., *China Shrimp*, and accompanying Issues and Decision Memorandum at Comment 2.

¹⁹⁸ See, e.g., *Writing Instrument Mfrs. Ass'n, Pencil Section v. Dep't of Commerce*, 984 F. Supp. 629, 640 (CIT 1997) ("*Writing Instruments*"); *Guangdong Chems. Imp. & Exp. Corp. v. United States*, 460 F. Supp. 2d 1370-71 (CIT 2006) ("*Guangdong Chems*"); *Peer Bearing Co. Changshan v. United States*, 752 F. Supp. 2d 1333, 1335 (CIT 2011) ("*Peer Bearing*"); *Dorbest Ltd. v. United States*, 462 F. Supp. 2d 1289-90 (CIT 2006) (sustaining the Department's use of a data set that included merchandise other than that being valued).

Comment IV: Surrogate Value for Fish Feed

Respondents

- Fish feed should be valued using the Bangladeshi Aquaculture Study, which contains pricing data for *pangasius* feed that was used to value fish feed in the *Seventh AR*.¹⁹⁹ The record contains an additional source which corroborates this study.²⁰⁰ The CIT's opinions, and the Department's consistent and longstanding policy, is to prefer more specific prices over overly broad price data sources, such as import data.²⁰¹
- The value used in the *Preliminary Results*, HTS 2309.90.1300, is specific to shrimp feed, not fish feed, and is aberrational.
- In the event that the Department continues to use Indonesia as the primary surrogate country in this review, fish feed could be valued using (a) prices from several feed producers for *pangasius* feed,²⁰² or (b) an article written by the head of the Indonesian Feed Mills Association which provides nationwide prices for *pangasius* feed in 2011 and 2012.²⁰³
- The Department should not use Petitioners' Indonesian prices because they are not contemporaneous. Additionally, these values are not as specific as Respondents', *e.g.*, one quote is for fingerling feed, one quote is from the Philippines, and one quote is for a feed with a very high protein content. Moreover, the Rukmono Affidavit represents prices from small hatcheries and, thus, is not a broad market average.

Petitioners

- In addition to not being contemporaneous, the Bangladeshi Aquaculture Study is not specific to the types of fish feed used by the Respondents. Specifically, neither the Bangladeshi Aquaculture Study, nor the Bangladeshi benchmark information, include information on the pellet size, whether the feed is floating or sinking, or the protein content.
- Vinh Hoan specifically stated that it only used floating, pelleted feed during the POR.²⁰⁴ The Vinh Hoan Verification Report notes the exact types of *pangasius* feed Vinh Hoan consumes and their protein contents.²⁰⁵ This information is consistent with the responses in this review, which reference the same feeds noted in the Vinh Hoan Verification Report.²⁰⁶ HVG provided sample fish feed invoices which demonstrate that it purchased fish feed with nearly identical protein contents to that of Vinh Hoan.²⁰⁷ Although HVG's questionnaire responses are less clear on all types of feed consumed, it is reasonable for the Department to rely on Vinh Hoan's specifications to determine the type of feed used by HVG.²⁰⁸

¹⁹⁹ See Respondents' May 24, 2013 submission at Exhibit 28; *see also Seventh AR*, and accompanying Issues and Decision Memorandum at Comment II.D.1.

²⁰⁰ See Respondents' December 6, 2013 submission at Exhibit 1.A.

²⁰¹ See *Yipin* 526 F. Supp. 2d 1347, 1378-79 (2007); *PVA*, and accompanying Issues and Decision Memorandum at Comment 5; *Sebacic Acid*, and accompanying Issues and Decision Memorandum at Comment 2.

²⁰² See Respondents' December 6, 2013 submission at Exhibits 5.O-S.

²⁰³ See Respondents' December 11, 2013 submission at Exhibit 1.

²⁰⁴ See Vinh Hoan's July 12 2013 submission at 18.

²⁰⁵ See Vinh Hoan Verification Report at 45-46.

²⁰⁶ See Vinh Hoan's July 12, 2013 submission at Exhibit 13.

²⁰⁷ See HVG's July 8, 2013 submission at Exhibit 8.

²⁰⁸ See *Shandong Huarong General Group Corp. v. United States*, 60 Fed. Appx. 797, 799 (Fed. Cir. 2003)

(upholding the Department's reliance on specifications of one respondent's FOPs to reach conclusions regarding the specifications of another Respondents' FOPs).

- Petitioners submitted an affidavit from an Indonesian government official, the Rukmono Affidavit, and two Indonesian *pangasius* feed producers.²⁰⁹ The protein content listed in the Rukmono Affidavit matches that of the feed used by Respondents. Although not contemporaneous, it is not that far removed from the POR, and the Department regularly inflates or deflates SVs in order to ensure contemporaneity.
- With respect to Respondents' contention that Rukmono Affidavit prices come from small scale hatcheries and not large scale farmers, Vinh Hoan reported it operated a hatchery for which it reported FOPs.²¹⁰ In addition, the Rukmono Affidavit contains prices for both fingerling feed and fish feed.²¹¹
- The Indonesian feed producers' price quotes cover the protein content of feed consumed by Respondents, and one quote is for a minimum order of 7 mt, representing a broad market average, and the other quote provides prices for ten different types of *pangasius* feed. The Indonesian feed producers' price quotes, and article, submitted by Respondents are not specific to the protein percentages consumed by the Respondents. In addition, the article contains no information on how this data was collected, or which specific feed products it covers.
- The price quote from a Philippine company appears to be the identical feed submitted by the Respondents as benchmark information for their Indonesian feed prices because the photographs bear this Philippine company's name and brand.²¹²

Department's Position: At the outset, we agree with Respondents that the HTS used in the *Preliminary Results* is specific to shrimp feed and not *pangasius* feed. Consequently, we will not use this data in the final results. The record contains many alternative SVs from Bangladesh and Indonesia which are specific to *pangasius* feed. We evaluated the other sources on the record and, as explained below, find prices in the article appearing in the publication *Atrobos Aqua* is the best available information to value this input.

As noted above, when considering what constitutes the best available information, the Department considers several criteria, including whether the SV data is representative of a broad market average.²¹³ For example, the Department does not prefer regional data²¹⁴, or data representative of single company's experience.²¹⁵ Moreover, we attempt to find the most representative and least distortive market-based value, because the more broad-based the value, the greater the likelihood that the value is representative.²¹⁶ Both Petitioners and Respondents submitted SVs which are price quotes from individual companies. The Department does not

²⁰⁹ See Petitioners' January 10, 2014 submission at Exhibit 3, Attachment 3.

²¹⁰ See Vinh Hoan's April 22, 2013 submission at 6-7.

²¹¹ See Petitioners' January 10, 2014 submission at Exhibit 3, Attachment 3.

²¹² See Respondents' December 6, 2013 submission at Exhibits 5E & N.

²¹³ See, e.g., *CLPP*, and accompanying Issues and Decision Memorandum at Comment 3.

²¹⁴ See *Wuhan Bee Healthy Co., Ltd. v. United States*, 29 CIT 1275, 1277-78 (CIT 2005).

²¹⁵ See, e.g., *Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review*, 71 FR 66304 (November 14, 2006) ("*Brake Rotors*") and accompanying Issues and Decision Memorandum at Comment 3.

²¹⁶ 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) and accompanying Issues and Decision Memorandum at Comment 5.

consider the experience of a single company to represent a broad market average when better information is available on the record.

Regarding the Bangladeshi Aquaculture Study, we find this source to be non-contemporaneous. Although published in 2011, the data was gathered in September and October of 2007.²¹⁷ Like the Rukmono Affidavit, the data was gathered from three of the larger *pangasius* producing regions in Bangladesh (Bogra, Mymensingh and Jessor); however, it only covers two months of data.²¹⁸ Consequently, we do not find that this data represents as broad a market average as other sources on the record. In support of the Bangladeshi Aquaculture Study, Respondents contend that the CIT's opinions and the Department's policy direct us to prefer more specific price quotes over broad price data such as import statistics. As noted above, we disagree. 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.²¹⁹ The Department's preference is to satisfy the breadth of the aforementioned selection criteria, not one alone.²²⁰ Moreover, on many occasions, the CIT sustained the Department's use of broader basket HTS categories for SVs as supported by substantial evidence.²²¹ In sum, we find that the Bangladeshi Aquaculture Study does not fulfill the SV selection criteria as well as other sources on the record. In addition, the Bangladeshi Aquaculture Study is not from the primary surrogate country, Indonesia.

The Rukmono Affidavit is a response to Petitioners' letter to the Indonesian government, specifically the DGA, which is a part of the Ministry of Marine Affairs and Fisheries of the Republic of Indonesia. This is the same department which publishes *Indonesian AS*. The Rukmono Affidavit is signed and on Ministry of Marine Affairs and Fisheries letterhead.²²² According to the Rukmono Affidavit, the *pangasius* feed prices it provides are publicly available and tax exclusive.²²³ The feed prices are from the largest three (of five) *pangasius* producing areas in Indonesia, Sumatera (Jambi), Java (Sukabumi), and Kalimantan (Mandiingin).²²⁴ The Rukmono Affidavit also provides the most specific *pangasius* feed prices on the record because the protein content matches that of the feed used by Respondents²²⁵ and includes fingerling feed, which Respondents consumed. However, this data appears to encompass the immediate time period the affidavit was submitted, January 2014, as the affidavit note the feed prices are "current" prices.²²⁶ As such, this value is neither contemporaneous nor representative of a broad market average.

²¹⁷ See Respondents' May 24, 2013 submission at Exhibit 28.

²¹⁸ *Id.*

²¹⁹ See, e.g., *CLPP*, and accompanying Issues and Decision Memorandum at Comment 3.

²²⁰ See, e.g., *China Shrimp*, and accompanying Issues and Decision Memorandum at Comment 2.

²²¹ See, e.g., *Writing Instruments*, 984 F. Supp. 629, 640 (CIT 1997); *Guangdong Chems*, 460 F. Supp. 2d 1370-71 (CIT 2006); *Peer Bearing*, 752 F. Supp. 2d 1333, 1335 (CIT 2011); *Dorbest*, 462 F. Supp. 2d 1289-90 (CIT 2006).

²²² See Petitioners' January 10, 2014 submission at Exhibit 3.

²²³ *Id.*

²²⁴ *Id.*; see also Final SV Memo.

²²⁵ See Vinh Hoan's July 12, 2013 submission at Exhibit 13; see also HVG's July 8, 2013 submission at Exhibit 8.

²²⁶ See Petitioners' January 10, 2014 submission at Exhibit 3. The Rukmono affidavit notes that the fingerling prices are for 2011 and 2012, however, the feed prices are "current" prices.

The article appearing in the publicly available publication *Atrobos Aqua*, which quotes the head of the Indonesian Feed Mills Association, represents the best available information to value Respondents' *pangasius* feed input. This data is contemporaneous with the POR and represents national Indonesian data for 2011 and 2012, consisting of 192,000 mt.²²⁷ Therefore, we find this represents a broad market average. The Indonesian Feed Mills Association would most likely be inclusive of the company data submitted by parties, as these companies are Indonesian producers of *pangasius* feed. Petitioners argue that the *Atrobos Aqua* does not state the protein percentages and other factors which would make it specific to the feed Respondents consume. As noted above, while the Rukmono Affidavit contains this information, and the article makes no mention of protein content, the feed prices listed in *Atrobos Aqua* are for *pangasius* feed and, thus, are sufficiently specific.²²⁸ No record information indicates that this value is not tax and duty exclusive. Because the data is specific, represents a broad market average and is contemporaneous, we find this data source best meets the Department's SV criteria and, consequently, represents the best available information to value Respondents' *pangasius* feed input.

Comment V: Surrogate Value for Rice Husk

Respondents

- The Department should value rice husk using the average of two price quotes from traders of rice husk in Bangladesh.²²⁹ The Bangladeshi rice husk quotes are specific to the input and actual business transactions (*i.e.*, they contain detailed terms and conditions of sale). Contrary to Petitioners' SV submissions, the record evidence does not demonstrate that the sellers of the Bangladeshi rice husk price quotes do not produce and sell rice husk.
- The Indonesian GTA import data under HTS 1213.00.00.00, "Cereal Straw and Husks, Unprepared, Whether or Not Chopped, Ground, Pressed, or in the Form of Pellets," is an overly broad HTS category, and thus, is not specific to the rice husk input. The Indonesian GTA import data is based on only a single month of data from Australia and, therefore, this data does not represent a broad-market average. Australia is not known as a large rice-producing country; consequently, it is illogical to assume that Australia produces rice husks. Moreover, this data is not contemporaneous. Also, the Indonesian GTA import data, \$0.68/kg, is aberrationally high in comparison to the various benchmarks²³⁰ on the record.
- Citing to *Blue Field*, Respondents argue that HTS 1213.00, which was used to value rice straw in that case (and for rice husks in this case), cannot be specific to two different inputs.²³¹
- Respondents' Soestrino Affidavit²³² demonstrates that Indonesia did not import rice husks in 2011 and 2012 because Indonesia has sufficient rice husks to supply domestic demand.

²²⁷ See Respondents' December 11, 2013 submission at Exhibit 1.

²²⁸ *Id.*

²²⁹ The "Bangladeshi rice husk price quotes" are from: (1) a November 13, 2012, price quote issued by Seraph International, Chittagong; and (2) a November 20, 2012, price quote issued by SR Apparels, Dhaka. See Respondents' Surrogate Value Submission, at Exhibit 7.

²³⁰ See Respondents' January 2, 2014 submission at Exhibit 16.

²³¹ See *Blue Field (Sichuan) Food Industrial Co., Ltd. v. United States*, 949 F. Supp. 2d 1311 (CIT 2013) ("*Blue Field*").

- If the Department chooses to value rice husks with Indonesian data, there is a price quote from constructed value (“CV”). Gemilang Multi Karya to PT. Vitafarm Indonesia²³³ (“Vitafarm rice husk price quote”) that meets the Department’s SV criteria.

Petitioners

- The Bangladeshi rice husk price quotes are unreliable because: (1) Seraph International’s website does not state that it offers rice for sale; (2) the price quote from Seraph International does not detail the numerous discussions the requestor had with other rice processors/rice husk traders; (3) printouts of SR Apparels’ website shows it is an exporter of clothing apparel, not rice or rice husk; and (4) the price quote from SR Apparels is not on official company letterhead, nor does it include correspondence regarding details of how the price quote was obtained.
- Respondents’ have not submitted record evidence showing that the items listed in HTS 1213.00.00.00 are sufficiently dissimilar to rice husk to render the HTS category non-specific. Import HTS categories are specific to multiple items as long as the “basket” does not distort the value as to a particular item, and there is no evidence that this is the case here. In addition, there is no record evidence demonstrating that Australia is not a large rice-producing country.
- The Department repeatedly acknowledges that import data is preferable because the data represents a broad-market average, as compared to price quotes that represent single commercial transactions. There is data from Australia and the United States on the record.
- The Indonesian GTA import data is not aberrationally high because the price, \$0.68/kg, falls within the range of the benchmark values on the record.
- Respondents’ Soetrisno Affidavit is not reliable because the affidavit does not explain how the affiant (an aquaculture expert) has knowledge of agriculture commodities and did not identify the source of the affiant’s information.
- The Vitafarm rice husk price quote is not suitable for SV purposes.

Department’s Position: The Department agrees with Petitioners that the Indonesian GTA import data reported under HTS 1213.00.00.00, “Cereal Straw and Husks, Unprepared, Whether or Not Chopped, Ground, Pressed, or in the Form of Pellets,” is the best available information for valuing rice husk. On the record of this review, there are the following sources for valuing rice husk: (1) the Bangladeshi rice husk price quotes; (2) the Vitafarm rice husk price quote from Indonesia; (3) the Indonesian GTA import data reported under HTS 1213.00.00.00; and (4) the Philippines GTA import data reported under HTS 1213.00.00.00.²³⁴ We address the suitability of each of these values below.

²³² The affidavit is from Coco Kokarin Soestrino, Director for Production of the DGA at Indonesia’s Ministry of Marine Affairs and Fisheries, hereafter referred to as “Respondents’ Soestrino Affidavit.” See Respondents’ December 6, 2013 submission at Exhibit 11D.

²³³ *Id.* at Exhibit 11.E.

²³⁴ The Department notes that no party mentioned the Philippines GTA import data for consideration in valuing rice husks in their briefs. However, for surrogate valuation purposes, the Department considered this value. See Petitioners’ Surrogate Country Comments/Factor Values Data (May 24, 2013) at Exhibit 36.

A. Indonesian HTS 1213.00.00

As an initial matter, consistent with its findings on GTA data in other proceedings, the Department finds that the Indonesian GTA import data is publicly-available and free of taxes and duties.²³⁵ The parties dispute whether this source is specific to the input, representative of broad market averages, and contemporaneous with the POR. We find that the data satisfies each of these criteria.

Contrary to Respondents' arguments, the Department finds that the Indonesian GTA import data reported under HTS 1213.00.00.00 is specific to rice husks. Specifically, the Department notes that husk is one of the items covered by the plain terms of the description for HTS 1213.00.00.00. Although Respondents claim that HTS 1213.00.00.00 covers other items not specific to rice husk, the Department finds that Respondents failed to provide record evidence, such as detailed entries listing of the import data, showing that the HTS category primarily consists of dissimilar items rendering the category non-specific.²³⁶ Additionally, the Department notes that the courts upheld the Department's use of broad import categories when the category's selection was supported by substantial evidence.²³⁷

The Respondents' reliance upon *Blue Field* for the proposition that a HTS category cannot be specific to two different inputs (*i.e.*, rice straw in that proceeding and rice husks in this proceeding) is misplaced. Specifically, the Department notes that *Blue Field* addresses whether the HTS category selected for rice straw was specific to the input, and whether aberrational problems in the data may result from non-specific items in the HTS category.²³⁸ However, the Department finds that the CIT, in *Blue Field*, makes no finding that determining a HTS category to not be specific to an input in one proceeding renders that same HTS category non-specific to another input in a different proceeding. The Department notes that it has been the Department's practice in different proceedings to value different inputs using the same HTS category when the record evidence supports such a selection. Accordingly, the Department finds that the Indonesian GTA import data reported under HTS 1213.00.00 is specific to rice husks.

The Department also disagrees that the Indonesian GTA import data reported under HTS 1213.00.00.00 is not a broad-market average. In the *Preliminary Results*, the rice husk SV, \$0.68/kg, was calculated based on October 2012 import data from Australia with a quantity of 21,403 kg.²³⁹ The Department finds that the fact that the import data for the rice husk SV is based on a data from a single country does not demonstrate that it is not broad-market average

²³⁵ See, e.g., *Mushrooms 2012*, and accompanying Issues & Decision Memorandum at Comment 3.

²³⁶ Respondents also argued that the Indonesian HTS category for fish oil is overly broad and not specific to the input in question. Unlike for rice husks, there is information on the record showing that the Indonesian HTS category for fish oil is overly broad and contains dissimilar items, such as refined fish oil, thereby rendering the HTS category not specific to the input. For further discussion, see Comment XXIII.

²³⁷ See, e.g., *Writing Instruments*, 984 F. Supp. 629, 640 (CIT 1997); *Guangdong Chems*, 460 F. Supp. 2d at 1370-71; *Peer Bearing*, 884 F. Supp. 2d at 1333-35; cf. also *Dorbest*, 462 F. Supp. 2d at 1289-90.

²³⁸ See *Blue Field*, 949 F. Supp. 2d at 1327.

²³⁹ See Memorandum to the File, through Scot Fullerton, Program Manager, from Paul Walker, Case Analyst, Subject: Ninth Administrative Review, and Aligned New Shipper Review, of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results (September 3, 2013) at Exhibit 4 ("Preliminary Surrogate Value Memo").

data.²⁴⁰ Specifically, the Department previously found that imports from a single country does not automatically discount that data as a source for surrogate valuation purposes, but will only discount that data if the data is found to consist of non-commercially significant quantities or the data is aberrational, which is discussed further below.²⁴¹ The Department notes that no party raised arguments that the Australian data quantity is commercially insignificant and, thus, the Department does not find that the fact the quantity of imports is from one country undermines the reliability of the import data. Additionally, the Department finds that Respondents' failed to provide record evidence showing that Australia is not a rice producer. Thus, there is no validity to Respondents' argument that the imports from Australia may not be rice husks, and we find that the data is representative of a broad market average.

The Department also disagrees with Respondents' that Indonesia was not an importer of rice husks during the POR. The Soestrino Affidavit claims that Indonesia did not import rice husks in 2011 and 2012 because Indonesia had sufficient domestic supply to meet its demand.²⁴² The affiant is the Director for Production of the Directorate General for Aquaculture of Indonesia's Ministry of Marine Affairs and Fisheries with knowledge of aquaculture issues, not necessarily importation of agricultural commodities. However, the Department finds that the affiant does not indicate the source of the information regarding Indonesia's imports of rice husks and the extent of the affiant's knowledge of agriculture commodities. Moreover, as noted above in Comment III, Respondents did not submit the correspondence with Mr. Soestrino, the Department does not know what questions were asked of Mr. Soestrino, and there is no way to put the Soestrino Affidavit in context. The Department also finds that there is contradictory evidence on the record, specifically import data into Indonesia in 2011 and 2012 under HTS 1213.00.00.00, that raises questions of the reliability of the Soestrino affidavit's claims.

The Department also disagrees with Respondents that the Indonesian GTA import data under HTS 1213.00.00.00 is not sufficiently contemporaneous with the POR. The POR is August 1, 2011, through July 31, 2012. The rice husk SV is based on import data from Australia reported in October 2012. Although the Indonesian GTA import data under HTS 1213.00.00.00 is outside the POR, the Department finds that the import data is only two months outside the POR and we can deflate the SV to make it contemporaneous with the POR.

