



A-552-801
AR10: 8/1/2012 - 7/31/2013
Public Document
E&C/V: SDH

July 2, 2014

MEMORANDUM TO: Ronald K. Lorentzen
Acting 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:
Decision Memorandum for the Preliminary Results of the 2012-
2013 Antidumping Duty Administrative Review

SUMMARY

The Department of Commerce (“the Department”) is conducting the tenth administrative review of the antidumping duty (“AD”) order on certain frozen fish fillets (“fish fillets”) from the Socialist Republic of Vietnam (“Vietnam”).¹ The Department preliminarily determines that HVG² sold merchandise below normal value (“NV”) during the period of review (“POR”), August 1, 2012, through July 31, 2013. We are also preliminarily applying adverse facts available (“AFA”) to Anvifish Joint Stock Company (“Anvifish”). As AFA, we are assigning to Anvifish the highest rate from any segment of this proceeding, which in this case is \$2.39 /kilogram (“kg”), as established in *Eighth AR Amended Final*.³ The Department also preliminarily determines that certain companies are entitled to a separate rate and that four companies had no shipments during the POR.

If we adopt these preliminary results in the final results of the review, we will instruct U.S. Customs and Border Protection (“CBP”) to assess ADs on all appropriate entries of subject merchandise during the POR. We invite interested parties to comment on these preliminary

¹ See *Notice of Antidumping Duty Order: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 47909 (August 12, 2003).

² The Hung Vuong Group, or “HVG,” includes: An Giang Fisheries Import & 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. See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Review; 2011–2012*, 79 FR 19053 (April 7, 2014) (“*Ninth AR Final*”), and accompanying Issues and Decision Memorandum at 3.

³ See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Amended Final Results of Antidumping Duty Administrative Review; 2010–2011*, 78 FR 29323 (May 20, 2013) (“*Eighth AR Amended Final*”).



results. We expect to issue final results no later than 120 days from the date of publication of this notice pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (“the Act”).

Case History

On October 2, 2013, the Department initiated the tenth administrative review of fish fillets from Vietnam with respect to 33 companies.⁴ As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.⁵ Thus, all deadlines in this segment of the proceeding were extended by 16 days. On November 8, 2013, the Department published a second notice to list two companies that were inadvertently omitted from the *Initiation Notice*.⁶

Because of the large number of exporters involved in this administrative review, the Department limited the number of respondents individually examined pursuant to section 777A(c)(2) of the Act and selected HVG and Vinh Hoan Corporation (“Vinh Hoan”) as mandatory respondents.⁷ On December 13, 2013, the Department sent AD questionnaires to HVG and Vinh Hoan, to which HVG responded in a timely manner.⁸ On December 18, 2013, the Department sent interested parties a letter inviting comments on surrogate country selection and surrogate value (“SV”) data, and specified the deadlines for these respective submissions.⁹ On December 27, 2013, Vinh Hoan timely withdrew its review request of itself.¹⁰ On January 22, 2014, NTSF Seafoods Joint Stock Company (“NTSF”) requested to be selected as a voluntary respondent.¹¹ On February 3, 2014, the Department partially rescinded the review with respect to Vinh Hoan,

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 78 FR 60834 (October 2, 2013) (“*Initiation Notice*”). The Department notes that “SaigonMekong {sic} Fishery Co., Ltd. (SAMEFICO)” should have appeared in the *Initiation Notice* as “Saigon-Mekong Fishery Co., Ltd. (SAMEFICO)”. In addition, the *Initiation Notice* inadvertently stated that “{i}f one of the above-named companies does not qualify for a separate rate, all other exporters of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC {sic} entity of which the named exporters are a part.” *Id.* at 60843. The *Initiation Notice* should have stated that, “{i}f one of the above-named companies does not qualify for a separate rate, all other exporters of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam who have not qualified for a separate rate are deemed to be covered by this review as part of the single Vietnam entity of which the named exporters are a part.”

⁵ See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, “Deadlines Affected by the Shutdown of the Federal Government” (October 18, 2013).

⁶ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 78 FR 67104 (November 8, 2013).

⁷ See Memorandum to James Doyle, Director, Office V, Enforcement and Compliance; through Scot T. Fullerton, Program Manager, Office V, Enforcement and Compliance; from Steven Hampton, International Trade Compliance Analyst, Office V, Enforcement and Compliance regarding “Tenth Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Selection of Respondents for Individual Review,” dated December 11, 2013.