The Department disagrees with Respondents that the rice husk SV, \$0.68/kg, based on Indonesia GTA import data under HTS 1213.00.00.00 is aberrational based on benchmark prices on the record. The Department notes that in making a finding as to whether data are aberrational, the Department found the existence of higher prices alone does not necessarily indicate that the price data are distorted or misrepresentative, and thus is not a sufficient basis upon which to exclude a particular SV.²⁴³ Under the Department's current practice, interested parties must provide specific evidence showing the value is aberrational. To discern whether a particular value is aberrational, the Department typically compares the prices for an input from all countries found

²⁴⁰ Although Petitioners' note that the record contains pre-POR data for this HTS, we used the Australian data which represents a higher, commercially significant quantity.

²⁴¹ See *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, (December 5, 2003) and accompanying Issues and Decision Memorandum at Comment 1; *Furniture from China*, and accompanying Issues and Decision Memorandum at Comment 21.

²⁴² See Respondents' December 6, 2013 submission at Exhibit 11.D.

²⁴³ See, e.g., *Carbazole Violet*, and accompanying Issues and Decision Memorandum at Comments 3 & 4.

to be at a level of economic development comparable to the NME whose products are under review.²⁴⁴ If a party presents sufficient evidence to demonstrate a particular SV is aberrational, and thus not reliable, the Department will assess all relevant price information on the record, including any appropriate benchmark data, in order to accurately value the input in question. We note that Respondents did not provide sufficient evidence to demonstrate that the Indonesian GTA import SV is aberrational (*e.g.*, providing annual GTA import data from Indonesia from prior years demonstrating that the value from the POR is aberrational compared to other years).²⁴⁵ Furthermore, in *Steel Wire Rope*²⁴⁶, the Department stated that it would determine whether unit values are aberrational if they are many times higher than the import values from other countries.

The Department has on the record the AUVs reported under HTS 1213.00.00.00²⁴⁷, from three countries found to be at a level of economic development comparable to Vietnam – Indonesia, which is the primary surrogate country, India, and the Philippines. The Department notes that Respondents did not provide historical annual GTA import data from these three countries to compare the AUVs to determine whether the Indonesian GTA import data SV is aberrational. The AUVs on the record for Indonesia, India, and the Philippines are \$0.68, \$0.12, and \$2.15/kg, respectively.²⁴⁸ The Department notes that Indonesian GTA import data value, \$0.68/kg, is a third lower than the average of the three AUVs, \$0.97/kg, and thus falls within the range of the AUVs for this HTS category. Accordingly, the Indonesian GTA import data value is not aberrational in comparison to other import AUVs from countries at levels of economic development comparable to Vietnam.

The Department also has on the record domestic prices for rice husk that range from \$0.01-\$1.90 from India, Pakistan, and Indonesia.²⁴⁹ The Department notes that the Indonesian GTA import data value, \$0.68/kg, falls within the range of benchmark prices for rice husk, which are \$0.01-\$1.90, and is thus not the highest price on the record. While the Department finds that the average of the domestic prices for rice husk from Indonesia, India, and Pakistan is \$0.42/kg, the Department does not find that this is sufficient to find the Indonesia GTA import data is aberrational. Although the average of the domestic prices for rice husk is two-thirds of the value of the Indonesian GTA import data, the Department finds that the Indonesian GTA import data value is not aberrational because it is not many times higher than the domestic prices for rice husk on the record. Unlike in this review, in *Fish Fillets from Vietnam Remand*, the Department

²⁴⁴ See, *e.g.*, *Mushrooms 2012*, and accompanying Issues & Decision Memorandum at Comments 3 & 4.

²⁴⁵ See *Lightweight Thermal Paper from the PRC and Saccharin from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 7515 (February 13, 2006) and accompanying Issues and Decision Memorandum at Comment 5.

²⁴⁶ See *Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rope From India and the People's Republic of China; Notice of Final Determinations of Sales at Not Less Than Fair Value: Steel Wire Rope from Malaysia*, 66 FR 12759 (February 28, 2001) ("*Wire Rope*") and accompanying Issues and Decision Memorandum for the People's Republic of China at Comments 1 & 6.

²⁴⁷ The Department does acknowledge that the HTS category description for these three countries is not identical.

²⁴⁸ See Preliminary Surrogate Value at Exhibit 4; Petitioners' Surrogate Country/Surrogate Value Comments at Exhibit 32; Respondents' Rebuttal Surrogate Value Comments at Exhibit 31.A.

²⁴⁹ See Respondents' January 2, 2014 submission at Exhibit 16.

found that the suggested SV was aberrational because the AUVs varied between 30 and 79 times greater than the average of the rest of the import data.²⁵⁰

The Department also has on the record domestic prices for rice from the Philippines and Indonesia that range from \$0.29-\$0.66/kg.²⁵¹ Although Respondents are correct that rice husk, which is a by-product of rice should not be at the same price level as the main input, the Department finds that it cannot make the same comparison, as the Department does for Indonesian SV for fish oil to the whole, live fish at Comment XXIII. The Department notes that the Department has on the record an SV specific to the main input, *pangasius* whole, live fish that the Department can compare to the Indonesian import data for fish oil. By comparing the specific main input, *pangasius* whole, live fish, to the Indonesian import data, the Department is able to determine based on the difference in the prices that the Indonesian import data for fish oil is not appropriate for valuing a by-product of *pangasius* whole, live fish. In contrast to the data on the record for fish oil, the Department finds that there is no information on the record to determine whether the domestic prices for rice are specific to the type of rice that generated specific rice husks used by Respondents. The Department notes that the Indonesian domestic price are for unmilled rice and the Philippines domestic prices are for rice. However, the Department finds that there is no information on what type of rice husk, except for not being pressed, was used by Respondents' in the processing of fish oil. Absent this information, the Department finds that it cannot make a similar comparison of the rice husk and rice prices on the record.

The Department notes that Respondents also placed on the record other benchmark prices, including import statistics, domestic prices, and price quotes from the United States, Cameroon, Sri Lanka, and Dubai.²⁵² However, the Department finds that the level of economic development of the United States, Cameroon, Sri Lanka, and Dubai is not comparable to that of Vietnam and, as a result, these prices are not appropriate benchmarks.²⁵³ Additionally, the Department also finds that the sample rice husk invoice from Vietnam, as suggested by Respondents, is an inappropriate benchmark for verifying the aberrational nature of a SV based on ME data. The Department finds NME purchase prices of inputs within Vietnam are unsuitable as benchmarks because these prices are from within an NME and the presence of government controls on various aspects of NMEs renders price comparisons invalid under the Department's normal methodologies.²⁵⁴

²⁵⁰ See Final Results of Redetermination Pursuant to *Catfish Farmers of America v. United States*, Consol. Court No. 08-00111, Slip Op. 09-96, (September 14, 2009), dated December 10, 2009, at 4-7 (“*Fish Fillets from Vietnam Remand*”).

²⁵¹ See Respondents' January 2, 2014 submission at Exhibit 16.

²⁵² See Respondents' December 6, 2013 submission at Exhibit 11, Tab H and Tab J; Respondents' Rebuttal Surrogate Values Submission at Exhibit 31.A; Respondents' Case Brief at Exhibit 16.

²⁵³ See *Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) (“*MLWF LTFV*”) and accompanying Issues and Decision Memorandum at Comment 15.

²⁵⁴ See, e.g., *Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China*, 71 FR 19695, 19703 (April 17, 2006), unchanged in *CLPP*, 71 FR 53079.

Accordingly, the Department finds that the Indonesian GTA import data reported under HTS 1213.00.00.00 is the best available information for valuing rice husk because it is publicly available, specific to the input, sufficiently contemporaneous with the POR, free of taxes and duties, representative of broad market averages, and not aberrational.

B. Bangladeshi Rice Husk Price Quotes

With respect to the Bangladeshi rice husk price quotes, the Department finds that the Bangladeshi rice husk price quotes are not the best available information for valuing rice husk. Although the Bangladeshi rice husk price quotes are specific to the input, the Department finds that the price quotes are not from the primary surrogate country, Indonesia, which has useable information, as detailed above, on the record for valuing the rice husk SV. As expressed by the Department's regulations, pursuant to 19 CFR 351.408(c)(2), it is the Department's preference to value all factors of production from a single surrogate country when there is available data for doing so.²⁵⁵ Additionally, the Department finds that the Bangladeshi rice husk price quotes are single transaction prices from two individual companies and do not represent a broad-market average.²⁵⁶ The Department stated that it prefers to use SVs that are not price quotes where other more reliable data, such as Indonesian GTA import data reported under HTS 1213.00.00.00, are available.²⁵⁷ The Department notes that the record does not demonstrate that the Bangladeshi rice husk price quotes are ex-factory and tax- and duty-exclusive because: 1) the affidavit accompanying the Seraph International price quote does not state that the price quote is on an ex-factory and tax- and duty-exclusive basis; and 2) the emails regarding the SR Apparels price quote are not accompanied by an affidavit, and the emails do not state whether this price quote is tax- and duty-exclusive.²⁵⁸ The Department also has concerns about the reliability of the two Bangladeshi rice husk price quotes because: (1) the email regarding the SR Apparels price quote is from Alibaba.com, which is an online commodities search engine and not an official company inquiry; (2) the Seraph International price quote does not indicate the payment terms; (3) there is contradictory information²⁵⁹ on the record for whether Seraph International and SR Apparels produce and sell rice husks; and (4) for the SR Apparels price quote, the price quote is not on

²⁵⁵ See *Globe Metallurgical, Inc. v. United States*, 32 CIT 1070, 1076 (2008) ("*Globe Metallurgical*"); see also *Peer Bearing*, 752 F. Supp. 2d 1353, 1373 (CIT 2011); *Clearon Corp. v. United States*, No. 08-00364, 2013 WL 646390, at *6 (Ct. Int'l Trade Feb. 20, 2013) ("deriving the surrogate data from one surrogate country limits the amount of distortion introduced into {Commerce's} calculations").

²⁵⁶ See *Certain Tissue Paper Products from the People's Republic of China: Final Results and Partial Rescission of the 2007-2008 Antidumping Duty Administrative Review and Determination Not To Revoke in Part*, 74 FR 52176 (October 9, 2009) ("*Tissue*") and accompanying Issues and Decision Memorandum at Comment 3.

²⁵⁷ See *Prestressed Concrete Steel Wire Strand from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 28560 (May 21, 2010) ("*Wire Strand*") and accompanying Issues and Decision Memorandum at Comment 1.B.

²⁵⁸ See Respondents' Surrogate Value Comments at Exhibit 7.

²⁵⁹ The hard copy printout of the website for Seraph International, submitted by Petitioners, does not list rice or rice husk as one of the many agricultural products that Seraph International offers for sale. See Petitioners' Rebuttal Surrogate Value Comments at Exhibit 61. Additionally, there are two different website addresses for SR Apparels on the record and a screenshot of one of the website addresses identifies SR Apparels as an exporter of clothing products but not rice or rice husk products. See Petitioners' Rebuttal Surrogate Value Comments at Exhibit 62 and Respondents' Surrogate Value Comments at Exhibit 7. Although Respondents argue that one of the websites is not for SR Apparels, which is company that offered the price quote, but for a different company because the website that identifies SR Apparels is for "SR Apparels Ltd," the Department cannot confirm based on the information on the record whether SR Apparels is a producer/exporter of clothing products or rice/rice husk products.

official company letterhead and there is no information on the record as to whether it was obtained directly from the company and issued by an official of the company for sale in the ordinary course of business.²⁶⁰

C. Vitafarm Rice Husk Price Quote

With respect to the Vitafarm rice husk price quote from Indonesia, the Department finds that this price quote, like the Bangladeshi rice husk price quotes, is not a broad-market average but instead is a single transaction price from an individual company. Additionally, the Department finds that the record evidence does not demonstrate that the Vitafarm rice husk price quote is tax-exclusive or on an *ex-factory* basis.²⁶¹ Although Petitioners argue that the Vitafarm rice husk price is not contemporaneous with the POR, the Department notes it is only outside the POR by a few months, as is the Indonesian GTA import data. However, the Department finds that the Vitafarm rice husk price quote does not fulfill the other SV criteria and, thus, is not the best available information on the record for valuing rice husks.

D. Philippines HTS 1213.00.00.00

With respect to the Philippines GTA import data reported under HTS 1213.00.00.00, the Department finds that it is not the best information available for valuing rice husks because it is not from the primary surrogate country; thus, selecting this source would cause the Department to run afoul of its regulatory preference stated in 19 CFR 351.408(c)(2). Although this data is specific to the rice husk input, as is the Indonesian GTA import data, the Department finds that there is available information within the primary surrogate country for valuing this input.

Comment VI: Surrogate Value for Labor

Respondents

- The Indonesian data used in the preliminary results (*i.e.*, International Labor Organization (“ILO”) Yearbook Chapter 5B, sub-classification 15, “Manufacture of Food Products and Beverages,” (“ILO Chapter 5B data”)) is not sufficiently specific to the subject merchandise.
- The Indonesian ILO Chapter 5B data is overly broad because it includes many different industries²⁶² and thus it is not correct to state that the ILO Chapter 5B data is specific to the subject merchandise.
- The Indonesian ILO Chapter 5B data is from 2008 and thus is not contemporaneous with the POR.
- The Indonesian ILO Chapter 5B data is not in conformity with the CIT’s ruling in *Allied Pacific Food*²⁶³ because it does not reflect the labor input used in “producing the {subject} merchandise.”

²⁶⁰ See Respondents’ May 24, 2013 submission at Exhibit 7.

²⁶¹ See Respondents’ December 6, 2013 submission at Exhibit 11.E.

²⁶² Sub-classification includes the following sub-categories: 1) 151—production, processing of meat, fish fruit, vegetables, oils and fats; 2) 152—manufacture of dairy products; 3) 153—manufacture of grain mill products, starches and starch products, and prepared animal feeds; 4) 154—manufacture of other food products; and 5) manufacture of beverages.

²⁶³ See *Allied Pacific Food Co., Ltd. v. United States*, 587 F. Supp 2d 1330, 1357 (CIT 2008) (“*Allied Pacific Food*”).

- The record contains several sources of reliable, publicly available information specific to the agricultural or seafood industry, including *pangasius* farming, for valuing labor from Bangladesh: (1) an agricultural labor rate from the Monthly Statistical Bulletin, Bangladesh Bureau of Statistics for March, April, June, and July 2008 (“Bangladeshi agricultural labor rate”);²⁶⁴ (2) average daily and mean nominal real wages for fishery workers/fisherymen for July-September and October-December (2009-2010) from “Strengthening National Accounts and Price and Wages,” Bangladesh Bureau of Statistics (“Bangladeshi fishery workers/fisherymen labor rate”);²⁶⁵ (3) human labor costs by different *pangasius* farm sizes based on a 2008 field study from “Thesis: An Economic Analysis of Small Scale Commercial Pangus Farming in Some Selected Areas of Mymensingh District,” by Mustafizer Rahman (“Mymensingh District *pangasius* farms human labor costs data”);²⁶⁶ and (4) annual human labor cost by *pangasius* farming system/feeding practice in Bangladesh for October 15, 2005, to February 15, 2006, from “Economics of Technical Aquaculture Practices in Selected Asian Countries,” FAO Fisheries Technical Paper (“Bangladeshi labor cost by *pangasius* farming system/feeding practice”).²⁶⁷

Petitioners

- None of the proposed Bangladeshi sources for valuing labor are suitable for surrogate valuation purposes.
- The Bangladeshi agricultural labor rate does not cover a full annual period, is not contemporaneous with the POR, and covers a broad category of agricultural labor (*i.e.*, not specific to the subject merchandise).
- The Bangladeshi fishery workers/fisherymen labor rate does not explain how the data was collected during the identified period, may ignore seasonal trends in labor, only covers a subset of the industry, and identifies shortcomings in the survey’s data collection.
- The Mymensingh District *pangasius* farms human labor costs data does not explain how the data was collected, does not indicate whether the source of the data is publicly available, and was collected within only one district of Bangladesh, thus rendering it not a broad-market average.
- The Bangladeshi labor cost by *pangasius* farming system/feeding practice is not contemporaneous with the POR, is based on a wage cost per farm not per worker, and includes payments by food and tobacco.
- The Indonesian ILO Chapter 5B data covers the specific industry being examined and has been used by the Department in another case to value labor in the seafood processing industry in Vietnam.²⁶⁸
- Respondents’ reliance on *Allied Pacific Food* is misplaced because the CIT’s concerns were regarding the Department’s regression-based labor methodology, which is not the methodology used to calculate labor in this case.
- Since the *Preliminary Results*, the record now contains contemporaneous, alternative ILO data that is more specific to the subject merchandise than the Indonesian ILO Chapter 5B

²⁶⁴ See Respondents’ May 24, 2013 submission at Exhibit 3.B.

²⁶⁵ *Id.* at Exhibit 3.A.

²⁶⁶ *Id.* at Exhibit 15.C (Table 6.2 at page 54).

²⁶⁷ *Id.* at Exhibit 18 at 50.

²⁶⁸ See *Vietnam Shrimp 11-12*, and accompanying Issues and Decision Memorandum at Comment 1.B.

data. This is ILOSTAT²⁶⁹ data for 2009 and 2010 reported under Chapter 5, “Fishing, operation of fish hatcheries and fish farms; Service activities incidental to fishing” (“Indonesian ILOSTAT data”).²⁷⁰

Department’s Position: The Department agrees with Petitioners that the Indonesian ILOSTAT data for 2010 reported under Chapter 5, “Fishing, operation of fish hatcheries and fish farms; Service activities incidental to fishing” (“ILOSTAT data”), is the best available information for valuing labor.

The Department currently prefers to value labor solely based on data from the primary surrogate country.²⁷¹ In *New Labor Methodology*, the Department explained that industry-specific wage data from the primary surrogate country was the best available information because it is consistent with how the Department values all other FOPs, and it results in the use of a uniform basis for FOP valuation – the use of data from a primary surrogate country.²⁷²

The Department disagrees with Respondents’ reliance on *Allied Pacific Food* because that CIT decision concerned the Department’s regression-based wage rate methodology, which was conducted under 19 CFR 351.408(c)(3), that the Court of Appeals for the Federal Circuit (“CAFC”) invalidated in *Dorbest IV*.²⁷³ As explained in *Allied Pacific Food*, the CIT found that “the legislative history of the provision confirms the importance Congress attached to use of data on prices or costs from countries satisfying both criteria,” under section 773(c)(4) of the Act, which the regression-based methodology did not fulfill.²⁷⁴ The CIT, in *Allied Pacific Food*, also found that 19 CFR 351.408(c)(3) paid “no heed to the second criterion of {section 773(c)(4) of the Act} which is investigation-specific, and does not permit the Secretary to determine the best available labor cost information with respect to the particular investigation being investigated.”²⁷⁵ In *Dorbest IV*, the CAFC supported the reasoning in *Allied Pacific Food* that there should be a “relationship between the valuation of each factor of production, including labor, and the production of the subject merchandise itself,” which the regression-based methodology did not provide.²⁷⁶ Based on the CAFC’s decision, the Department no longer values labor under the invalidated regression-based methodology, which was the subject of *Allied Pacific Food*, and instead values labor using industry-specific data from the primary surrogate country as articulated in *New Labor Methodology*.²⁷⁷ The Department notes that the CIT found the current methodology for valuing labor using industry-specific data from the

²⁶⁹ The ILOSTAT database is the new labor database that replaces the LABORSTA database, which is no longer being updated by the ILO. See Petitioners’ Post Preliminary Results Surrogate Values Submission, (December 6, 2013) at Exhibit 15.

²⁷⁰ *Id.*

²⁷¹ See *Dorbest Ltd. v. United States*, 604 F.3d 1363 (Fed. Cir. 2010) (“*Dorbest IV*”); *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing The Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (“*New Labor Methodology*”).

²⁷² *Id.*

²⁷³ See *Dorbest IV*, 604 F.3d 1363; *Allied Pacific Food*, 587 F. Supp 2d 1330.

²⁷⁴ See *Allied Pacific Food*, 587 F. Supp. 2d at 1355.

²⁷⁵ *Id.* at 1358.

²⁷⁶ *Dorbest IV*, 604 F.3d at 1372.

²⁷⁷ See *New Labor Methodology* at 36092.

primary surrogate country reasonable because it is consistent with how the Department values all other FOPs.²⁷⁸

Under the current labor methodology, it is the Department's practice to value labor using industry-specific data reported by the ILO under Chapter 6A ("ILO Chapter 6A"), which reflects all costs related to labor (*i.e.*, wages, benefits, housing, training, etc.). It is the Department's preference to value labor using ILO Chapter 6A data under the rebuttable presumption that ILO Chapter 6A data better accounts for all direct and indirect labor costs.²⁷⁹ However, in this review, there is no ILO Chapter 6A data on the record from any of the possible surrogate countries and, thus, the Department must look outside its preferred data source for the best available information for valuing labor.²⁸⁰

On the record of this review, there are four possible sources for valuing labor from Bangladesh and two possible sources for valuing labor from Indonesia. Based on the analysis below, the Department finds that the best available information for valuing labor is the Indonesian ILOSTAT data because it is specific to the subject merchandise, a broad-market average, closely contemporaneous with the POR, and covers the entire industry.

A. Bangladeshi Data Sources

Regarding the Bangladeshi agricultural labor rate, the Department notes that no parties submitted information contesting that this labor rate is a broad-market average, tax- and duty-exclusive, and publicly available. However, the Department finds that this labor rate is not as specific because it is an overly broad category that covers agriculture labor. In contrast the Indonesian ILOSTAT data is specific to fishing and other similar activities.²⁸¹ Moreover, the Bangladeshi agricultural labor rate, which is from 2008, is not as contemporaneous with the POR as the Indonesian ILOSTAT data, which is from 2010.²⁸²

Regarding the Bangladeshi fishery workers/fisherymen labor rate, the Department notes that no parties submitted information contesting that this labor rate is a broad-market average, or tax- and duty-exclusive. However, the Department finds that this labor rate is not as specific as the Indonesian ILOSTAT data in that it does not provide full coverage of the industry because it only reports data for fisherymen but does not report data for female workers in the industry.²⁸³ It has been the Department's practice to calculate a labor rate that covers the total population of the industry, and basing a labor rate only on a sub-part of the industry would undercount the labor rate for the total population of the industry.²⁸⁴ Additionally, the Department has concerns with whether the data represents a broad market average because this data source only collected data

²⁷⁸ See *Taian Ziyang Food Company, Ltd. vs. United States*, 918 F. Supp 2d 1345, 1357 (CIT 2013).

²⁷⁹ See *New Labor Methodology*, 76 FR at 36093.

²⁸⁰ See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty New Shipper Reviews; 2011-2012*, 78 FR 39708 (July 2, 2013) and accompanying Issues and Decision Memorandum at Comment III ("*Fish Fillets New Shippers*").

²⁸¹ See Respondents' May 24, 2013 submission at Exhibit 3.B.

²⁸² *Id.*

²⁸³ *Id.* at Exhibit 3.A.

²⁸⁴ See *Antidumping Methodologies; Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; Request for Comments*, 71 FR 61716, 61721 (October 19, 2006).

for November as an estimate for the October-December 2009 quarter and for the previous quarter, July-September 2009.²⁸⁵ The Department finds that the data does not provide full coverage for an annual cost of labor and, thus, does not provide coverage of seasonal trends in labor.²⁸⁶ The Department also finds that the Bangladeshi fishery workers/fisherymen labor rate is not contemporaneous with the POR because the data was collected in 2009.²⁸⁷

Regarding the Mymensingh District *pangasius* farms human labor costs data, the Department finds that this is specific to the subject merchandise, as it covers the subject *pangasius* species.²⁸⁸ The Department also finds that there is no information on the record demonstrating that the data source is publicly available. Specifically, while the data source appears to be a published thesis, there is no information on the record regarding how Respondents' obtained this thesis or whether it is available to the public.²⁸⁹ Based on this lack of information, the Department cannot conclusively determine that the data source for the Mymensingh District *pangasius* farms human labor costs data is publicly available. Further, the Department finds that the data is from only one district, Mymensingh, in Bangladesh, a country that contains numerous districts.²⁹⁰ Accordingly, the Department finds the Mymensingh District *pangasius* farms human labor costs data is not a broad-market average and, thus, is not suitable for surrogate valuation purposes for labor. The Department also finds that there is no information in the thesis, which is the source of the human labor costs data, to determine whether the data is tax- and duty-exclusive.²⁹¹ The Department also finds that the Mymensingh District *pangasius* farms human labor costs data is from 2008, which is not contemporaneous with the POR.

Regarding Bangladeshi labor cost by *pangasius* farming system/feeding practice, the Department finds that no parties submitted information contesting that this labor cost is a broad-market average, publicly available, and tax- and duty-exclusive. Nevertheless, the Department finds that this labor rate is not the best information available for valuing labor because it is not calculated based as a labor rate per hour. The Bangladeshi labor cost by *pangasius* farming system/feeding practice provides an annual cost/quantity by farming cost/feeding practice, such as an annual cost of \$241 per farm.²⁹² However, the Department notes that the Respondents, such as Vinh Hoan, reported labor consumption for the POR based on the total hours worked.²⁹³ Additionally, the Department finds that the Bangladeshi labor cost by *pangasius* farming system/feeding practice included labor components, such as unpaid family labor and payments made by food/tobacco, which are not included in the labor FOP reported by Respondents.²⁹⁴ Taken together, the Department finds that this source is not specific to Respondents' input. Furthermore, the Department notes that the Bangladeshi labor cost by *pangasius* farming system/feeding practice

²⁸⁵ See Respondents' May 24, 2013 submission at Exhibit 3A.

²⁸⁶ *Id.* at Exhibit 18 (page 50, discussing the peak labor demand from February to April).

²⁸⁷ See Respondents' May 24, 2013 submission at Exhibit 3A (page 10).

²⁸⁸ See *Preliminary Results*, 78 FR at 55677.

²⁸⁹ See *Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 16651 (March 18, 2013) and accompanying Issues and Decision Memorandum at Comment I.A; Respondents' May 24, 2013 submission at Exhibit 15.C.

²⁹⁰ See, e.g., *Fish Fillets New Shippers*, and accompanying Issues and Decision Memorandum at Comment 1.

²⁹¹ See Respondents' May 24, 2013 at Exhibit 15.C (Table 6.2 at page 54).

²⁹² *Id.* at Exhibit 15.

²⁹³ See Vinh Hoan's Supplemental Section D Response at Exhibit 17.

²⁹⁴ See Respondents' May 24, 2013 submission at Exhibit 15.

is from October 1, 2005, through February 15, 2006, and thus is not contemporaneous with the POR.

B. Indonesian Data Sources

Regarding the Indonesian data sources on the record, the Department notes that these publicly-available sources contain data collected at the national level. No party submitted information on the record questioning whether the Indonesian ILO Chapter 5B data and the Indonesian ILOSTAT data cover a broad-market average. Accordingly, the Department finds that both the Indonesian ILO Chapter 5B data and the Indonesian ILOSTAT data represent broad-market average data. Moreover, no evidence on the record indicates that these sources reflect rates inclusive of taxes and duties. With respect to specificity, the Department finds that Indonesian ILOSTAT data is more specific to the subject merchandise than the Indonesian ILO Chapter 5B data. The Indonesian ILOSTAT data is specific to the fishing industry, whereas the Indonesian Chapter 5B data covers a broader spectrum of industries, including beverages, grain products, etc. Finally, the Department finds that the Indonesian ILO Chapter 5B data, which is from 2008, is less contemporaneous with the POR than the Indonesian ILOSTAT data from 2010. Accordingly, the Department finds that the Indonesian ILOSTAT data is the best available information for valuing labor for these final results.

Comment VII: Surrogate Financial Ratios

Respondents

- Surrogate financial ratios should be based on the financial data of Apex Foods Ltd. (“Apex”), an integrated producer of processed fish products, and Gemini Sea Foods (“Gemini”), a non-integrated producer of processed fish and shrimp.²⁹⁵ It has been the Department’s longstanding practice to apply multiple financial statements in deriving surrogate ratios, in order to obtain a broader industrial representation.²⁹⁶

Petitioners

- Record evidence indicates that Apex and Gemini produce only shrimp products.²⁹⁷ The production of shrimp entails a fundamentally different production process than the production process of fish.²⁹⁸ In the section of their brief concerning SVs for *pangaisus* feed, Respondents argue at length about the lack of comparability between shrimp and *pangasius*

²⁹⁵ See Respondents’ May 24, 2013 submission at Exhibits 12.A & B.

²⁹⁶ See, e.g., *Certain Helical Spring Lock Washers from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 29720 (May 27, 2010) and accompanying Issues & Decision Memorandum at Comment 1.

²⁹⁷ See Respondents’ May 24, 2013 submission at Exhibit 12 (Apex 2011-2012 annual report, Note 20, states that all sales consist of “shrimp” products; Gemini 2011-2012 annual report, note 14, identifies only sales and exports of “shrimp” products).

²⁹⁸ See Petitioners’ June 14, 2013 submission at Exhibit 1. In addition, the record also establishes that shrimp processing is a far more labor-intensive production process than fish processing (e.g., the average number of labor hours required to produce one kilogram of finished product is over 2 times higher for shrimp producers than for fish fillet producers). See Petitioners’ June 14, 2013 submission at Exhibit 1.B.4 (responses of Vietnamese shrimp producers).

fish inputs, and argue that the feed input used in shrimp production (a key input) is not sufficiently specific to *pangasius* production to be used as a factor value.²⁹⁹

- Respondents misstate the Department’s practice with respect to the use of multiple financial statements. The Department’s established practice is to use financial statements from one or more producers of comparable merchandise from the primary surrogate country whenever possible, even when multiple financial statements are available from a non-primary surrogate country.³⁰⁰
- If the Department continues to use the Bangladeshi processors’ financial statements to calculate the surrogate financial ratios in the final results, it cannot rely upon the statements of Gemini because it contains subsidies. The Department’s longstanding practice is to disregard SV data that is affected by subsidies.³⁰¹
- In *Vietnam Shrimp*, the Respondents and VASEP argued against selecting financial statements of seafood processors because processing seafood was not sufficiently specific to processing shrimp.³⁰² Thus, the position that VASEP has adopted in these reviews - that shrimp production is comparable to that of fish fillet production - is directly at odds with the position taken by VASEP in *Vietnam Shrimp*.³⁰³

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.”³⁰⁴ 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.³⁰⁵ 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: (a) physical characteristics; (b) end uses; and (c) production process.³⁰⁶ Additionally, for purposes of selecting surrogate producers, the Department examines how similar a proposed surrogate producer’s production experience is to

²⁹⁹ See Respondents’ January 2, 2014 submission at 48-49.

³⁰⁰ See, e.g., *Diamond Sawblades and Parts Thereof from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2009-2010*, 78 FR 11143 (February 15, 2013) and accompanying Issues and Decision Memorandum at Comment 14 (the Department’s preference is to look for “specificity, contemporaneity, and quality” of the data when selecting surrogate financial statements, and selecting the statements of a single company because it produced merchandise most comparable to Respondents’ subject merchandise).

³⁰¹ See *Carbazole Pigment*, and accompanying Issues and Decision Memorandum at Comment 1 (“the Department does not rely on financial statements where there is evidence that the company received countervailable subsidies and there are other sufficiently reliable and representative data on the record for purposes of calculating the surrogate financial values”).

³⁰² See Petitioners’ December 6, 2013 submission at Exhibit 15.

³⁰³ See *Vietnam Shrimp 11-12*, and accompanying Issues and Decision Memorandum at Comment 1; see also Petitioners’ December 6, 2013 submission at Exhibit 15.

³⁰⁴ See *CLPP*, and accompanying Issues and Decision Memorandum at Comment 1.

³⁰⁵ 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.

³⁰⁶ 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.

the NME producer's production experience.³⁰⁷ However, the Department is not required to "duplicate the exact production experience of" an NME producer, nor must it undertake "an item-by-item analysis in calculating factory overhead."³⁰⁸

For these final results the Department finds that the publicly available financial statements of Indonesian seafood producer PT Dharma Samudera Fishing Industries ("DSFI"), which the Department used to value this input in the *Preliminary Results*, represent the best available information with which to value surrogate financial ratios. Specifically, DSFI's 2012 financial statements cover fiscal year 2012.³⁰⁹ Moreover, DSFI's statements are publicly available and certified by independent auditors to conform to Indonesian accounting standards.³¹⁰ DSFI also is based in Indonesia and is a producer of comparable merchandise, *i.e.*, frozen fish fillets, which is the same merchandise that the Department used to determine whether certain ME countries are significant producers of comparable merchandise in Comment I.B.³¹¹ Lastly, we note no party challenged the use of these financial statements in the final results.

As noted above, the parties raised issues concerning surrogate financial statements from Bangladesh. We find that these companies are not primarily producers of frozen fish fillets, the comparable merchandise. In fact, these companies produced no frozen (or fresh) fish fillets during the POR; rather, they only produced shrimp during the POR.³¹² Although in past reviews we used the surrogate financial information of shrimp producers, as they represented the best available information on the record, in this review we have a much closer match in a frozen fish fillet producer, DSFI, from the primary surrogate country. Consequently, because these companies' core business do not appear to be based on the production of frozen fish fillets, the Department finds that these financial statements are not the best available data on the record from which to calculate surrogate financial ratios.³¹³ Moreover, because we have surrogate financial statements from the primary surrogate country which meets the Department's SV selection criteria, consistent with the preference stated in our regulations, selecting a Bangladeshi source would cause us to act inconsistently with that preference.³¹⁴

³⁰⁷ 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.

³⁰⁸ 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).

³⁰⁹ See Petitioners' May 24, 2013 submission at Exhibit 23.A.

³¹⁰ *Id.*

³¹¹ *Id.*

³¹² See Respondents' May 24, 2013 submission at Exhibit 12 (Apex 2011-2012 annual report, Note 20, states that all sales consist of "shrimp" products; Gemini 2011-2012 annual report, note 14, identifies only sales and exports of "shrimp" products).

³¹³ See *Vietnam Shrimp 11-12*, and accompanying Issues and Decision Memorandum at Comment 2 (where the Department found that, because a proposed surrogate company's core business was not based on the production of comparable merchandise, its financial statements were not the best available data on the record from which to calculate surrogate financial ratios).

³¹⁴ See 19 CFR 351.408(c)(2); *Clearon Corp. v. United States*, No. 08-00364, 2013 WL 646390, at *6 (CIT 2013) ("*Clearon*") ("[T]he court must treat seriously {the Department's } preference for the use of a single surrogate country."); *Globe Metallurgical*, 32 CIT 1070, 1076 (2008); see also *Peer Bearing*, 752 F. Supp. 2d 1353, 1373 (CIT 2011).

Comment VIII: Surrogate Value for Lime

Respondents

- Lime should be valued using the Bangladeshi Aquaculture Study, which contains pricing data for lime used in *pangasius* farming, and was used to value lime in the *Seventh AR*.³¹⁵ The CIT's opinions and the Department's consistent and longstanding policy requires the Department to select the more specific prices over overly broad price data sources, such as import data.³¹⁶

No other party commented on this issue.

Department's Position: We continue to find that the Indonesian GTA import data under HTS 2522.10, "Quicklime," represents the best available information to value Respondents' lime input.³¹⁷ We previously found that GTA data, such as the data in question, is contemporaneous, publicly-available, representative of broad market averages, and free of duties and taxes.³¹⁸ Moreover, we find that the GTA data is sufficiently specific to the input in question because the description of HTS 2522.10 by its terms covers "Quicklime."

Regarding the Bangladeshi Aquaculture Study, we find this source to be non-contemporaneous. Although published in 2011, the data was gathered in September and October of 2007.³¹⁹ Moreover, although the data was gathered from three of the larger *pangasius* producing regions in Bangladesh (Bogra, Mymensingh and Jessor), it only covers two months of data.³²⁰ As a result, we find that it also does not represent a broad market average. In support of the Bangladeshi Aquaculture Study, Respondents contend that the CIT's opinions and the Department's policy requires the Department to select more specific price quotes over broad price data, such as import statistics. As noted above, we disagree. 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.³²¹ Both sources satisfy the publicly available and free of taxes and duties criteria. However, the Department's preference is to satisfy the breadth of the aforementioned selection criteria, not one alone.³²² Moreover, on many occasions the CIT sustained the Department's use of broader basket HTS categories for SVs as supported by substantial evidence.³²³ In this case, while the Bangladeshi Aquaculture

³¹⁵ See Respondents' May 24, 2013 submission at Exhibit 28; see also *Seventh AR*, and accompanying Issues and Decision Memorandum at Comment II.D.1.

³¹⁶ See *Yipin* 526 F. Supp. 2d 1347, 1378-79 (2007); *PVA*, and accompanying Issues and Decision Memorandum at Comment 5; *Sebacic Acid*, and accompanying Issues and Decision Memorandum at Comment 2.

³¹⁷ See Petitioners' May 24, 2013 submission at Exhibit 16.

³¹⁸ See, e.g., *Frontseating Service Valves from the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 73825 (December 9, 2013) ("*Frontseating Service Valves*") and accompanying Issues and Decision Memorandum at Comment 7; *Mushrooms 2012*, and accompanying Issues and Decision Memorandum at Comment 3.

³¹⁹ See Respondents' May 24, 2013 submission at Exhibit 28.

³²⁰ *Id.*

³²¹ See, e.g., *CLPP*, and accompanying Issues and Decision Memorandum at Comment 3.

³²² See, e.g., *China Shrimp*, and accompanying Issues and Decision Memorandum at Comment 2.

³²³ See, e.g., *Writing Instruments*, 984 F. Supp. 629, 640 (CIT 1997); *Guangdong Chems*, 460 F. Supp. 2d 1370-71 (CIT 2006); *Peer Bearing*, 752 F. Supp. 2d 1333, 1335 (CIT 2011); *Dorbest*, 462 F. Supp. 2d 1289-90 (CIT 2006).

Study is more specific, in that it provides a price for “lime” as opposed to “quicklime,” the GTA data satisfy more of the Department’s SV criteria. Finally, use of the Indonesian GTA quicklime data is consistent with the Department’s strong preference to use SVs from the primary surrogate country. In sum, we find that the Bangladeshi Aquaculture Study does not fulfill the SV selection criteria as well as the Indonesian GTA import data, under HTS 2522.10.

Comment IX: Surrogate Value for Fish Meal By-Product

Respondents

- In the *Preliminary Results*, the Department properly used Bangladeshi import data under HTS 2301.20 to value fish meal.³²⁴ The Department also used the same HTS to value fish meal in the 6th, 7th, and 8th POR final results. If the Department decides to use Indonesia as the primary surrogate country, then it should value fish meal under with Indonesian GTA import data under the same HTS number, 2301.20.³²⁵
- The Bangladesh fish meal data comes from 2007 and is not contemporaneous, while the Indonesian data on the record is from the POR (2011-2012) and meets the Department’s SV criteria.³²⁶
- Respondents placed benchmark prices on record to show fish meal values are reasonable and not aberrational, as well as a chart comparing how well the Department’s fish meal value source from the *Preliminary Results* compares to the Indonesia value suggested by Respondents.³²⁷
- If the Department selects Bangladesh as the primary surrogate country in the final results, then it should use the same data source for fish meal as it did in the *Preliminary Results*. However, if Indonesia is selected as the primary surrogate country, then the Department should use the Indonesian GTA data.³²⁸

Petitioners

- In the *Preliminary Results*, the Department valued fish meal using 2007 UN ComTrade import data for Bangladesh. Specifically, it valued fish meal using Bangladesh import data under HTS subheading 2301.20 (“Flours, Meals & Pellets Of Fish, Crustaceans, Mollusks Or Other Aquatic Invertebrates, Unfit Human Consumption”).³²⁹
- If the Department chooses Indonesia as the primary surrogate country, it should not value fish meal using the HTS subheading from Indonesia. Petitioners disagree with Respondents’ suggestion and submit that reliance on Indonesian import data results in an inaccurate valuation for fish meal because the HTS subheadings reflect broad categories of refined and high-protein fish meal.³³⁰

³²⁴ See Respondents’ January 22, 2014 submission at 71.

³²⁵ *Id.* at 72.

³²⁶ *Id.*

³²⁷ *Id.* at 73.

³²⁸ *Id.*

³²⁹ See Petitioners’ February 10, 2014 submission at 184.

³³⁰ *Id.*

- Instead, the Department should use a publicly available price quote provided by Yahdi, an Indonesian supplier, to value fish meal because it is much more specific to the crude fish meal used by Respondents in their production process and is reliable.³³¹

Department’s Position: We agree with Respondents and find that the import data under Indonesian HTS 2301.20, “Flours, Meals & Pellets Of Fish, Crust, Mol Or Other Aqua Invert, Unfit Human Cons”, is the best available information to value this input. In the *Preliminary Results*, we used 2007 Bangladeshi UN ComTrade data under HTS 2301.20, to value fish meal.³³² After the *Preliminary Results*, Respondents placed contemporaneous Indonesian GTA data under 2301.20 on the record.³³³ The Indonesian data satisfies each of the Department’s SV criteria. Specifically, because Respondents reported selling “fish meal” as a by-product resulting from their production of subject merchandise³³⁴, HTS 2301.20 by its terms covers this by-product and, thus, is specific to the fish meal sold by them.

Although Petitioners argue that this HTS contains refined fish meal and, therefore, that the value should be capped, we disagree. The Indonesian 2301.20 HTS description, “Flours, Meals & Pellets Of Fish, Crust, Mol Or Other Aqua Invert, Unfit Human Cons,” by its terms does not indicate that it contains refined fish meal. Moreover, the Department previously found that GTA data, such as the data in question, is publicly-available, representative of broad market averages, and is free of duties and taxes.³³⁵ The Department notes that the value for fish meal (one of two by-products derived from fish waste, the other being fish oil) derived from Indonesian GTA import data under HTS 1504.20.90.00 is \$1.21/kg, whereas the SV for the whole, live fish is \$1.63. The Department does not have concerns valuing Vinh Hoan’s fish meal using the SV for Indonesian GTA import data under HTS 1504.20.90.00 because this value is less than the SV for whole, live fish. As such, we find capping this HTS to be inappropriate. Finally, the Indonesian data is contemporaneous with the POR.

We disagree with Petitioners that the Yahdi price quote is the best available information to value this by-product. Specifically, in the last review, the Department found that this same Yahdi price quote is unreliable and not contemporaneous with the POR.³³⁶ The Yahdi price quote is not reliable because it 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. Nothing on the record of this review undermines the Department’s findings with respect to this quote, and we decline to reach a different conclusion in this review.

Finally, we also determine that the Bangladeshi import data under 2301.20 is not the best available information to value this by-product because it is not contemporaneous with the POR

³³¹ *Id.* at 184-185.

³³² See Preliminary Surrogate Value Memo at 6-7, and Exhibit 1.

³³³ See Respondents’ December 6, 2013 submission at Exhibit 6A.

³³⁴ See Vinh Hoan’s Supplemental Section D Questionnaire Response, (April 22, 2013) at 46 and Exhibit 38L, and see HVG’s Supplemental Section D Questionnaire Response, (April 22, 2013) at 31 and 34-35.

³³⁵ See, e.g., *Frontseating Service Valves from the People’s Republic of China; Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 73825 (December 9, 2013) and accompanying Issues and Decision Memorandum at Comment 7; *Mushrooms 2012*, and accompanying Issues and Decision Memorandum at Comment 3.

³³⁶ See *Eighth AR*, and accompanying Issues and Decision Memorandum at Comment VII B.

and selecting a country other than the primary surrogate country, Indonesia, would be inconsistent with our regulatory presumption under 351.408(c)(2).

Comment X: Surrogate Value for Fish Waste By-Products

Respondents

- In the *Preliminary Results*, the Department valued fish stomach (belly) and fish waste with a Vitarich price quote from the Philippines. If the Department continues to use Indonesia as the primary surrogate country, then it must use a different SV and source for fish waste.³³⁷
- The Vitarich price is unreliable because it is non-contemporaneous and results in an aberrational value. The record of this case does not demonstrate that the Vitarich price quote is a reliable market price generated in the normal course of business.³³⁸
- The Department rejected the Vitarich price quote in the 6th and 7th POR because it was unreliable, but accepted the quote in the 8th POR based on the fact that there was an affidavit signed by a Philippine attorney.³³⁹
- Neither the Vitarich price quote itself nor the accompanying affidavit demonstrate that these prices reflect an actual business transaction, are on a tax-exclusive basis, or are otherwise reliable.³⁴⁰
- The new information placed on the record after the *Preliminary Results* casts additional significant doubt on whether the 2010 Vitarich price quote reflects an actual business transaction. On November 26, 2013, the vice president of CENSEA, a U.S. company that imports more than \$200 million worth of seafood a year, was unable to obtain the same price quote for fish skin, waste, and broken fillet meat from the Sales and Marketing Director of Vitarich. Therefore, this price quote from Vitarich is unreliable and should not be used as a surrogate source.³⁴¹
- Furthermore, the values from the Vitarich price quotes are aberrational compared to the fish waste prices placed on the record by Respondents.³⁴²
- If the Department selects Bangladesh as the primary surrogate country then it should use the Asian Seafood price. The Bangladesh price quote is reliable and specific because it was signed by, Azizur Rahman, the Managing Director of the company. In addition, the Asian Seafood price quote is specific to *pangasius* fish waste, belly, and skin.³⁴³
- If the Department selects Indonesia as the primary surrogate country, then the Indonesian import statistics on the record should be used for the final results. The GTA data under Indonesian HTS 0511.90 is from the primary surrogate country, publically available, contemporaneous, a broad market average, and tax and duty exclusive. Indonesian import data under HTS 0511.90 is also specific to fish waste as stated by the Department in the final decision of the 7th POR.³⁴⁴

³³⁷ See Respondents' January 22, 2014 submission at 74.

³³⁸ *Id.*

³³⁹ *Id.*

³⁴⁰ *Id.* at 76.

³⁴¹ *Id.* at 77.

³⁴² *Id.*

³⁴³ *Id.* at 36-37.

³⁴⁴ *Id.* at 78.

Petitioners

- In the *Preliminary Results*, the Department used a 2010 price quote from a Philippine processor, Vitarich, to value fish waste, belly, and skin.³⁴⁵
- Since the *Preliminary Results*, petitioners placed a 2013 price quote for fish waste on the record from Bluebay Aquaculture Inc. (“Bluebay”). Bluebay is a Philippine *pangasius* fish processor, a sales representative of Vitarich, and an independent seller of *pangasius* by-products. Respondents have not challenged the 2013 price quote from Bluebay.³⁴⁶
- Respondents argue the Department should value fish waste with a Bangladesh price quote from Asian Seafood if Bangladesh is the primary surrogate country or use Indonesian HTS 0511.90 (“Products & Dead Fish Molluscs, Etc, Inedible Neso”) if it selects Indonesia.³⁴⁷
- The Asian Seafood price quote from Bangladesh was rejected by the Department in the previous review and is not specific or reliable. The Indonesian HTS 0511.90 for fish waste is not specific to the types of fish waste produced by Respondents.³⁴⁸
- Instead, the Department should average the price quotes provided by Vitarich and Bluebay, which are specific to the fish waste by-product.³⁴⁹

Department’s Position: We agree with Petitioners and determine that the price quotes from Vitarich and Bluebay are the best available information to value Respondents’ fish waste by-products. During the review, Respondents reported selling the following fish waste by-products: fish waste, fish belly/stomach, fish head, fish fat, fish trimmings, fish fin/nugget, fresh air bladder, and fish skin.³⁵⁰ The price quote from Vitarich, a Philippine processor of *pangasius*, contains prices for numerous types of fish waste (head and belly waste, fat and intestines, bone and tails waste, skin, and trimmings) sold by Respondents, thus rendering the source specific.³⁵¹ Moreover, the price quote from Bluebay covers fish trimmings, head and tail bones, and *pangasius* skin, and, thus, also is specific to the by-products sold by Respondents.³⁵² With respect to the other SV criteria, while the Department finds them not as representative of a broad market average as other data on the record, these sources are publicly available, and nothing on the record indicates that these sources contain prices inclusive of taxes and duties. While the Vitarich (April 2010) and Bluebay (July 2013) quotes are not contemporaneous with the POR, the Department finds this fact is outweighed by their superior specificity and satisfaction of other SV criteria. Thus, because the Department finds that the Vitarich and Bluebay quotes are the best available information to value these by-products, consistent with its practice,³⁵³ the Department will average the values on a waste-specific basis (*i.e.*, average skin prices, trimmings, *etc.*).

³⁴⁵ See Petitioners’ February 10, 2014 submission at 189.

³⁴⁶ *Id.* at 189-190.

³⁴⁷ *Id.* at 190.

³⁴⁸ See Petitioners’ February 10, 2014 submission at 92-93.

³⁴⁹ *Id.* at 196-197.

³⁵⁰ See Vinh Hoan’s Section D Questionnaire Response, (April 22, 2013) at 41, and see HVG’s Section D Questionnaire Response, (April 22, 2013) at 30, and see Golden Quality’s Section D Questionnaire Response, (December 10, 2012) at 21, and Exhibit D.8.

³⁵¹ See Petitioners’ December 6, 2013 submission at Exhibit 13.

³⁵² *Id.*

³⁵³ See, *e.g.*, *Fifth AR*, and accompanying Issues and Decision Memorandum at Comment 2.C.

We disagree with Respondents that the Vitarich price quote is aberrational and not a reliable market price generated in the normal course of business. Respondents argue that the Vitarich quote is aberrational by comparing the prices to values obtained from other countries' import datasets and only one price quote.³⁵⁴ Since fish waste products are generally not internationally traded commodities that would be reflected in import statistics, the import data that Respondents are using as benchmarks cannot reliably measure *pangasius*-specific fish waste, a domestically traded commodity. Furthermore, the chart submitted by Petitioners shows that the Vitarich and Bluebay prices are consistent with the benchmark prices that Respondents submitted, and that, in fact, the Indonesian import data from HTS 0304.90 is significantly different when compared to the others.³⁵⁵

In addition, we disagree with Respondents that the Vitarich quote is not a reliable market price generated in the normal course of business and is not on a tax exclusive basis. The affidavit submitted with the Vitarich price quote contains all the necessary information to demonstrate that the price quote is ex-factory and tax exclusive and how the recipient obtained the price quote. The fact that it was obtained by a lawyer indicating the basis for inquiry and request does not render the price quote unreliable. Finally, although CENSEA's purported inability to obtain the same Vitarich price quote weighs against the Vitarich information, we accord this little weight because not only does the Vitarich information offer the multiple advantages listed above, the record does not fully detail the efforts CENSEA undertook to replicate the price quote.

We also find the import data under Indonesian HTS 0511.90, "Products & Dead Fish, Molluscs Etc., Inedible Nesoi", to not be the best available information to value these byproducts. Specifically, while this source satisfies most of the SV criteria, the HTS category by its terms would not contain the fish waste by-products sold by Respondents as it covers the input fish itself, as well as molluscs and potentially other unspecified sea creatures. Thus, the source is not specific to the by-products reported by Respondents.

Similarly, the Asian Seafood price quote from Bangladesh is not the best available information to value these by-products. The Asian Seafood price quote from Bangladesh lists three *pangasius* fish waste products that include waste, belly, and skin.³⁵⁶ Furthermore, the Asian Seafood quote does not contain individualized prices for multiple kinds of fish waste products and, thus, does not include the same level of specificity as the Vitarich and Bluebay quotes. Moreover, it is unclear whether the Asian Seafood quote contains prices on a tax-exclusive basis, and it is not from the primary surrogate country.

Comment XI: Surrogate Value for Fresh Broken Fillets By-Product

Respondents

- In the *Preliminary Results*, the Department valued Respondents' fresh broken fillets by-product using the 2010 Vitarich price quote. For the same reasons set forth in the fish waste section, the Vitarich price quote should not be used as an SV for this by-product. For the final results, the Department should use the Indonesian GTA import data under HTS

³⁵⁴ See Respondents' December 6, 2013 submission at Exhibit 9.C.

³⁵⁵ See Petitioners February 10, 2014 submission at 195-196.

³⁵⁶ See Petitioners' June 14, 2013 submission at Exhibit 57.

0304.19, as recommended by Petitioners in the last administrative review and placed on the record by Respondents in this review.³⁵⁷

Petitioners

- Fish waste products are not internationally traded and, therefore, the Indonesian GTA import data under HTS 0304.19 does not reflect the value for fresh broken fish fillets. In addition, this subheading is a basket category that includes items that are more expensive, such as whole fish fillets, thus rendering it not specific to fresh broken fillets.³⁵⁸
- The Department should value fresh broken fillets with an average of the Vitarich and Bluebay price quotes provided on the record. These price quotes are specific to the fresh broken fillets and reliable as an SV.³⁵⁹

Department’s Position: Similar to our finding on the best available information for fish waste by-products, the Department finds that the Vitarich and Bluebay price quotes are the best available information to value Respondents’ fresh broken fillets by-products. Respondents reported that it produced and sold “fresh broken fish meat,” derived “from the trimming step,” as a by-product during the period of review.³⁶⁰ The price quotes from Vitarich and Bluebay are specific to this by-product because they cover the exact by-product sold by Respondents – “fish trimmings.”³⁶¹ Moreover, while these sources are not as representative of a broad market average as other sources on the record, the quotes are publicly available, and nothing on the record indicates that their prices are inclusive of taxes and duties. While the Vitarich (April 2010) and Bluebay (July 2013) quotes are not contemporaneous with the POR, the Department finds this fact is outweighed by their superior specificity and satisfaction of other SV criteria. Thus, because the Department finds that the Vitarich and Bluebay quotes are the best available information to value this by-product, consistent with its practice,³⁶² the Department will average the values on a waste-specific basis (*i.e.*, average skin prices, trimmings, *etc.*). Finally, as explained above, the Department continues to find the Vitarich price quote reliable.³⁶³

By contrast, the Indonesia GTA import data under HTS 0304.19, “Fish Fillets, Fresh, or Chilled, Other”, is not the best available information for this by-product. In particular, the source is not specific to the fresh broken fillet by-product reported by Respondents because this category by its terms includes whole, unbroken fresh fish fillets.³⁶⁴ As explained above, Respondents reported producing and selling fresh broken fish meat, which is waste by-product derived from the trimmings stage. However, this HTS category includes whole fish fillets and not fresh broken fish meat by-product. Thus, the source is not specific to the by-product reported by Respondents.

³⁵⁷ See Respondents’ January 22, 2014 submission at 79.

³⁵⁸ *Id.*

³⁵⁹ *Id.* at 198.

³⁶⁰ See Vinh Hoan’s Section D Questionnaire Response, (April 22, 2013) at 41-42.

³⁶¹ See Petitioners’ December 6, 2013 submission at Exhibit 13.

³⁶² See, *e.g.*, *Fifth AR*, and accompanying Issues and Decision Memorandum at Comment 2.C.

³⁶³ Notably, Respondents have not argued that the value for this by-product in the Vitarich quote is aberrational.

³⁶⁴ See Respondents’ December 6, 2013 submission at Exhibit 10.A.

Comment XII: Surrogate Value for Sawdust

Respondents

- In the *Preliminary Results*, the Department valued sawdust using Indonesian GTA import data under HTS 4401.30. It is not appropriate to use HTS 4401.30 Indonesian import data to value sawdust because it is not specific to the input and results in an abnormally high value.³⁶⁵
- If the Department selects Bangladesh as the primary surrogate country, then it should apply a simple average of the Bangladeshi prices quotes on the record that were issued by SR Apparels, Dhaka, MK Traders, and Chittagong in November 2012. These prices quotes are actual commercial transactions, reliable, and contemporaneous with the POR.³⁶⁶
- If the Department selects Indonesia as the primary surrogate country, then it should use an Indonesian price quote from Pt. Serba Dowel to value sawdust for the final results.³⁶⁷ This Indonesian price quote provides the name and contact of the company providing the price quote, as well as the date (November, 13, 2012) and name of the person (Murdani) providing the quote. The price quote is also specific to the input and net of taxes and duties. Finally, the price quote includes terms of payment, a sales price being offered for the item, and is an actual business transaction. However, the Pt. Serba Dowel price quote is not a broad market average and is from outside the POR.³⁶⁸

Petitioners

- In the *Preliminary Results*, the Department used Indonesian GTA import data under HTS 4401.30 to value Respondents' pressed sawdust.³⁶⁹
- Respondents argue that the Department should value sawdust with an Indonesian price quote from Pt. Serba Dowel. The Department should reject the Pt. Serba Dowel price quote because it is not specific.³⁷⁰
- The Department should continue to use Indonesian HTS 4401.30 ("Sawdust and Wood Waste and Scrap") to value sawdust in the final results because it is more specific and includes the type of sawdust product used to produce *pangasius* by-products.³⁷¹

Department's Position: We find that the Indonesian GTA import data under HTS 4401.30, "Sawdust and Wood Waste and Scrap", is the best available information to value this input.³⁷² During the review, respondents reported using "pressed sawdust."³⁷³ The HTS category by its terms covers the input used by Respondents and, thus, is specific to the input in question. Moreover, the data is contemporaneous with the POR. Finally, the Department previously found that GTA data, such as the data in question, is publicly-available, representative of broad market

³⁶⁵ See Respondents' January 22, 2014 submission at 84-85.

³⁶⁶ *Id.* at 35.

³⁶⁷ *Id.* at 87.

³⁶⁸ *Id.*

³⁶⁹ See Petitioners' February 10, 2014 submission at 165.

³⁷⁰ *Id.*

³⁷¹ *Id.* at 165 and 168.

³⁷² See Preliminary Surrogate Value Memo at 5-6, and Exhibit 1.

³⁷³ See Vinh Hoan's Section D Questionnaire Response, (April 22, 2013) at 40.

averages, and is free of duties and taxes.³⁷⁴ Thus, we find this source to be the best available information to value this input. We disagree with Respondents' argument that Indonesia import data for sawdust is aberrational. Respondents provided benchmark prices for coal, whole fish, and fish feed for comparison. However, these values are for products that are not comparable to the input in question and are not suitable benchmarks to demonstrate that the Indonesian import data for sawdust is aberrational.

By contrast, while the Pt. Serba Dowel price quote may be specific to the sawdust input, publicly available and free of taxes and duties, it fails to satisfy several of the Department's SV criteria.³⁷⁵ Specifically, it reflects a single company's experience and, thus, does not represent a broad market average. Moreover, the quote is not contemporaneous as it pertains to prices outside of the POR. In addition, the Pt. Serba Dowel price quote is not reliable because it is not addressed to anyone and it is unclear how the Respondents acquired the price quote.

Finally, the Bangladeshi price quotes submitted by Respondents similarly are not the best available information to value this input because they are not representative of broad market averages and since we have a reliable and specific source from the primary surrogate country then we decline to depart from our regulatory preference of valuing all inputs from a single surrogate country

Comment XIII: Surrogate Values for Truck Freight and Boat Freight

Respondents

- The Department should value truck freight and boat freight using Bangladeshi data published in the *Bangladeshi Statistics Yearbook*.³⁷⁶
- Should the Department continue to select Indonesia as the surrogate country, truck freight should be valued using a price quote which is specific to *pangasius* fillets. In past cases, the Department used price quotes as the surrogate source when it is the most appropriate value on the record.³⁷⁷
- Because *Doing Business 2012: Indonesia* ("*Doing Business*") is designed to compare the degree of ease of doing business in different countries (economies) around the world and to make the data comparable across the economies, the publication assumes that the traded goods covered are "one of the economy's leading export or import products."³⁷⁸ As a result, this data does not encompass many of the key inputs used by Respondents, *e.g.*, *pangasius* fillets, *pangasius* feed, and is therefore not specific.

³⁷⁴ See, *e.g.*, *Frontseating Service Valves from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 73825 (December 9, 2013) and accompanying Issues and Decision Memorandum at Comment 7; *Certain Preserved Mushrooms from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 55808 (September 11, 2012) and accompanying Issues and Decision Memorandum at Comment 3.

³⁷⁵ See Respondents' December 6, 2013 submission at Exhibit 8.

³⁷⁶ See Respondents' May 24, 2013 submission at Exhibit 8.

³⁷⁷ See, *e.g.*, *Saccharin from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 68 FR 27530 (May 20, 2003) ("*Saccharin*") and accompanying Issues and Decision Memorandum at Comment 1.

³⁷⁸ See Respondents' December 6, 2013 submission at Exhibit 7.B.

- If the Department continues to value truck freight using *Doing Business*, the freight distance should be adjusted. *Doing Business* clearly states the surveyed business “is located in the *periurban area* of the economy’s largest business city,” *i.e.*, the immediately adjoining urban area between the suburbs and countryside, not the center of Jakarta as the Department used in the *Preliminary Results*.³⁷⁹ Moreover, the Department should adjust the container weight based on data from Maersk.

Petitioners

- The Department should continue to value truck freight using *Doing Business* because it is form the surrogate country and is contemporaneous, unlike the *Bangladeshi Statistics Yearbook*.

Department’s Position: The parties comments concern the SVs for two forms of freight utilized by Respondents, boat and truck freight. We examine each in turn.

A. Boat Freight

Regarding boat freight, we continue to find that the Indonesian freight rates published by the Indonesian freight forwarder, PT. Mantap Abiah Abadi, is the best available information to value boat freight.³⁸⁰ Although a price quote, it is published by the company on the internet, making it publicly available, and is the only boat freight SV on the record for Indonesia. Moreover, it is contemporaneous with the POR, whereas the *Bangladeshi Statistics Yearbook* is from 2005.³⁸¹ Also, the Indonesian price quote is from the primary surrogate country, Indonesia, and selecting this source to value Respondents’ boat freight ensures that the Department follows its regulatory preference articulated in 19 CFR 351.408(c)(2). The *Bangladeshi Statistics Yearbook* represents country-wide data whereas the Indonesian data represents the experience of one company. We do not have any information either way that the Indonesian data is any more specific, or tax and duty free, to this movement expense as the Bangladeshi data. However, having weighed the pros and cons of each data source, in the absence of better data, we consider a price quote for boat freight from the primary surrogate country to be better than the Bangladeshi government statistics which are not from the primary surrogate country, not contemporaneous and not more specific than the Indonesian price quote. Therefore, consistent with the preference stated in our regulations, we continue to value boat freight using the data from PT. Mantap Abiah Abadi.³⁸²

³⁷⁹ *Id.*

³⁸⁰ See Memo to the File, From Paul Walker, Case Analyst, “Ninth Administrative Review, and Aligned New Shipper Reviews, of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Value Source Documents” dated September 3, 2013 at Attachment 4.c

³⁸¹ See Respondents’ May 24, 2013 submission at Exhibit 8.

³⁸² See 19 CFR 351.408(c)(2); *Clearon*, No. 08-00364, 2013 WL 646390, at *6 (CIT 2013) (“{T}he court must treat seriously {the Department’s } preference for the use of a single surrogate country.”); *Globe Metallurgical*, 32 CIT 1070, 1076 (2008); see also *Peer Bearing*, 752 F. Supp. 2d 1353, 1373 (CIT 2011).

B. Truck Freight

Regarding valuing truck freight, we continue to find that *Doing Business* is the best available information.³⁸³ As noted above, *Doing Business* is contemporaneous with the POR, whereas the *Bangladeshi Statistics Yearbook* is from 2005 and, thus, is not contemporaneous with the POR. Moreover, the *Bangladeshi Statistics Yearbook* is a general freight rate, like *Doing Business*, and is no more specific to the truck freight reported by Respondents.³⁸⁴ Regarding Respondents' Indonesian price quote, we note that this quote is from a secondary source, not the company itself.³⁸⁵ The Department prefers data from primary sources, if available.³⁸⁶ Moreover, the Department does not prefer data representative of single company's experience when a more broad market average is available on the record, as it is in this case.³⁸⁷ In contrast, *Doing Business* is a broad-based survey of costs in the Indonesian market and, thus, constitutes a more representative source than the data that are limited to the experiences of individual companies.³⁸⁸ We note that the cost data have an official nature, in that they represent statistical analysis by the World Bank, an international organization.³⁸⁹ In past cases, we found international organization publications to be reliable and credible sources of information.³⁹⁰ Respondents also argue that *Doing Business* is not specific to its FOPs and *pangasius* fillets. We note that the price quote would only be specific to *pangasius* fillets and not the many other FOPs consumed by Respondents in their production of *pangasius* fillets. Thus, we find the Indonesian price quote to be no more specific than *Doing Business*.

Regarding Respondents' proposed adjustment to the freight distances, we agree. In the *Preliminary Results*, the Department used the distance from Jakarta city center to the Jakarta port, when we should have used a peri-urban area, as noted by *Doing Business*. Accordingly, we changed our calculations consistent with Respondents' comments for the final results.

Regarding Respondents' proposed adjustment to the container weight, we disagree. We note that we faced this issue in *Frontseating Service Valves*, where a respondent argued the Department should divide the *Doing Business* truck freight rate by the weight of a larger container than the 20 foot container used in the *Doing Business* study.³⁹¹ In that case we stated that it is distortive to increase the per-unit value of B&H based the relative size of the cargo containers, because in that case, and as in this case, there is no record evidence to suggest that the per-unit B&H

³⁸³ See Memo to the File, from Paul Walker, Case Analyst, "Ninth Administrative Review, and Aligned New Shipper Reviews, of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Value Source Documents," dated September 3, 2013 at Attachment 4.B.

³⁸⁴ Respondents reported that they incurred truck or boat freight for various FOPs. See, e.g., HVG's April 22, 2013 submission at Exhibit 1.

³⁸⁵ See Respondents' December 6, 2013 submission at Exhibit 7.A.

³⁸⁶ See *Honey from the People's Republic of China: Final Results and Rescission of Antidumping Duty New Shipper Reviews*, 76 FR 4289 (January 25, 2011) and accompanying Issues and Decision Memorandum at Comment 3.

³⁸⁷ See, e.g., *Brake Rotors*, and accompanying Issues and Decision Memorandum at Comment 3.

³⁸⁸ See, e.g., *Certain Polyester Staple Fiber from the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review*, 76 FR 2886 (January 18, 2011) ("PSF") and accompanying Issues and Decision Memorandum at Comment 1.

³⁸⁹ *Id.*

³⁹⁰ *Id.*

³⁹¹ See *Frontseating Service Valves*, and accompanying Issues and Decision Memorandum at Comment 11.

charges increase proportionally to the size of the container.³⁹² In order to standardize costs across countries, *Doing Business* states that charges listed in the study are based on a 10,000 kg, weight which is the weight the Department used in the *Preliminary Results*, and in other cases.³⁹³ We note that it is the Department's practice to use the standard weight employed by *Doing Business*.³⁹⁴ Moreover, in the past we stated that we do not adjust the per-unit B&H charges to account for the size of the container.³⁹⁵ As we have no information on the record to justify Respondents' proposed adjustment, we made no changes to this part of the truck freight calculation.

Comment XIV: Surrogate Value for Electricity

Respondents

- The Department should value electricity using Bangladeshi data published in the *Bangladeshi Statistics Yearbook*.³⁹⁶

Petitioners

- The Department should continue to value electricity using PT PLN (Persero) ("Persero"), an Indonesian electric utility company.³⁹⁷

Department's Position: We continue to find that the data from Persero is the best available information to value electricity. Respondents' argument for using the *Bangladeshi Statistics Yearbook* rests on their argument that Bangladesh should be the primary surrogate country; they do not challenge the specificity, accuracy, or reliability of the Persero data. Although the Persero data is from February 2011, the *Bangladeshi Statistics Yearbook* is from 2002; therefore, while neither source is contemporaneous with the POR, the Persero data is closer in time to the POR. Moreover, the Persero data is from the primary surrogate country, Indonesia, and meets the Department's SV selection criteria. We find that both data represent broad market averages, as *Bangladeshi Statistics Yearbook* represents country-wide data, and Persero is the sole electricity distributor in Indonesia. We note the Indonesian data is more specific as it represents data for the industry where as the Bangladeshi data is for general electricity. We do not have any information either way that the Indonesian and Bangladeshi data are tax and duty free. Having weighed the pros and cons of each data source, in the absence of better data, we consider the more specific electricity data from the primary surrogate country to be better than Bangladeshi government statistics which are not from the primary surrogate country, not contemporaneous and not specific. Therefore, consistent with the preference stated in our regulations, we continue to value electricity using the data from Persero.³⁹⁸

³⁹² *Id.*

³⁹³ See *Vietnam Shrimp 11-12*, and accompanying Issues and Decision Memorandum at Comment 5; see also <http://www.doingbusiness.org/methodology/trading-across-borders>.

³⁹⁴ *Id.*

³⁹⁵ See *Frontseating Service Valves*, and accompanying Issues and Decision Memorandum at Comment 11.

³⁹⁶ See Respondents' May 24, 2013 submission at Exhibit 6.

³⁹⁷ See Petitioners' May 24, 2013 submission at Exhibit 20.

³⁹⁸ See 19 CFR 351.408(c)(2); *Clearon*, No. 08-00364, 2013 WL 646390, at *6 (CIT 2013) ("[T]he court must treat seriously {the Department's } preference for the use of a single surrogate country."); *Globe Metallurgical*, 32 CIT 1070, 1076 (2008); see also *Peer Bearing*, 752 F. Supp. 2d 1353, 1373 (CIT 2011).

Comment XV: Surrogate Value for Diesel

Respondents

- The Department should value diesel using Bangladeshi data published by the World Bank for Bangladesh.³⁹⁹

Petitioners

- The Department should continue to value diesel using Indonesian GTA import data under HTS 2710.19.7200, “Other Diesel Fuel.”⁴⁰⁰

Department’s Position: We continue to find that the Indonesian GTA import data is the best available information to value diesel. Respondents’ argument for using the World Bank data rests on their argument that Bangladesh should be the primary surrogate country; they do not challenge the specificity, accuracy, or reliability of the GTA data. As noted above, GTA fulfills the Department’s SV selection criteria, *i.e.*, it is publicly-available, represents a broad market average, and is free of taxes and duties.⁴⁰¹ Moreover, the GTA data is contemporaneous with the POR and covers diesel fuel, which is sufficiently specific to the diesel oil Respondents reported to run generators.⁴⁰² Additionally, the GTA data is from the primary surrogate country, Indonesia, and selecting this source to value Respondents’ diesel ensures that the Department follows its regulatory preference articulated in 19 CFR 351.408(c)(2). Therefore, consistent with the preference stated in our regulations, we continue to value diesel using the Indonesian GTA import data under HTS 2710.19.7200, “Other Diesel Fuel”.⁴⁰³

Comment XVI: Surrogate Value for Containerization

Respondents

- The Department should value containerization using data from a respondent in another proceeding.⁴⁰⁴

No other party commented on this issue.

Department’s Position: We agree with Respondents. The record of this review does not contain any value for containerization from the primary surrogate country. Therefore, we considered other values that meet the Department’s SV selection criteria. The only value on the record for containerization is from Falcon Marine Exports Limited (“Falcon Marine”), an Indian producer and exporter of frozen warmwater shrimp.⁴⁰⁵ We used the data from Falcon Marine to

³⁹⁹ See Respondents’ May 24, 2013 submission at Exhibit 4.

⁴⁰⁰ See Petitioners’ May 24, 2013 submission at Exhibit 19.

⁴⁰¹ See, *e.g.*, *Carbon*, and accompanying Issues and Decision Memorandum at Comment I.C.A.

⁴⁰² See, *e.g.*, HVG’s April 22, 2013 submission at 30.

⁴⁰³ See 19 CFR 351.408(c)(2); *Clearon*, No. 08-00364, 2013 WL 646390, at *6 (CIT 2013) (“{T}he court must treat seriously {the Department’s } preference for the use of a single surrogate country.”); *Globe Metallurgical*, 32 CIT 1070, 1076 (2008); see also *Peer Bearing*, 752 F. Supp. 2d 1353, 1373 (CIT 2011).

⁴⁰⁴ See Respondents’ May 24, 2013 submission at Exhibit 9.

⁴⁰⁵ *Id.*

value containerization in other NME cases because it satisfies the breadth of the Department's SV criteria.⁴⁰⁶ For the final results, we valued containerization using data from Falcon Marine.

Comment XVII: Surrogate Value for Marine Insurance

Respondents

- The Department should continue to value marine insurance using data from RJG Consultants for the far east.

No other party commented on this issue.

Department's Position: We agree with Respondents. The record of this review does not contain any value for marine insurance from the primary surrogate country. Therefore, we considered other values that meet the Department's SV selection criteria. For the final results, we continue to value marine insurance using data from RJG Consultants for the far east.

Comment XVIII: Surrogate Value for Water

Respondents

- The Department should value water using Bangladeshi data published in the *Dhaka Water Supply and Sewage Authority Report*.⁴⁰⁷

Petitioners

- The Department should continue to value water using the 2011 rates charged by Pam Jaya, an Indonesian water utility company.⁴⁰⁸

Department's Position: We continue to find that the data from Pam Jaya is the best available information to value this input. Respondents' argument for using the *Dhaka Water Supply and Sewage Authority Report* rests on their argument that Bangladesh should be the primary surrogate country; they do not challenge the specificity, accuracy, or reliability of the Pam Jaya data. The Pam Jaya data is from the primary surrogate country, Indonesia, and meets the Department's SV selection criteria. Specifically, the Pam Jaya data appears to be for potable water, and the Respondents reported that the water, when used in processing fish fillets, is potable.⁴⁰⁹ Moreover, category "Group IV B" is specific to food factories, and thus, is more specific to the Respondent's water input than the Bangladeshi data for "industrial" use. Therefore, consistent with the preference stated in our regulations, we continue to value water using the data from Pam Jaya.⁴¹⁰

⁴⁰⁶ See, e.g., *Vietnam Shrimp 09-10*, and accompanying Issues and Decision Memorandum at Comment H.

⁴⁰⁷ See Respondents' May 24, 2013 submission at Exhibit 4.

⁴⁰⁸ See Petitioners' May 24, 2013 submission at Exhibit 17.

⁴⁰⁹ See, e.g., HVG's April 22, 2013 submission at 2.

⁴¹⁰ See 19 CFR 351.408(c)(2); *Clearon*, No. 08-00364, 2013 WL 646390, at *6 (CIT 2013) ("[T]he court must treat seriously [the Department's] preference for the use of a single surrogate country."); *Globe Metallurgical*, 32 CIT 1070, 1076 (2008); see also *Peer Bearing*, 752 F. Supp. 2d 1353, 1373 (CIT 2011).

Comment XIX: Surrogate Value for Brokerage and Handling

Respondents

- The Department should value brokerage and handling (“B&H”) using *Doing Business 2012: Bangladesh* and the container weight published by Maersk.⁴¹¹
- Should the Department continue to select Indonesia as the surrogate country, B&H should be valued using a price quote which is specific to *pangasius* fillets. In past cases, the Department used price quotes as the surrogate source when it is the most appropriate value on the record.⁴¹²
- Because *Doing Business 2012: Indonesia* (“*Doing Business*”) is designed to compare the degree of ease of doing business in different countries (economies) around the world and to make the data comparable across the economies, the publication assumes that the traded goods covered are “one of the economy’s leading export or import products.”⁴¹³ As a result, this data is not specific to *pangasius* fillets as Indonesia does not export *pangasius* fillets.

Petitioners

- The Department should continue to value truck freight using *Doing Business* from Indonesia because it is from the surrogate country, unlike *Doing Business* from Bangladesh.

Department’s Position: We continue to find that *Doing Business* data from Indonesia is the best available information to value this input. *Doing Business* is a publicly available broad-based survey of costs in the Indonesian market and, thus, constitutes a source more representative of a broad market average than does the data from individual companies.⁴¹⁴ We note that the cost data have an official nature, in that they represent statistical analysis by the World Bank, an international organization.⁴¹⁵ In past cases, we found international organization publications to be reliable and credible sources of information.⁴¹⁶ Moreover, similar to our findings on *Doing Business* in other proceedings, we find that the *Doing Business* data from Indonesia satisfy the remaining SV criteria in that it is contemporaneous with the POR and free of taxes and duties.⁴¹⁷ Although Respondents propose using *Doing Business* from Bangladesh, the record contains *Doing Business* from Indonesia. Therefore, consistent with the preference stated in our regulations, we continue to value B&H using the data from *Doing Business* from Indonesia.⁴¹⁸

Regarding Respondents’ Indonesian price quote, we note that this quote is from a secondary source, and not the company itself. Although this price quote is arguably more specific than *Doing Business*, it does not meet any of the Department’s other SV criteria. The Department

⁴¹¹ See Respondents’ May 24, 2013 submission at Exhibits 11.A & B.

⁴¹² See, e.g., *Saccharin*, and accompanying Issues and Decision Memorandum at Comment 1.

⁴¹³ See Respondents’ December 6, 2013 submission at Exhibit 7.B.

⁴¹⁴ See, e.g., *PSF*, and accompanying Issues and Decision Memorandum at Comment 1.

⁴¹⁵ *Id.*

⁴¹⁶ *Id.*

⁴¹⁷ See *Frontseating Service Valves*, and accompanying Issues and Decision Memoandum at Comment 11.

⁴¹⁸ See 19 CFR 351.408(c)(2); *Clearon*, No. 08-00364, 2013 WL 646390, at *6 (CIT 2013) (“{T}he court must treat seriously {the Department’s } preference for the use of a single surrogate country.”); *Globe Metallurgical*, 32 CIT 1070, 1076 (2008); see also *Peer Bearing*, 752 F. Supp. 2d 1353, 1373 (CIT 2011).

prefers data from primary sources, if available.⁴¹⁹ Moreover, the Department does not prefer data representative of single company's experience, when a more broad market average is available on the record, as it is in this case.⁴²⁰

Comment XX: Surrogate Value for Salt

Respondents

- In the *Preliminary Results*, the Department used Indonesian GTA import data under HTS 2501.00, "Salt Incl Tbl/Dentrd, Pure Sodm Chlor Etc; Sea Wtr", to value salt.⁴²¹
- The Indonesian GTA import data is aberrational because it contains countries that shipped small quantities at high prices.⁴²²
- The Department should value salt based on price data published in a 2008 Bangladeshi newspaper article called Financial Express. This data for valuing salt comes from the major salt producing region of Bangladesh. There is no reason why a producer of subject merchandise would pay significantly higher price for imported salt, hence the domestic prices represent a more accurate SV.⁴²³

Petitioners

- Respondents claim that Indonesia import data is aberrational, but fail to compare the data for salt to any other benchmark sources as required by the Department.⁴²⁴
- The Department should reject their argument because no record evidence suggests that the salt value is aberrant.⁴²⁵
- The Bangladesh newspaper article placed on the record by respondents with prices for valuing salt is unreliable because it does not include the name of the salt producer, the selling price, date of sale, or whether the prices are ex-factory or tax exclusive. It is also non-contemporaneous, given that it is from 2008.⁴²⁶
- The Department should continue to value salt using Indonesian GTA import data under HTS 2501.00 because it constitutes the best information on the record.⁴²⁷

Department's Position: We continue to find that the Indonesian GTA import data under HTS 2501.00 is the best available information to value salt. As noted above in Comment I, we selected Indonesia as the primary surrogate country. It is the Department's preference to value all FOPs utilizing data from the primary surrogate country and to consider alternative sources only when a suitable value from the primary surrogate country does not exist on the record.⁴²⁸ In

⁴¹⁹ See *Honey from the People's Republic of China: Final Results and Rescission of Antidumping Duty New Shipper Reviews*, 76 FR 4289 (January 25, 2011) and accompanying Issues and Decision Memorandum at Comment 3.

⁴²⁰ See, e.g., *Brake Rotors*, and accompanying Issues and Decision Memorandum at Comment 3.

⁴²¹ See Respondents' Case Brief at 29.

⁴²² *Id.*

⁴²³ *Id.* at 29-30.

⁴²⁴ See Petitioners' Rebuttal Brief at 98.

⁴²⁵ *Id.*

⁴²⁶ *Id.* at 98-99

⁴²⁷ *Id.* at 100.

⁴²⁸ See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Fifth New Shipper Review*, 75 FR 38985 (July 7, 2010) ("*Fifth NSR*") and accompanying Issues and Decision Memorandum at Comment 2.B; see also *Furniture from China*, and accompanying Issues and Decision Memorandum at Comment 3.

this review, the record contains suitable GTA import data for the salt from the primary surrogate country, Indonesia. This GTA data is contemporaneous with the POR and is specific to the salt reported by Respondents, *i.e.*, “salt.”⁴²⁹ Moreover, as noted above, the GTA data fulfills the Department’s other SV selection criteria, *i.e.*, it is publicly-available, represents a broad market average, and is free of taxes and duties.⁴³⁰

By contrast, the 2008 price data published in the Financial Express newspaper article from Bangladesh while it is specific to the salt input, it reflects a single company’s experience and, thus, is not representative of a broad market average; is not contemporaneous with the POR; and contains no information whether it reflects prices inclusive of taxes and duties.⁴³¹

Finally, we disagree with Respondents that the Indonesian GTA import data under HTS 2501.00 is aberrational. Respondents have not provided any record evidence or benchmark price comparisons to show the data is unreliable and aberrational. Thus, Respondents’ arguments are speculative.

Comment XXI: Surrogate Values for CO Gas and Coal

Respondents

- In the *Preliminary Results*, the Department valued CO gas and coal with Indonesian GTA import data under HTS 2811.29.9000 and 2701.19.0000, respectively.⁴³²
- The data reported under both HTS 2811.29.9000 and 2701.19.0000 is aberrational because they contain imports from countries that shipped small quantities at high prices.⁴³³
- The Department should value CO gas and coal with UN ComTrade Bangladesh import data for the final results.⁴³⁴

Petitioners

- Respondents claim that Indonesia import data for CO gas and coal are aberrational, but fail to compare the import data to any other benchmark sources as required by the Department.⁴³⁵
- The Department should reject their argument because no specific evidence is on the record to suggest the data is unreliable or aberrational.⁴³⁶
- The UN ComTrade Bangladesh import data proposed by Respondents is not from the preferred surrogate country and does not contain values that are contemporaneous to the POR. Price data for CO gas is from 2007 and data for coal is from 2004.⁴³⁷
- The Department should continue to use Indonesian import data to value CO gas and coal because it is reliable, contemporaneous, and from the primary surrogate country.⁴³⁸

⁴²⁹ See Vinh Hoan’s Section D Questionnaire Response, (April 22, 2013) at 28 and see HVG’s Supplemental Section D Questionnaire Response, (April 22, 2013) at 24, and see Golden Quality’s Section D Questionnaire Response, (December 10, 2012) at 16.

⁴³⁰ See, *e.g.*, *Carbon*, and accompanying Issues and Decision Memorandum at Comment I.C.A.

⁴³¹ See Respondent’s May 24, 2013 submission at Exhibit 3.

⁴³² See Respondents’ Case Brief at 30.

⁴³³ *Id.*

⁴³⁴ *Id.* at 31.

⁴³⁵ See Petitioners’ Rebuttal Brief at 100.

⁴³⁶ *Id.*

⁴³⁷ *Id.* at 101.

Department’s Position: We continue to find that Indonesian GTA import data under HTS 2811.29.9000, (“Inorganic Oxygen Compounds Of Nonmetals, Nesoi”), and HTS 2701.19.0000, (“Coal, nes, w/n pulverized, but not agglomerated”), is the best available information to value CO gas and coal, respectively. As noted above in Comment I, we selected Indonesia as the primary surrogate country. It is the Department’s preference to value all FOPs utilizing data from the primary surrogate country and to consider alternative sources only when a suitable value from the primary surrogate country does not exist on the record.⁴³⁹ In this review, the record contains suitable GTA import data for the CO gas and coal factors listed above from the primary surrogate country, Indonesia. Specifically, by their terms, these HTS categories cover the type of CO gas and coal reported by Respondents, “Co gas and coal.”⁴⁴⁰ This GTA data also is contemporaneous with the POR. Moreover, the GTA data fulfills the Department’s other SV selection criteria, *i.e.*, it is publicly-available, represents a broad market average, and is free of taxes and duties.⁴⁴¹

By contrast, while specific to the input, publicly available, representative of a broad market average, and free of taxes and duties, the 2007 UN ComTrade Bangladesh import data is non-contemporaneous with the POR and not from the primary surrogate country. Thus, because the Indonesian GTA import data satisfy the breadth of the Department’s SV selection criterion, and the Bangladeshi data does not, we find the former to be the best available information to value this input.

Finally, we disagree with Respondents that Indonesian import data for CO gas and coal are aberrational. Respondents have not provided any record evidence or benchmark price comparisons to show the data is unreliable and aberrational. Thus, Respondents’ claims are speculative.

Company Specific Issues:

Comment XXII: Vinh Hoan’s Gross Weight vs. Net Weight for U.S. Sales and FOPs

Petitioners

- The antidumping statute requires that the U.S. price for the subject merchandise be compared on an equivalent basis to normal value (“NV”).
- In the less-than-fair value (“LTFV”) investigation, the Department calculated the U.S. price and FOPs on a gross weight basis (*i.e.*, inclusive of glazing) because Respondents sold the subject merchandise on a gross weight basis.⁴⁴²

⁴³⁸ *Id.*

⁴³⁹ See *Fifth NSR*, and accompanying Issues and Decision Memorandum at Comment 2.B; see also *Furniture from China*, and accompanying Issues and Decision Memorandum at Comment 3.

⁴⁴⁰ See Vinh Hoan’s Section D Questionnaire Response, (April 22, 2013) at 40.

⁴⁴¹ See, *e.g.*, *Carbon*, and accompanying Issues and Decision Memorandum at Comment I.C.A.

⁴⁴² See *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37716 (June 23, 2003) and accompanying Issues and Decision Memorandum at Comment I.A (“*LTFV Fish Fillet Final Determination*”).

- In *Final Results of Shrimp from Thailand*, the Department determined to compare glaze-exclusive U.S. prices to glaze-exclusive NVs because this approach “was necessary... to ensure a proper comparison.”⁴⁴³
- In the *Preliminary Results*, the Department departed from its statutorily mandated practice by calculating Vinh Hoan’s antidumping duty margin by comparing the U.S. price on an unglazed basis to the FOPs reported on a weight basis that included glazing.
- In Vinh Hoan’s U.S. sales database, Vinh Hoan reported most sales on an unglazed weight basis and some sales on a glazed⁴⁴⁴ weight basis.
- Even though most of Vinh Hoan’s sales by volume were on an unglazed basis, Vinh Hoan reported the FOPs on a glaze-inclusive basis. Specifically, the denominator for Vinh Hoan’s FOPs includes the total weight of the processed fish fillet products and the glazing weight for the glazed products, which understates Vinh Hoan’s FOPs.
- Vinh Hoan understated its FOPs by calculating each FOP based on the total amount of the FOP consumed divided by an “inflated” denominator inclusive of glazing.
- Vinh Hoan’s accounting records demonstrate that the glaze-inclusive FOPs are understated because there is a difference between the glazed and unglazed weights of the glazed-processed fish fillet products.⁴⁴⁵
- By not adjusting Vinh Hoan’s FOPs to eliminate the distortive effect of including the glazing weight in the NVs, as compared to Vinh Hoan’s U.S. prices reported on an unglazed basis, the Department understated Vinh Hoan’s antidumping duty margin.
- For comparison, the Department made the correct U.S. price-to-NV comparison for the other mandatory respondent, HVG, by calculating HVG’s antidumping duty margin on an equivalent net weight basis, *i.e.*, exclusive of glazing.⁴⁴⁶
- To be consistent with the antidumping statute, the Department must adjust Vinh Hoan’s FOPs by removing the glazed weight so that the FOPs are reported on a weight basis comparable to the U.S. price.
- Although there are not inventory records for all months of the POR on the record, Vinh Hoan submitted a sample month inventory record for the net weight and gross weight of the glazed products. This sample month inventory record is reasonably representative of the average weight of ice glaze added to the processed fish fillet products for the POR, which can be used to adjust Vinh Hoan’s FOPs.
- The average weight of ice glaze listed in Vinh Hoan’s sample month inventory record is corroborated by the Department’s findings in the glazing weight test performed during the verification of Vinh Hoan in the 8th AR.⁴⁴⁷ This is also corroborated by the glazing weight percentages reported in Vinh Hoan’s U.S. sales database for sales that included glazing weight.

⁴⁴³ See *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 76 FR 40081 (July 12, 2011) and accompanying Issues and Decision Memorandum at Comment 6 (“*Final Results of Shrimp from Thailand*”).

⁴⁴⁴ The net weight factor in the CONNUM included the weight for glazing, ice, or water. See Vinh Hoan’s Supplemental Section C Questionnaire Response, (June 20, 2013) at 6.

⁴⁴⁵ See Vinh Hoan’s Supplemental Section D Questionnaire Response, (July 12, 2013) at Exhibit 3.

⁴⁴⁶ HVG revised its FOP database by revising the denominator to be reported on a net weight basis, *i.e.*, exclusive of glazing. See HVG’s Supplemental Section D Questionnaire Response, (July 8, 2013) at 12.

⁴⁴⁷ See Petitioners’ May 2, 2013 submission at Exhibit 7 (Vinh Hoan Verification Report at 45).

- Vinh Hoan's FOPs should be adjusted, based on facts available, by the following: (1) dividing Vinh Hoan's denominator into glazed and unglazed products based on the percentage of products that were glazed in the sample inventory month; (2) adjusting the weight of the glazed products by removing glazing weight using the average ice glaze in the sample inventory month; (3) recalculating the denominator of total processed fish fillet products on an unglazed basis; (4) calculating the ratio between the denominator on a glazed basis and the denominator on an unglazed basis; and (5) multiplying each FOP by the ratio of the glaze-inclusive FOP denominator to the glaze-exclusive denominator.

Respondents

- Vinh Hoan did not sell the subject merchandise in the United States on a net weight basis. In fact, Vinh Hoan sold, and thus reported, the U.S. price for each sale on a gross weight basis.
- Vinh Hoan reported some sales inclusive of ice, water, and glazing. Thus, it is not accurate to state that Vinh Hoan reported its U.S. price on an unglazed basis.
- All U.S. sales expenses were calculated and reported in the original U.S. sales database using a denominator reported on a gross weight basis.
- Vinh Hoan maintains its accounting records on a gross weight basis and thus there is no record evidence that it sells and invoices on a net weight basis.
- In the 8th AR, the Department verified that Vinh Hoan's U.S. sales are reported on gross weight basis.
- Because Vinh Hoan reported its U.S. price and U.S. sales expenses on a gross weight basis, Vinh Hoan's FOPs also were reported on a gross weight basis.
- Petitioners are confused that there are calculated net U.S. prices, quantities, entered values, and international freight expenses on the record for Vinh Hoan. However, this data was provided at the request of the Department and is not on the weight basis that Vinh Hoan sells the subject merchandise.
- Except for international freight, all other U.S. sales expenses are reported on a gross weight basis and calculating a net weight U.S. price using these gross weight U.S. sales expenses would distort Vinh Hoan's antidumping duty margin.
- The Department should not adjust Vinh Hoan's FOPs because the correct U.S. price is the gross weight sales price (and any accompanying gross weight sales expenses), which should be compared to the only FOPs on the record (*i.e.*, the gross weight FOPs).
- Because Vinh Hoan reported its FOPs on a gross weight basis (as it did in the original investigation and in previous reviews), and because Vinh Hoan was never requested to report its FOPs on a net weight basis, there is no net weight FOP database.
- Petitioners' requested adjustment to the FOPs would lead to a less accurate NV calculation because the calculation is based on an inventory record for one month of the POR. There is no evidence that this single month is representative of the production for the entire POR.
- Petitioners' requested adjustment to the FOPs is incorrect because it does not rely on the inventory-in amounts listed in the inventory record for Vinh Hoan that is on the record for the POR.
- Comparing the difference between glazed and non-glazed production in the inventory-in amounts for this single month, Vinh Hoan notes that the difference is much smaller than Petitioner alleged. Thus, there is no reason for the Department to manipulate Vinh Hoan's FOPs when there is actual, useable data on the record.

- There is no disparity in the treatment of HVG and Vinh Hoan because the antidumping duty margin for each respondent was calculated and compared on the equivalent weight basis.

Department’s Position: The Department agrees, in part, with Petitioners and Respondents. In the LTFV investigation of this proceeding, the Department was required to determine whether U.S. price and normal value for the respondents should be based on net weight or gross weight for the subject merchandise. As established in the LTFV investigation, net weight (or unglazed weight) is the weight of the frozen fish fillets only, whereas gross weight (or glazed weight) is the net weight of the frozen fish fillets with additional water added.⁴⁴⁸ The Department noted in the *LTFV Fish Fillet Final Determination* that for sales where net weight equals gross weight, there is no distinction between net and gross weight (*i.e.*, unglazed and glazed weight).⁴⁴⁹ In determining what weight basis should be used to compare the U.S. price to the normal value in the LTFV investigation, the Department stated:

Because the Department's practice is to use the U.S. price paid to the Respondent and because the Respondents sell, invoice, and are paid for the subject merchandise sold to the United States on a gross weight basis, we are using the gross weight U.S. price as our starting export price. Consequently, to calculate the dumping margins, we are using the gross weight factors of production reported by the Respondents in order to ensure that the normal value is fully comparable to the U.S. price.⁴⁵⁰

Since the LTFV investigation, the Department addressed the comparable weight basis to be used in calculating the U.S. price and normal value in the 2nd administrative review, a remand in the 3rd administrative review, and in the 8th administrative review. In the 2nd administrative review, the Department calculated the U.S. price and normal value on a net weight basis (*i.e.*, exclusive of glazing) because, while glazing of water was reported as a FOP, the denominators were reported on a net weight basis.⁴⁵¹ The Department noted that an adjustment of the weight basis for the U.S. price and normal value would only be appropriate where the “per-unit basis of comparison is affected by inconsistent denominators.”⁴⁵² Additionally, in the remand on the 3rd administrative review, the Department did make a weight adjustment to the international freight expenses for a respondent because the international freight expenses were calculated on a gross weight basis, whereas, the U.S. price, all other selling expenses, and normal value were on a net weight basis.⁴⁵³ The Department found that making such a weight adjustment was necessary because “mixing of net weight and gross weight figures in the calculation would distort the results and improperly leave the international freight expense associated with the shipment of the glazing unaccounted for in the antidumping calculation.”⁴⁵⁴ Finally, in the *Eighth AR*, the

⁴⁴⁸ See *LTFV Fish Fillet Final Determination*, 68 FR 37716 and accompanying Issues and Decision Memorandum at footnote 7.

⁴⁴⁹ *Id.* at footnote 8.

⁴⁵⁰ *Id.* at 4 (Discussion of Issues at I.A).

⁴⁵¹ See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Second Administrative Review*, 72 FR 13242 (March 21, 2007) (“*Second AR*”) and accompanying Issues and Decision Memorandum at Comment 14.

⁴⁵² *Id.*

⁴⁵³ See *Final Results of Redetermination of Catfish Farmers of America v. United States*, Consol. Court No. 08-00111, Slip Op. 09-96 (CIT 2009) at 3-4 (“*3rd AR Fish Final Redetermination*”).

⁴⁵⁴ *Id.*

Department did not make a weight adjustment to the FOPs because the respondent's U.S. price⁴⁵⁵ and normal value were reported on a gross weight basis and thus the relevant basis of comparison was consistent.⁴⁵⁶

In this review, for Vinh Hoan's U.S. price and normal value, the Department finds that it is presented with the unusual situation, which is the first such situation in this case, where U.S. price and normal value are reported using denominators that include both glazed (*i.e.*, gross) and unglazed (*i.e.*, net) weight of the fish fillets. Although Petitioners argue that Vinh Hoan's U.S. price is reported on an unglazed basis and the denominator for the U.S. selling expenses is based on an unglazed weight, this is not the case for all U.S. sales. In Vinh Hoan's U.S. sales database, the Department notes that Vinh Hoan reported both glazed and unglazed sales of fish fillets.⁴⁵⁷ As explained by Vinh Hoan, the quantity of the subject merchandise is based on the volume reflected on the commercial invoice and the quantities for those glazed sales on the invoice are inclusive of ice, water, and glazing.⁴⁵⁸

Although Petitioners are correct that, in the *Preliminary Results*, we calculated U.S. price using the net weight⁴⁵⁹ (*i.e.*, exclusive of glazing), we find that this is not the correct U.S. price for all sales reported in Vinh Hoan's U.S. sales database, in that Vinh Hoan made some sales of glazed subject merchandise.⁴⁶⁰ The Department finds that the correct U.S. price to use for the final results is the gross unit price (*i.e.*, glazed weight basis and unglazed weight basis for those specific sales) recorded on the commercial invoice⁴⁶¹ because this is the weight basis price that Vinh Hoan sold and was paid for the subject merchandise.⁴⁶² Additionally, for all U.S. selling expenses, the Department finds that the correct denominator to use for calculating the U.S. selling expenses is the total quantity weight using the weight basis (*i.e.*, glazing weight or unglazed weight) recorded on the commercial invoice. For unglazed sales, as an example, the

⁴⁵⁵ In the *Eighth AR*, the Department noted for the respondent, Vinh Hoan, that the U.S. price did not include ice, water, or glazing, and thus the net weight of the U.S. price was equivalent to the gross weight. *See Eighth AR*, and accompanying Issues and Decision Memorandum at Comment IX. This is in accordance with the Department's findings, in the *LTFV Fish Final Determination*, where the Department established for sales that are on a net weight basis (*i.e.*, unglazed weight) that there is no distinction between net weight and gross weight. *See LTFV Fish Final Determination*, 68 FR 37716 at footnote 8

⁴⁵⁶ *See Eighth AR*, and accompanying Issues and Decision Memorandum at Comment IX.

⁴⁵⁷ *See* Vinh Hoan's Second Supplemental Section C Questionnaire Response (June 28, 2013) at Exhibit 1 (sec_c_2.sasbdat).

⁴⁵⁸ *See* Vinh Hoan's Supplemental Section C Questionnaire Response (June 20, 2013) at 11.

⁴⁵⁹ The U.S. price on a net weight basis (*i.e.*, exclusive of glazing) was reported by Vinh Hoan, at the Department's request, in Vinh Hoan's Supplemental Section C Questionnaire Response at 6. The Department notes that while the U.S. price on a net weight basis is the same as the gross unit price recorded on the commercial invoice for unglazed sales, the U.S. price on a net weight basis is not the same as the gross unit price recorded on the commercial invoice for glazed sales.

⁴⁶⁰ *See* Memorandum to the File, through Scot Fullerton, Program Manager, from Julia Hancock, Case Analyst, Subject: Ninth Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results Analysis Memorandum for Vinh Hoan Corporation (September 3, 2013) at 4 ("Vinh Hoan Prelim Analysis Memo").

⁴⁶¹ *See* Vinh Hoan's Section C Response (April 22, 2013) at Exhibit 6.

⁴⁶² *See* Vinh Hoan's Section C Response (April 22, 2013) at 16.

Department notes that U.S. selling expenses is calculated based on total net quantity weight⁴⁶³ or unglazed weight of the commercial invoice.⁴⁶⁴ The Department notes that, in the *Preliminary Results*, Vinh Hoan calculated its international freight using a net weight denominator for both glazed and unglazed.^{465,466} However, the Department finds that calculating international freight, in the final results, using a net weight denominator for both glazed and unglazed sales is not consistent with the weight basis of the U.S. price of the subject merchandise invoiced and sold by Vinh Hoan. Accordingly, the Department finds that, for the final results, Vinh Hoan's U.S. price, quantity, and the U.S. selling expenses will be based on the weight basis recorded on the commercial invoice. Therefore, the Department finds that U.S. sales database used for calculating Vinh Hoan's U.S. price, for the final results, includes U.S. prices and U.S. selling expenses reported on a net weight basis (*i.e.*, unglazed) and a gross weight basis (*i.e.*, glazed).

For Vinh Hoan's normal value, the Department finds that, like the U.S. price for the U.S. sales database, the denominator includes both the glazed (*i.e.*, gross) and unglazed (*i.e.*, net) weight of the subject merchandise. The Department notes that Vinh Hoan reported its FOPs, such as the whole live fish FOP, by total consumption of the input divided by the total production weight of fish fillet products.⁴⁶⁷ Vinh Hoan reports the denominator for the total production weight is based on the gross weight, which includes the total production of U.S. sales, domestic sales, and other third-country sales.⁴⁶⁸ However, for this review, the Department finds that the denominator for the FOPs is based on total production both on a glazed weight basis (*i.e.*, gross) and on a unglazed weight basis (*i.e.*, net) since Vinh Hoan and its affiliates⁴⁶⁹ state that they do not segregate their production records on a product-specific basis, such as by glazed or unglazed products.⁴⁷⁰ The Department concludes that the denominator of the FOPs includes both glazed weight and unglazed weight for the fish fillets because the U.S. sales include both glazed and unglazed sales, and there is record evidence that the third-country total sales weight included unglazed sales.⁴⁷¹ Although the Department requested that Vinh Hoan and its affiliates report the FOPs on a CONNUM-specific or more product-specific basis, Vinh Hoan stated that it does not maintain accounting or production records that allow it to report FOPs on a CONNUM-specific or product-specific basis.⁴⁷² Accordingly, the Department finds that Vinh Hoan's FOPs, such as the whole live fish and the glazing FOPs (*i.e.*, water, electricity, labor), are calculated using a denominator that includes the total production weight of both glazed and unglazed fish fillets.

⁴⁶³ The Department notes that for the unglazed sales the net weight or gross weight is the same and thus the denominator for the U.S. selling expenses for these unglazed sales is the same whether it is reported on a net or gross weight basis.

⁴⁶⁴ See Vinh Hoan's Section C Response at Exhibits 6 & 7 (the denominator for the U.S. selling expenses is taken from the total shipment weight of the commercial invoice).

⁴⁶⁵ See Vinh Hoan Prelim Analysis Memo at 2.

⁴⁶⁶ See Vinh Hoan's Supplemental Section C Questionnaire Response at 7.

⁴⁶⁷ See Vinh Hoan's Section D Questionnaire Response at 19 and Exhibit 18.

⁴⁶⁸ See Vinh Hoan's Section D Questionnaire Response at 9; Vinh Hoan's Supplemental Section D Questionnaire Response (July 12, 2013) at Exhibit 7.

⁴⁶⁹ Van Duc Export Joint Stock Company and Van Duc Tien Giang Company. See Vinh Hoan's Section D Questionnaire Response at 3.

⁴⁷⁰ See Vinh Hoan's Section D Questionnaire Response at 9.

⁴⁷¹ See Vinh Hoan's Section D Questionnaire Response at Exhibit 38J.

⁴⁷² See Vinh Hoan's Supplemental Section D Questionnaire Response at 3-4.

The Department disagrees with Petitioners that Vinh Hoan's FOPs are distorted and should be adjusted by removing the glazing weight from the denominator of Vinh Hoan's FOPs so that the FOPs are on an equivalent basis comparable to Vinh Hoan's U.S. price. As stated above, Vinh Hoan's U.S. sales, for these final results, include U.S. prices reported on a glazed weight basis and on an unglazed weight basis. Similar to Vinh Hoan's U.S. sales, the Department finds that the denominator for Vinh Hoan's FOPs includes total production weight, which includes both glazed and unglazed weight fillets. Although Petitioners are correct that the Department made adjustments, in the past, to ensure that U.S. sales and normal value were calculated on the same weight basis, the Department finds that this adjustment is also guided by the understanding that U.S. price is determined on the weight basis that the subject merchandise is invoiced, sold, and paid for.⁴⁷³ Accordingly, the Department finds that if Vinh Hoan's FOPs were adjusted to remove the glazing weight from the total production weight of the FOP denominator, this would result in Vinh Hoan's FOPs not being on the equivalent weight basis to Vinh Hoan's glazed U.S. sales. While Petitioners claim that calculating Vinh Hoan's antidumping duty margin using FOPs reported on both a glazed and unglazed weight basis understates Vinh Hoan's antidumping duty margin, the Department finds that making Petitioners' suggested adjustment would also have a distortive effect. The Department finds removing the glazing weight from Vinh Hoan's reported FOPs and comparing Vinh Hoan's glazed U.S. sales to unglazed FOPs could overstate Vinh Hoan's antidumping duty margin because the glazing cost of producing these glazed U.S. sales would not be included in the margin calculation.

The Department finds that the most accurate calculation of Vinh Hoan's antidumping duty margin would be comparing U.S. glazed sales to FOPs on a glazed weight basis and U.S. unglazed sales to FOPs on an unglazed weight FOPs. However, the Department finds that Vinh Hoan is not able to report FOPs on a CONNUM-specific or product-specific basis.⁴⁷⁴ Since the LTFV investigation, Vinh Hoan stated that it has not been able to track consumption on a CONNUM-specific or product-specific basis because its accounting and production records do not distinguish between the product characteristics (*i.e.*, CONNUM) identified in the original questionnaire.⁴⁷⁵ Specifically, in the previous review, the Department found that Vinh Hoan demonstrated in its questionnaire responses that it could not report FOPs on a CONNUM-specific basis because its production and accounting records do not distinguish between the product characteristics within the CONNUM.⁴⁷⁶ Additionally, the Department verified this issue, in the previous review, and found no evidence that Vinh Hoan kept production records which would enable it to report its FOPs on a more CONNUM-specific basis.⁴⁷⁷

The Department finds that, in the previous review, the Department indicated that it would revisit the issue of Vinh Hoan's reporting methodology of its FOPs in further reviews and may require Vinh Hoan to report its FOPs on a CONNUM-specific basis that would reflect the different

⁴⁷³ See 3rd AR Final Fish Redetermination at 3-4; *LTFV Fish Fillet Final Determination*, 68 FR 37716 at footnote 7.

⁴⁷⁴ See Vinh Hoan's Supplemental Section D Questionnaire Response at 3-4.

⁴⁷⁵ See *Eighth AR*, and accompanying Issues and Decision Memorandum at Comment VIII.A.

⁴⁷⁶ *Id.*

⁴⁷⁷ *Id.* at accompanying Issues and Decision Memorandum at Comment VIII.A; Petitioners' Submission of Rebuttal Factual Information, (May 2, 2013) at Exhibit 7 (Verification of the Sales and Factors of Production Response of Vinh Hoan Corporation in the 2010-2011 Administrative Review; Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, (December 14, 2012) at 13-15).

production costs required to produce the different type of fish fillets.⁴⁷⁸ However, the Department notes that Vinh Hoan was not informed of this requirement until March 21, 2013, which is almost eight months after the conclusion of the POR for this review. Accordingly, for the POR of this review, the Department finds that Vinh Hoan's accounting and production records were based on the reporting methodology that Vinh Hoan used in the LTFV investigation and in all previous reviews. As explained in Vinh Hoan's questionnaire responses, Vinh Hoan is unable to report its FOPs on a CONNUM-specific or product-specific basis, such as glazed and unglazed production weight, because its production and accounting records do not distinguish between the product characteristics within the CONNUM.⁴⁷⁹ The Department finds that because it did not notify Vinh Hoan that it may be required to start maintaining its accounting and production records on a monthly, product-specific basis until eight months after the conclusion of the POR for this review, the Department was unable to implement this requirement in this review.⁴⁸⁰ However, the Department finds that there is evidence on the record of this review that Vinh Hoan maintains inventory records that track the production weight of the finish product on a glazed and unglazed basis.⁴⁸¹ For all future reviews, the Department intends to require Vinh Hoan and other respondents to report its FOPs on a CONNUM-specific, product-specific, or at a minimum, glazed- and unglazed-specific basis. Although Vinh Hoan argues that it is unable to report all FOP data on a CONNUM-specific basis, the Department finds that Vinh Hoan, based on its experience as a respondent in the LTFV investigation and numerous previous reviews, should now fully understand the Department's documentation and data collection requirements for reporting CONNUM-specific FOPs.⁴⁸²

Accordingly, for the final results, the Department finds that the best information available for calculating Vinh Hoan's normal value is Vinh Hoan's reported FOPs without making Petitioners' suggested adjustment for removing the glazed weight. Although the Department notes that there is an inventory record for one month of the POR that indicates Vinh Hoan records net weight and gross weight, the Department finds that this is only a sample for one month of the total production of the POR.⁴⁸³ The Department notes that Vinh Hoan reported the denominator for the FOPs based on an aggregate basis for all products based on the total production weight, which includes both glazed and unglazed products.⁴⁸⁴ The Department finds that Vinh Hoan's reporting methodology is reasonable because Vinh Hoan's accounting and production records for the POR were maintained on an aggregate basis, which does not allow Vinh Hoan to report CONNUM-specific FOPs for this POR. The Department finds making Petitioners' suggested adjustment to Vinh Hoan's FOPs, based on facts available, is unreasonable. The Department notes that making Petitioners' adjustment is an estimate, based on a single month inventory record, which would be applied to Vinh Hoan's total production for the POR and is not based on Vinh Hoan's actual books and records. The Department finds that making such an adjustment is also unreasonable because it would require the Department to approximate the FOPs required to produce glazed merchandise, instead of basing such

⁴⁷⁸ See *Eighth AR*, and accompanying Issues and Decision Memorandum at Comment VIII.A.

⁴⁷⁹ See Vinh Hoan's Supplemental Section D Questionnaire Response at 3-4 and Exhibit 2.

⁴⁸⁰ See *Eighth AR*, and accompanying Issues and Decision Memorandum at Comment VIII.A.

⁴⁸¹ See Vinh Hoan's Supplemental Section D Questionnaire Response at Exhibit 3.

⁴⁸² See *Carbon*, and accompanying Issues and Decision Memorandum at Comment 10.

⁴⁸³ See Vinh Hoan's Supplemental Section D Response at Exhibit 3.

⁴⁸⁴ See Vinh Hoan's Section D Questionnaire Response at 9; Vinh Hoan's Supplemental Section D Questionnaire Response at 3-4.

consumption for these FOPs from Vinh Hoan's actual books and records. Because Vinh Hoan did not maintain product-specific information in its ordinary course of business, Vinh Hoan based its consumption figures on the information it did maintain in the ordinary course of business for this POR. Consequently, the Department finds that Vinh Hoan cooperated to the best of its ability to provide the requested information for its FOPs, and the application of facts available for Vinh Hoan's FOPs is inappropriate.⁴⁸⁵

The Department disagrees with Petitioners that *Pressure Pipe* and *Silicon Metal* supports the application of facts available to the entirety of Vinh Hoan's reported FOPs. The Department acknowledges that, in *Pressure Pipe* and *Silicon Metal*, the Department applied facts available to a specific input based on estimating the POR consumption for that input using sample records for a portion of the POR.⁴⁸⁶ The Department notes that, in *Silicon Metal*, the application of facts available was applied to electricity because the respondent's accounting records did not track consumption of this input for the entire POR.⁴⁸⁷ However, unlike in *Silicon Metal*, the Department finds that Vinh Hoan's accounting books and production records tracked the consumption of its FOPs and the total production of the finished products for the entire POR, which was verified in the previous review. The Department also notes that, in *Pressure Pipe*, the application of facts available was applied to the respondent's scrap offset because the Department found at verification that a single monthly record showed that the respondent could report the scrap offset more specifically.⁴⁸⁸ However, unlike in *Pressure Pipe*, the Department finds that there is no basis to not rely upon Vinh Hoan's actual accounting books and production records for Vinh Hoan's FOPs. While there is a sample inventory document on the record for one month of the POR, the Department does not find that this single inventory record clearly demonstrates that the information contained in this inventory record would have enabled Vinh Hoan to report its FOP consumption on a more specific basis in the current review.⁴⁸⁹ Therefore, the Department cannot assume, contrary to the statements made by Petitioners, that this inventory record could have been used to report FOPs on a more specific basis. Moreover, it is unclear that based on the information from the single available month whether any adjustment to Vinh Hoan's reported data would enhance or diminish the overall accuracy of the analysis given the number of estimates that would be required. Accordingly, the Department finds that there is not information on the record to impugn the reliability of Vinh Hoan's FOPs, which are based on Vinh Hoan's actual accounting books and production records. Therefore, for the final results, the Department will calculate Vinh Hoan's antidumping duty margin using Vinh Hoan's reported U.S. price and selling expenses for glazed and unglazed sales based on the weight recorded on the commercial invoice. Additionally, the Department will calculate Vinh Hoan's normal value

⁴⁸⁵ See *Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China*, 72 FR 9508 (March 2, 2007) and accompanying Issues and Decision Memorandum at Comment 10.

⁴⁸⁶ See *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 76 FR 17819, 17824 (March 31, 2011) (unchanged in the final results) ("*Pressure Pipe*"); *Silicon Metal from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative*, 75 FR 1592 (January 12, 2010) ("*Silicon Metal*") and accompanying Issues and Decision Memorandum at Comment 13.

⁴⁸⁷ See *Silicon Metal*, and accompanying Issues and Decision Memorandum at Comment 13.

⁴⁸⁸ See *Pressure Pipe*, 76 FR at 17824.

⁴⁸⁹ See *Carbon*, and accompanying Issues and Decision Memorandum at Comment 10.

using Vinh Hoan's reported FOPs because the denominator includes both glazed and unglazed production weight, which is the weight basis for Vinh Hoan's U.S. sales.

Finally, the Department disagrees with Petitioners that the methodology used in calculating Vinh Hoan's antidumping duty margin is not consistent with the methodology used in calculating HVG's antidumping duty margin. As explained above, in this case, it is the Department's practice to use the U.S. price paid to the respondent based on the weight basis that the respondent sells, invoices, and is paid for the subject merchandise.⁴⁹⁰ Unlike Vinh Hoan, the Department notes that HVG only reported unglazed sales in its U.S. sales database, which is why the equivalent weight basis for its FOPs was the net total production weight (*i.e.*, unglazed weight).⁴⁹¹ In contrast to HVG, the Department finds that Vinh Hoan reported both glazed and unglazed sales in its U.S. sales database and thus the U.S. price for these sales are on a glazed and unglazed weight basis. Additionally, because the record demonstrates that Vinh Hoan cannot report its FOPs on a CONNUM-specific or product-specific basis for this review, the Department finds that the best available information for calculating Vinh Hoan's FOPs is using a denominator that includes both glazed and unglazed total production weight. The Department concludes that Vinh Hoan's antidumping duty margin is calculated on an equivalent weight basis because Vinh Hoan's U.S. prices and normal value are a mix of glazed and unglazed weight.

Comment XXIII: Surrogate Value for Vinh Hoan's Fish Oil By-Product

Respondents

- In the *Preliminary Results*, the Department inappropriately valued fish oil using Indonesian GTA data reported under HTS 1504.20.90.00⁴⁹² and then "capped" the SV by calculating the CV to produce fish oil.
- The Department cannot determine that the HTS category is specific to fish oil, but then decide to manipulate the data through a "cap" because the HTS category includes refined fish oil, which is not specific to the input.
- The Department cannot construct a capped SV specific to the unrefined fish oil input due to concerns regarding the broad coverage of the selected HTS category but then, for rice husk and sawdust, decide the selected HTS categories, which are also broad categories, are specific to the input.
- There is no reason for the Department to construct a capped SV for unrefined fish oil because the record does not demonstrate that refined fish oil is more expensive or valuable than unrefined fish oil.
- The Department fails to demonstrate how its calculation of the CV to produce fish oil addresses the distortion in the Indonesian GTA import data for fish oil (*i.e.*, showing that unrefined fish oil is a certain percentage less expensive than refined fish oil).
- The Department's calculated CV for unrefined fish oil is aberrationally low in comparison to various other fish oil benchmark prices.⁴⁹³ Some of these benchmark prices are for unrefined

⁴⁹⁰ See *LTFV Fish Fillet Final Determination*, and accompanying Issues and Decision Memorandum at "Discussion of Issues."

⁴⁹¹ See HVG's Supplemental Section D Questionnaire Response, (July 8, 2013) at 11; HVG's Section C Questionnaire Response, (April 15, 2013) at 8-9.

⁴⁹² The calculated SV for fish oil using Indonesian GTA data was \$1.73/kg.

⁴⁹³ See Respondents' Case Brief, (January 22, 2014) at Exhibit 8.

fish oil, and the Department could use one of these prices as the SV for fish oil in the final results.

- If the Department chooses to continue to calculate CV for unrefined fish oil, the Department should make the following corrections to the calculation: (1) the Department's calculation was not mathematically correct because there are no common units of measure, which can be corrected by not multiplying the calculated CV for unrefined fish oil by Vinh Hoan's fish oil FOP; (2) the calculated ratio of fish oil to fish meal did not include the production of fish oil by VDTG;⁴⁹⁴ (3) the Department should calculate the CV for unrefined fish oil using whole, live fish, which is the relevant input, and not fish waste; (4) the incorrect fish oil/fish meal ratio was applied to the electricity FOP; and (5) the calculated CV for unrefined fish oil did not include the surrogate freight costs incurred for each input.

Petitioners

- The Department's decision to apply a cap to the SV for fish oil based on the CV of fish oil is appropriate because the Indonesian GTA import data includes refined and unrefined fish oil.
- Vinh Hoan's fish oil is unrefined and is dissimilar to the refined fish oil contained in the Indonesian GTA import data because Vinh Hoan's fish oil is not packed for shipment, does not contain additives, and is less processed.
- The Sopeheluwakan Affidavit⁴⁹⁵ shows that *pangasius* oil produced in Indonesia does not contain free fatty acids (FFA) or Omega-3 content.
- Although the Indonesian GTA import data does not provide information regarding the specific types of fish oil covered in HTS 1504.20.9000, the corresponding HTS description⁴⁹⁶ from the United States shows that it includes enriched and refined fish oil.
- Respondents' proposed revised calculation for the fish oil cap is inaccurate because the Department should continue to calculate the CV for fish oil using fish waste and not whole, live fish as the relevant input.
- The Department should only include freight cost for those inputs (*i.e.*, energy) that required transport and not those inputs that did not require transport.
- The Department should include a fish waste FOP to calculate the CV for fish oil, which is multiplied by the ratio of fish oil/fish meal resulting in the volume of fish oil produced per kg of fish fillet.
- Respondents' revised calculation includes revised surrogate financial ratios but do not explain how the ratios differ from the surrogate financial ratios used in the *Preliminary Results*.
- Because Petitioners' revised calculation results in a fish oil value per kg of fish fillet, the Department does not need to multiply the CV for fish oil by Vinh Hoan's reported fish oil FOP.

⁴⁹⁴ Vinh Hoan's affiliate, Van Duc Tien Giang ("VDTG").

⁴⁹⁵ Affidavit from Jeska Daslita Sopaheluwakan, S.H., from law firm of Mataram Partners, regarding her discussion with Azam B. Zaidy, Secretary General of the Association of Indonesian Catfish Entrepreneurs. *See* Petitioners' Surrogate Value Rebuttal Data, (January 10, 2014) at Exhibit 4.

⁴⁹⁶ US HTS 1504.20.9000: "Fats and oils and their fractions, of fish or marine mammals, whether or not refined, but not chemically modified... fish-liver oils and their fractions... other." *See* Petitioners' Submission of Rebuttal Surrogate Country and Factor Data, (June 14, 2013) at Exhibit 36.

- Pursuant to *Blue Field*, the Department should reject seven of Respondents’ benchmark prices for use in its aberrational analysis because these price quotes are for refined fish oil and do not represent the FOP at issue, unrefined fish oil.
- The remaining benchmark prices submitted by Respondents should also be disregarded because they include additional fees, such as delivery costs and packaging, which are not included in the calculated CV for unrefined fish oil.
- The calculated CV for unrefined fish oil is consistent with other Indonesian prices for unrefined fish oil and a Bangladeshi price quote.⁴⁹⁷
- If the Department does not value fish oil using the calculated CV for unrefined fish oil, the record contains the following other suitable Indonesian sources for fish oil: (1) a 2011 *pangasius* fish oil price quote published by Yadhi,⁴⁹⁸ an Indonesian seafood company, which is corroborated by a 2007 Indian price quote from Haris Marine (“Indian Haris Marine price quote”)⁴⁹⁹, a manufacturer of fish oil and meal; and (2) several 2010 prices for fish oil from districts in Muncar, Indonesia (“Muncar fish oil prices”).⁵⁰⁰

Department’s Position: The Department continues to find that the Indonesian GTA import data under HTS 1504.20.9000, “Fish Fats & Oils & Their Fractions Exc Liver, Refined Or Not, Not Chemically Mod.”, is the best available information to value this by-product, but that a CV for fish oil is appropriate based upon record evidence related to nature of Vinh Hoan’s fish oil by-product. Vinh Hoan reported selling “fish oil” as a by-product resulting from its production of subject merchandise.⁵⁰¹ On the record of this review, there are the following sources for valuing fish oil: (1) the Yadhi fish oil price quote from Indonesia; (2) the Indonesian Muncar fish oil prices; (3) a fish oil price quote from Arbee Biomarine Extracts Pvt Ltd. (“Arbee”), an Indian company (“Arbee fish oil price quote”);⁵⁰² (4) a fish oil price quote from the Yashaswi Fish Meal & Oil Company (“Yashaswi”), an Indian company (“Yashaswi fish oil price quote”);⁵⁰³ (5) a fish oil price quote from Asian Seafood Limited (“Asian”), a Bangladeshi company (“Asian price quote for fish oil”); and (6) the Indonesian GTA import data under HTS 1504.20.90.00, “Fish Fats & Oils & Their Fract, Excl Liver, O/T Rou.” We examine each in turn.

The Department finds that the Yadhi fish oil price quote is not suitable for surrogate valuation purposes. As we found in the previous review, the Yadhi fish oil price is from Agromaret, which appears to be an online agricultural commodities search engine site, instead of an official issued price quote directly from the company with a signed affidavit.⁵⁰⁴ No record information indicates how this price is sourced, constructed or whether it reflects a market price. Although Petitioners argue that the Yadhi fish oil price quote is corroborated by the Indian Haris Marine price quote, the Department disagrees. Specifically, the Department notes that the Indian Haris Marine price quote is not from the same market as the Yadhi fish oil price quote and is also four years older than the Yadhi fish oil price quote. For these reasons, the Department finds that the

⁴⁹⁷ See Petitioners’ Surrogate Country/Surrogate Value Comments (May 24, 2013) at Exhibits 21-B, 21-C, and 41; Petitioners’ Submission of Rebuttal Surrogate Country and Factor Data at Exhibit 58.

⁴⁹⁸ See Petitioners’ Surrogate Country/Surrogate Value Comments at Exhibit 21.B.

⁴⁹⁹ *Id.* at Exhibit 41.

⁵⁰⁰ *Id.* at Exhibit 21.C.

⁵⁰¹ See Vinh Hoan’s Supplemental Section D Response at 21.

⁵⁰² See Respondents’ Surrogate Value Submission at Exhibit 37.B.

⁵⁰³ *Id.*

⁵⁰⁴ See *Eighth AR*, and accompanying Issues and Decision Memorandum at Comment VII.B.

Indian Haris Marine price quote does not corroborate the Yadhi fish oil price quote. Moreover, the Yahdi price quote is not as contemporaneous with the POR as are other data for this input. The Department notes that no parties submitted information contesting that the Yadhi fish oil price quote is publicly available. The Department finds that the Yadhi fish oil price quote is specific to Vinh Hoan’s “unrefined” fish oil because the price quote is for *pangasius* fish oil, which is for “unrefined” fish oil since it does not contain FFA or Omega-3, as explained below. However, the Department finds that the Yadhi fish oil price quote is representative of a single company’s experience and thus is not a broad-market average. Furthermore, the Department finds that the price quote does not indicate whether the price quote is on an ex-factory basis or tax- and duty-exclusive, and is also missing an accompanying affidavit attesting to that fact.⁵⁰⁵

With respect to the Indonesian Muncar fish oil prices, the Department finds that the Indonesian Muncar fish oil prices are also not suitable for surrogate valuation purposes. The Department notes that the Indonesian Muncar fish oil prices were ranges of fish oil prices provided in an evaluation of small scale fish oil refinery enterprises in the Muncar districts, Indonesia.⁵⁰⁶ The Department finds that Indonesian Muncar fish oil prices are not official commercial transactions because there is no information regarding the payment terms, the party offering the price, the manner in which the prices were obtained, and whether the prices were obtained in the ordinary course of business. The Department also finds that the Indonesian Muncar fish oil prices, *i.e.*, low quality fish oil prices, are specific to Vinh Hoan’s “unrefined” fish oil because the Muncar fish oil prices do not contain Omega-3, as described below.⁵⁰⁷ The Department also finds that the Indonesian Muncar fish oil prices are not a broad-market average because the Indonesian Muncar fish oil prices appear to only be prices for the Muncar districts. There is no information on the record for the extent of fish oil production in the Muncar districts and whether the Muncar districts account for a significant majority of production in Indonesia. Absent such information, the Department cannot conclude that the Indonesian Muncar fish oil prices represent a broad-market average. The Department finds that Indonesian Muncar fish oil prices are publicly available because the prices were contained in an evaluation study of small scale fish oil refinery enterprises that was obtained from an Indonesian government website.⁵⁰⁸ Additionally, the Department finds that the Indonesian Muncar fish oil prices are from 2010, and thus, not contemporaneous with the POR. Moreover, the Department finds that there is no information in the evaluation study to indicate whether the Indonesian Muncar fish oil prices are tax- and duty-exclusive.

The Department finds that the Arbee fish oil price quote is not suitable for surrogate valuation purposes for fish oil. Although the Arbee price quote is for crude fish oil from India, a potential surrogate country, the Department finds that the Arbee price quote is a single transaction price and does not represent a broad-market average.⁵⁰⁹ The Department stated that it prefers to use SVs that are not price quotes where other more reliable data, such as Indonesian GTA import data reported under HTS 1504.20.90.00, are available.⁵¹⁰ Additionally, the Department has

⁵⁰⁵ See Petitioners’ Surrogate Country/Surrogate Value Comments at Exhibit 21.B.

⁵⁰⁶ *Id.*, at Exhibit 21.C.

⁵⁰⁷ *Id.*

⁵⁰⁸ *Id.* (at the Google Translate webpage for <http://agroindustri.menlh.go.id/attachment/docimuncar.pdf>).

⁵⁰⁹ See *Tissue*, and accompanying Issues and Decision Memorandum at Comment 3.

⁵¹⁰ See *Wire Strand*, and accompanying Issues and Decision Memorandum at Comment 1.B.

additional concerns about the Arbee fish oil price quote: (1) the accompanying affidavit does not detail the payment terms of the price offer; and (2) the price quote is not on official company letterhead with an official company business card. The Department also notes that the email from the Arbee official with quoted fish oil prices does not indicate whether the prices are tax- and duty-exclusive.

With respect to the Yashaswi fish oil price quote, the Department finds that the Yashaswi crude fish oil price quote is not suitable for surrogate valuation purposes for fish oil. The Department finds that the Yashaswi fish oil price quote is similar to Vinh Hoan's "unrefined" fish oil because the price quote is for "crude" fish oil.⁵¹¹ The Department notes that no parties submitted information contesting whether the Yashaswi fish oil price quote is publicly available. Similar to the Arbee price quote, the Department finds that the Yashaswi fish oil price quote is a single transaction price and does not represent a broad-market average. Additionally, the Department has additional concerns about the Yashaswi fish oil price quote: (1) the accompanying affidavit does not detail the payment terms of the price offer; and (2) the price quote is not on official company letterhead with an official company business card. The Department also notes that the email from the Yashaswi official with quoted fish oil prices does not indicate whether the prices are tax- and duty-exclusive. The Department also finds that the Yashaswi fish oil price quote, which is from India, is not from the primary surrogate country, Indonesia, which has useable information, as detailed below, on the record for valuing the fish oil SV. The Department finds that the Yashaswi fish oil price quote is not contemporaneous with the POR because the price quote is from 2013, which is two years after the POR.

With respect to the Asian fish oil price quote, the Department finds that this price quote is not suitable for surrogate valuation purposes. The Department finds that the Asian fish oil price quote is for *pangasius* fish oil, which is specific to Vinh Hoan's "unrefined" fish oil that is a by-product of *pangasius* fish processing.⁵¹² Although the Asian fish oil price quote is for fish oil from Bangladesh, a potential surrogate country, the Department finds that the Asian fish oil price quote is a single transaction price and does not represent a broad-market average. Additionally, in the affidavit accompanying the price quote, the affiant noted that Asian has limited *pangasius* operations and thus does not typically sell *pangasius* waste products.⁵¹³ Accordingly, the Department finds that there are questions regarding whether this price quote is typical of Asian's ordinary business practices. The Department notes that no parties submitted information contesting whether the Asian fish oil price quote is publicly available. The Department also notes that the price quote is not on official company letterhead and there is no indication whether the price quote is tax- and duty-exclusive. The Department also finds that the Asian fish oil price quote is from November 12, 2012, which is outside the POR, and thus is not contemporaneous. Lastly, the Asian fish oil price quote is not from the primary surrogate country, Indonesia.

At the *Preliminary Results*, the Department valued fish oil using Indonesian import statistics, specifically GTA data under HTS 1504.20.9000, "Fish Fats & Oils & Their Fractions Exc Liver, Refined Or Not, Not Chemically Mod."⁵¹⁴ However, as explained in the *Preliminary Results*, the

⁵¹¹ See Respondents' Rebuttal Surrogate Value Comments at Exhibit 37.B.

⁵¹² See Petitioners' Rebuttal Surrogate Value Comments at Exhibit 58.

⁵¹³ *Id.*

⁵¹⁴ See Prelim SV Memo at 6-7.

Department capped the fish oil SV using a CV for fish oil starting with fish waste and adding the factors of production used by Vinh Hoan to produce fish oil, and included surrogate financial ratios to ensure the value is on an as-sold basis.

The Department disagrees with Respondents that the Indonesian GTA import data under HTS 1504.20.90.00 is not specific to Vinh Hoan's by-product because the HTS category lists unrefined fish oil as one of the items covered by the HTS category. As explained above, the Department notes that Vinh Hoan has not specified that its fish oil is "unrefined" fish oil, but only described it as "fish oil."⁵¹⁵ However, in its responses, Vinh Hoan stated that the fish oil is not packaged (*i.e.*, the customers bring their own bottles/tanks to be filled with fish oil).⁵¹⁶ Additionally, in the previous review, the Department found⁵¹⁷ that Vinh Hoan's fish oil was unrefined fish oil because the Department observed, the following, at verification:

We asked company officials to describe the production process for fish oil. Company officials noted that Vinh Hoan saves fish scrap during the production process. All of the scrap is transferred to Vinh Hoan Feed, where it is processed into fish oil and fish meal. There are machines at Vinh Hoan Feed that chop and grind the scrap, and then cook it. Then the scrap is pressed, and then a portion is then dried. Once it is dried, the dry part is used for fish meal, and the remaining liquid is further cooked to become fish oil. We asked what the fish oil is sold for. Company officials indicated that fish oil is sold mostly to animal food factories. We asked how it is packaged. Company officials indicated that the fish oil is not packaged, but rather it is pumped into containers belonging to the purchaser. Vinh Hoan's fish oil is kept in a large vat and sold by turning a spigot which empties the oil into the customers' buckets.⁵¹⁸

The Department's findings in the last review align with the record evidence in this review. Specifically, although Respondents argue that its production of fish oil is capital intensive and results in a value-added product, the Department finds that there is record evidence to designate Vinh Hoan's fish oil as "unrefined" fish oil. Besides Vinh Hoan's descriptions of its fish oil and the observations from verification from the previous review, the Department notes that the Sophehluwakan Affidavit demonstrates that fish oil produced from *pangasius* fish does not contain free fatty acid (FFA) and Omega-3 oil.⁵¹⁹ The Department finds that the Sophehluwakan Affidavit is a reliable source regarding *pangasius* fish oil, such as in Indonesia, because the source is the Secretary General of the Association of Indonesian Catfish Entrepreneurs who has extensive experience in the Indonesian *pangasius* industry.⁵²⁰ The Department also notes that there is a website from a company, BAWA Fish Meal & Oil, Co., offering fish oil for sale that distinguishes between crude fish oil and nutritional fish oil, which contains FFA and

⁵¹⁵ See Vinh Hoan's Supplemental Section D Response at 21.

⁵¹⁶ *Id.*

⁵¹⁷ See *Eighth AR*, and accompanying Issues and Decision Memorandum at Comment VIII.B.

⁵¹⁸ See Petitioners' Submission of Rebuttal Factual Information, (May 2, 2013) at Exhibit 7 (Vinh Hoan Verification Report at 33, 39-40).

⁵¹⁹ See Petitioners' Surrogate Value Rebuttal Data at Exhibit 4.

⁵²⁰ *Id.*

Omega-3.⁵²¹ Additionally, the Department finds that the website for Yashaswi, which provides the specifications for crude fish oil, does indicate that crude fish oil (*i.e.*, “unrefined” fish oil) does not contain Omega-3.⁵²² Accordingly, based on the record evidence that “unrefined” fish oil is not packaged and does not contain FFRA and Omega-3, the Department finds that Vinh Hoan’s fish oil is “unrefined” fish oil.⁵²³

Because Vinh Hoan’s “unrefined” fish oil is one of the types of items listed in the Indonesian GTA import data under HTS 1504.20.90.00, the Department finds that it is specific to Vinh Hoan’s “unrefined” fish oil. However, the Department finds that it has concerns valuing Vinh Hoan’s “unrefined” fish oil using the Indonesian GTA import data under HTS 1504.20.90.00 because this HTS category also includes “refined” fish oil, which as described above, requires more production cost (*i.e.*, packaging costs and additional additives in the fish oil) to produce than “unrefined” fish oil. The Department notes that the value for fish oil (one of two by-products derived from fish waste, the other being fish meal) derived from Indonesian GTA import data under HTS 1504.20.90.00 is \$1.73/kg, whereas the SV for the whole, live fish is \$1.63.⁵²⁴ The Department finds that it has concerns valuing Vinh Hoan’s fish oil using the SV for Indonesian GTA import data under HTS 1504.20.90.00. The Department finds it unreasonable that the SV for Vinh Hoan’s fish oil by-product derived from whole fish would be higher than its main input (*i.e.*, whole fish).

The Department notes that it has the practice of rejecting or capping the by-product SV based on the premise that the by-product should not be priced in excess of the value of the product from which it was derived.⁵²⁵ In this case the purpose of the cap is to remove the effect of the refined fish oil contained in the HTS category. In this review, and the last, because the company-specific data existed on the record to do so, the Department built a constructed value for unrefined fish oil and applied this cap to the Indonesian GTA import data. We applied a cap to Vinh Hoan’s fish oil by-product because the HTS category is broad, and the value contained therein is at odds with the price of the whole, live fish value, as noted above. Because both of these conditions exist on the record of this review, with regard to fish oil, we capped the HTS with the constructed value. As noted above in Comment IX, this is not the case with respect to Vinh Hoan’s fish meal by-product, because the HTS value is lower than that of the whole, live fish value.

Additionally, the Department finds that there are prices for “refined” fish oil on the record from India that range from \$1.575-\$3.20/kg suggest that the price for “refined” fish oil is much higher

⁵²¹ *Id.* at Exhibit 10.

⁵²² See Petitioners’ Post-Preliminary Results Surrogate Value Submission at Exhibit 16.

⁵²³ The Department notes that Petitioners argue that U.S. Customs rulings under HTS 1504.20.90.00 demonstrate that “unrefined” fish oil is different than “refined” fish oil. However, the Department finds that these U.S. Customs rulings cannot be relied upon because the U.S. Customs rulings are not based on the international 6-digit HTS category.

⁵²⁴ See Vinh Hoan Prelim Analysis Memo at Attachment 2.

⁵²⁵ See *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008) (“*Steel Nails*”) and accompanying Issues and Decision Memorandum at Comment 12; *Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 79 FR 94 (January 2, 2014) and accompanying Issues and Decision Memorandum at Comment 2.

than the price for “unrefined” fish oil.⁵²⁶ In contrast, the Department notes that there are prices⁵²⁷ for “unrefined” fish oil (*i.e.*, crude oil) on the record from India, Bangladesh, and Indonesia that range from \$0.14-0.88/kg.⁵²⁸ The Department notes that the average of the “unrefined” fish oil prices is \$0.48/kg, thus making the fish oil SV 3.62 times higher than the average of the “unrefined” fish oil prices.⁵²⁹ Based on this, the Department finds that the value derived from the Indonesian GTA import data under HTS 1504.20.90.00 is unrepresentative of Vinh Hoan’s “unrefined” fish oil because this value likely reflects “refined” fish oil prices.

Nevertheless, the Department will continue to value fish oil using the Indonesian GTA import data under HTS 1504.20.9000 because it is the most specific of the available Indonesian HTS categories on the record and, by its terms, encompasses “unrefined” fish oil. Moreover, the GTA data is contemporaneous with the POR. And, as stated above, the Department previously found GTA data to be publicly available, free of taxes and duties, and representative of broad market averages.⁵³⁰ However, because of the concerns articulated in the immediately-preceding paragraph, the Department will “cap” the price of HTS 1504.20.9000 at the calculated CV of the FOPs and ratios used by Vinh Hoan to make fish oil, *i.e.*, fish waste, labor and energy, plus surrogate ratios, to ensure that it is a fully-loaded fish oil value.⁵³¹

Although Respondents argue that the Department failed to demonstrate how the calculated CV for Vinh Hoan’s “unrefined” fish oil addresses the distortions in the \$1.73/kg value derived from the Indonesian GTA import data under HTS 1504.20.90.00, the Department disagrees. As explained above, it is the Department’s practice of rejecting or capping the by-product SV based on the premise that the by-product should not be priced in excess of the value of the product from which it was derived. In the Final Determination Pursuant To The Remand Order From The U.S. Court Of International Trade In *Paslode Division of Illinois Tool Works, Inc. v. United States*, Ct. No. 9712-02161 (Jan. 15, 1999), the Department stated that “[i]t is clear that our steel scrap value selection produced an unreasonable result - a value for steel wire rod scrap (0.8390 USD/kg) that exceeded the price for steel wire rod (0.3119 USD/kg) - one that cannot be explained by any notes or data...” As explained above, the value derived from Indonesian GTA import data under HTS 1504.20.90.00 is \$1.73/kg, whereas the SV for the whole, live fish input is \$1.63.⁵³² Although Respondents argue that the Department should segregate the portion of the “refined” fish oil value in the SV and the portion of “unrefined” fish oil value in the SV to demonstrate the distortion in the SV, the Department finds that there is no information on the record to perform such a calculation. However, the Department finds that there is “unrefined” and “refined” fish oil prices that show significant price differences in these two types of fish oil. The Department notes that the average of these “unrefined” fish oil prices is \$0.48/kg, whereas,

⁵²⁶ See Respondents’ Post-Preliminary Results Surrogate Value Submission at Exhibit 6 (Tab G); Respondents’ Rebuttal Surrogate Value Submission at Exhibit 37.B.

⁵²⁷ While these prices are not suitable for surrogate valuation purposes, the Department finds that these prices are suitable for determining whether the calculated SV for fish oil is unrepresentative of Vinh Hoan’s “unrefined” fish oil.

⁵²⁸ See Petitioners’ Case Brief at 182.

⁵²⁹ *Id.*

⁵³⁰ See, *e.g.*, *Carbon*, and accompanying Issues and Decision Memorandum at Comment I.C.A.

⁵³¹ See *Eighth AR*, and accompanying Issues and Decision Memorandum at Comment VII.B (where the Department capped the surrogate value for fish oil); see also Vinh Hoan Analysis Memo at Attachment 2.

⁵³² See Vinh Hoan Prelim Analysis Memo at Attachment 2.

the average of the “refined” fish oil prices is \$2.38/kg,⁵³³ which make the “refined” fish oil price average 4.96 times higher than the “unrefined” fish oil price average. Accordingly, the Department finds that there are distortions in the value derived from HTS 1504.20.90.00 because the value from that HTS category includes entries for “refined” fish oil that the record evidence demonstrates is significantly higher than Vinh Hoan’s “unrefined” fish oil.

The Department disagrees with Respondents that Vinh Hoan’s CV for “unrefined” fish oil is aberrationally low. There is POR import statistics on the record under HTS 1504.20 for Bangladesh and India, which are countries at a level of economic development comparable to Vietnam.⁵³⁴ However, the Department finds that the import data from Bangladesh and India are at the six-digit HTS level (*i.e.*, HTS 1504.20), which the Department found was unrepresentative of Vinh Hoan’s “unrefined” fish oil since this HTS category may include both “refined” and “unrefined” fish oil and is less specific than the import data for Indonesia that is at the eight-digit HTS category. The Department finds that it cannot compare Vinh Hoan’s CV for “unrefined” fish oil which is derived from the Indonesian import data at the eight-digit HTS category to the Bangladesh and India import data because the data sets are reported at different HTS levels and thus involve different products.⁵³⁵ Accordingly, the Department finds that it cannot make a benchmark comparison of Vinh Hoan’s CV for “unrefined” fish oil to the Bangladeshi and Indian import statistics under HTS 1504.20.

The Department notes that the record also contains U.S. import statistics under HTS 1504.20 and HTS 1504.20.60, as well as a Norwegian price quote for refined fish oil. However, the Department finds that the economic development of the United States and Norway is not comparable to Vietnam or to the countries considered as potential surrogates; consequently, neither values are suitable benchmarks.⁵³⁶ Moreover, the Norwegian value is not specific to Vinh Hoan’s by-product.

The Department also notes that there are Indian price quotes for “refined” fish oil on the record. Specifically, there is a Karnataka Marine Product price quote for “refined” fish oil,⁵³⁷ a Blue Line Foods (India) Pvt. Ltd. price quote for “refined” fish oil,⁵³⁸ and the Arbee Biomarine Extracts Pvt. Ltd. price quote for “refined” fish oil.⁵³⁹ Although Respondents argue that “refined” and “unrefined” fish should be compared, the Department disagrees that the “refined” prices should be compared to Vinh Hoan’s CV for “unrefined” fish oil as benchmarks because these prices are based on different by-products and thus, sold in different channels of trade.

⁵³³ See Respondents’ Post-Preliminary Results Surrogate Value Comments at Exhibit 6 Tab G; Respondents’ Rebuttal Surrogate Values Submission at Exhibit 37.B.

⁵³⁴ See Respondents’ Case Brief at Exhibit 8.

⁵³⁵ See *Carbon*, and accompanying Issues and Decision Memorandum at Comment 1.C.

⁵³⁶ See *MLWF LTFV*, and accompanying Issues and Decision Memorandum at Comment 15.

⁵³⁷ The Karnataka Marine Product price quote is classified as “refined” fish oil because the price quote is for fish oil that includes FFA, which the Department designated is not included in “unrefined” fish oil. See Respondents’ Post-Preliminary Results Surrogate Value Submission at Exhibit 6 (Tab F).

⁵³⁸ The Blue Line Foods (India) Pvt. Ltd. price quote is classified as “refined” fish oil because the price quote for fish oil includes FFA, Omega-3, and other additives. See Respondents’ Post-Preliminary Results Surrogate Value Submission at Exhibit 6 (Tab G).

⁵³⁹ See Respondents’ Rebuttal Surrogate Value Comments at Exhibit 37.B.

The Department also notes that there are Indian price quotes on the record for “unrefined” fish oil. Specifically, there is the Arbee price quote for “unrefined” fish oil⁵⁴⁰ and the Yashaswi price quote for “unrefined” fish oil.⁵⁴¹ However, the Department notes that these two price quotes are on a FOB delivery basis. In contrast, the Department notes that Vinh Hoan’s CV includes surrogate freight costs and, thus, is not on the same delivery basis as these two price quotes. The Department finds that it is appropriate to also reject these two price quotes as benchmarks because the discrepancy in the delivery costs prevents the price quotes from correlating to Vinh Hoan’s CV.

The Department finds that when it compares Vinh Hoan’s CV for “unrefined” fish oil, \$0.08/kg,⁵⁴² to the domestic prices for “unrefined” fish oil on the record from Indonesia, India, and Bangladesh, Vinh Hoan’s CV is not aberrational.⁵⁴³ The Department notes that the domestic prices for “unrefined” fish oil range from \$0.14-\$0.88/kg and that Vinh Hoan’s CV for “unrefined” fish oil falls close to the range of prices.

Thus, in light of the record evidence, the Department will value Vinh Hoan’s fish oil using the CV for “unrefined” fish oil; however, the Department will make corrections to the calculation used in the *Preliminary Results*. The Department agrees with Petitioners and Respondents that the calculation resulted in a CV for “unrefined” fish oil that was not mathematically correct because it multiplied the CV for fish oil by the total cost of fish oil to produce a kilogram of fish fillets, which resulted in a cost that did not have common units of measure. The Department agrees with Respondents and Petitioners that this error can be corrected by not multiplying the CV for fish oil by the total cost of fish oil to produce a kilogram of fish fillets, which the Department will do for the final results. However, the Department also finds that it made an error in the calculation by constructing the cost to produce fish oil using total fish fillet production as the denominator for the inputs that went into producing fish oil. Because fish oil is the finished product for which the Department is building the constructed value, the Department finds that the cost for the inputs should be based on the total production of fish oil and not total production of fish fillets. Accordingly, the Department recalculated the FOP ratios for electricity, labor, fish waste, rice husk, and saw dust used in the production of fish oil using total production of fish oil as each FOP ratio’s denominator.⁵⁴⁴

The Department also agrees with Respondents that the Department made an error when it calculated the ratio of fish oil production to fish meal. Specifically, the Department finds that it did not include the production of fish oil by Vinh Hoan’s affiliate, VDTG, in the numerator and denominator. Accordingly, the Department is making this correction for the final results and is applying a revised ratio of fish oil to the FOP ratios. Additionally, the Department agrees with Petitioners that fish waste, not whole live fish as argued by Respondents, is the relevant input for valuing fish oil. As described by Vinh Hoan, fish oil is produced from fresh head, bone, gut and fat, which is fish waste collected at the filleting stage.⁵⁴⁵ Therefore, the Department finds that fish waste is the relevant input for valuing fish oil.

⁵⁴⁰ *Id.*

⁵⁴¹ *Id.*

⁵⁴² Vinh Hoan’s CV for “unrefined” fish oil, \$0.08/kg, is based on the corrections made to the calculation for the final results.

⁵⁴³ See Petitioners’ Case Brief at 182.

⁵⁴⁴ See Vinh Hoan’s Final Analysis Memo at Attachment 2.

⁵⁴⁵ See Vinh Hoan’s Section D Response at 46.

The Department also agrees with Petitioners that a fish waste FOP ratio should be included in the calculation of the total cost of manufacturing for fish oil, which the Department notes was not included in the calculation used in the *Preliminary Results*. Because Vinh Hoan did not report a fish waste FOP ratio, the Department derived this FOP ratio by taking Vinh Hoan's reported whole live fish FOP ratio required to produce one kilogram of fish fillets and subtracting by one kilogram of fish fillet to obtain the volume of fish waste required to produce one kilogram of fish fillets.⁵⁴⁶

The Department also agrees, in part, with Respondents that the Department should include the surrogate freight costs incurred for the inputs required to produce Vinh Hoan's "unrefined" fish oil. However, contrary to Respondents' suggestion, the Department finds that it is appropriate to only include the surrogate freight costs incurred for the inputs that incurred these costs and not for inputs, such as fish waste, that did not incur these surrogate freight costs. Accordingly, for the final results, the Department will only add surrogate freight costs to sawdust, rice husk, and coal.⁵⁴⁷

The Department also agrees with Respondents that the Department used the wrong fish oil ratio when the Department applied the fish oil ratio to Vinh Hoan's electricity FOP. The Department will make this correction for the final results by applying the correct fish oil ratio to Vinh Hoan's electricity FOP. Additionally, the Department notes that, in Respondents' revised fish oil calculation, Respondents' provided revised financial ratios. However, the Department finds that Respondents did not explain what errors were in the financial ratios used in the calculation of Vinh Hoan's CV for fish oil for the *Preliminary Results*. Accordingly, the Department cannot ascertain what errors were made in the financial ratios used in the calculation of Vinh Hoan's CV for fish oil. Therefore, for the final results, the Department will use the surrogate financial ratios used in the calculation of Vinh Hoan's CV for fish oil from the *Preliminary Results*.

Comment XXIV: Application of the Vietnam-Wide Rate to GODACO and Quang Minh

Respondents

- In the *Preliminary Results*, the Department assigned GODACO Seafood Joint Stock Company ("GODACO") and Quang Minh Seafood Co., Ltd. ("Quang Minh") the Vietnam-wide rate.^{548, 549}
- However, on October 5, 2012, both companies timely filed no shipment certifications. Therefore, GODACO and Quang Minh should not be subject to this administrative review and should not be part of the Vietnam-wide entity.⁵⁵⁰

⁵⁴⁶ *Id.*, at Exhibit 18; Vinh Hoan's Supplemental Section D Questionnaire Response at Exhibit 14; Vinh Hoan's Final Analysis Memo at Attachment 2.

⁵⁴⁷ See Vinh Hoan's Final Analysis Memo at Attachment 2.

⁵⁴⁸ See Respondents' Case Brief at 99.

⁵⁴⁹ See *Preliminary Results*, at 5 and footnote 13.

⁵⁵⁰ See Respondents' Case Brief at 99.

Petitioners

- Respondents request that the Department find that GODACO and Quang Minh made no shipments of subject merchandise during the POR and, therefore, should not be assigned the Vietnam-wide rate.⁵⁵¹
- In accordance with the Department's practice, the Department should confirm that these companies had no shipments via a no shipment inquiry before determining whether or not they should be assigned the Vietnam-wide rate.⁵⁵²

Department's Position: We issued a no shipment inquiry to CBP, which indicated that GODACO and Quang Minh had no shipments during the POR.⁵⁵³ As a result, for the final results, we find that GODACO and Quang Minh had no shipments, and are not identified as part of the Vietnam-wide entity as a result of this review. Consistent with the refinement to our assessment practice in NME cases, we have not rescinded the review with respect to these companies, but completed the review with respect to GODACO and Quang Minh finding that they had no shipments and will issue appropriate instructions to CBP based on the final results of review.⁵⁵⁴

⁵⁵¹ See Petitioners' Rebuttal Brief at 209.

⁵⁵² *Id.*

⁵⁵³ See Memorandum to the File, from Alexander Montoro, International Trade Analyst, "Ninth Administrative Review, and Aligned New Shipper Review, of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: GODACO and Quang Minh No Shipment Inquiry to CBP," dated March 28, 2014 at Attachment 1 and 2.

⁵⁵⁴ See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694, 65694-65695 (October 24, 2011).

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
Paul Piquado
Assistant Secretary
for Enforcement & Compliance

28 MARCH 2014
Date