⁸ See Request for Information, Antidumping Duty Administrative Review, Hung Vuong Group, the Socialist Republic of Vietnam, Certain Frozen Fish Fillets, dated December 13, 2013; and Request for Information, Antidumping Duty Administrative Review, Vinh Hoan Corporation, the Socialist Republic of Vietnam, Certain Frozen Fish Fillets, dated December 13, 2013.

⁹ See Memo to the File, “Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Request for Surrogate Country and Surrogate Value Comments and Information,” dated December 18, 2013 (“Surrogate Country Memo”).

¹⁰ See Vinh Hoan Corporation’s December 27, 2013 submission.

¹¹ See NTSF Seafoods Joint Stock Company’s January 22, 2014 submission.

An Phu Seafood Corporation, and Bien Dong Seafood Co., Ltd. (“Bien Dong”) based on the withdrawal of certain requests for review.¹²

On February 10, 2014, based on the rescission of the review with respect to Vinh Hoan, the Department selected the next largest exporter of subject merchandise during the POR, Anvifish, for individual examination as an additional mandatory respondent in this proceeding, as well as denied NTSF’s request to be afforded voluntary respondent treatment because it failed to satisfy the statutory requirements for consideration as a voluntary respondent.¹³

On February 10, 2014, the Department released its standard questionnaire to Anvifish.¹⁴ On March 26, 2014, the Department partially extended the deadline for issuing the preliminary results by 30 days until June 18, 2014.¹⁵ On March 27, 2014, Anvifish indicated that it will not provide a response to the Department’s questionnaire or otherwise participate in this review.¹⁶

On April 11, 2014, NTSF submitted a second request to be treated as a voluntary respondent.¹⁷ On April 21, 2014, the Department rejected NTSF’s second request to be afforded voluntary respondent treatment because it failed to satisfy the statutory requirements for consideration as a voluntary respondent.¹⁸

Between February 25, 2014 and May 27, 2014, the Department issued supplemental questionnaires to HVG, to which it responded in a timely manner.

Between May 9, and May 29, 2014, the Department received surrogate country comments, SV comments, and rebuttal comments from interested parties. On May 16, 2014, the Department extended the deadline for interested parties to submit to rebuttal, clarification, or correction information on surrogate country/SV comments.¹⁹

¹² See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Partial Rescission of Antidumping Duty Administrative Review; 2012–2013*, 79 FR 6158 (February 3, 2014).

¹³ See Memorandum to James Doyle, Director, Office V, Enforcement and Compliance; through Scot T. Fullerton, Program Manager, Office V, Enforcement and Compliance; from Steven Hampton, International Trade Compliance Analyst, Office V, Enforcement and Compliance regarding “Tenth Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Second Respondent Selection Memo,” dated February 10, 2014 (“Second Respondent Selection Memo”).

¹⁴ See Request for Information, Antidumping Duty Administrative Review, Anvifish Joint Stock Company, the Socialist Republic of Vietnam, Certain Frozen Fish Fillets, dated February 10, 2014.

¹⁵ See Memorandum to Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, through James C. Doyle, Director, Office V, Antidumping and Countervailing Duty Operations regarding “Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Deadline for Preliminary Results of 2012-2013 Antidumping Duty Administrative Review,” dated March 26, 2014.

¹⁶ See Anvifish’s March 27, 2014 submission.

¹⁷ See NTSF Seafoods Joint Stock Company’s April 11, 2014 submission.

¹⁸ See Memorandum to James C. Doyle, Director, Office V, Enforcement and Compliance, through Scot T. Fullerton, Program Manager, Office V, Enforcement and Compliance, from Steven Hampton, International Trade Compliance Analyst, Office V, Enforcement and Compliance, regarding “Tenth Administrative Review of the Antidumping Duty Order on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: NTSF Seafoods Joint Stock Company’s Second Request for Voluntary Respondent Treatment,” dated April 21, 2014.

¹⁹ See Memorandum to the File from Susan Pulongbarit, International Trade Analyst, Enforcement and Compliance regarding “Tenth Administrative Review, and New Shipper Review, of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Rebuttal Surrogate Country/Surrogate Values Due Date,” dated May 16, 2014.

On June 11, 2014, the Department partially extended the deadline for issuing the preliminary results by 14 days until July 2, 2014.²⁰

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 *Pangasius* including basa and tra) of the Harmonized Tariff Schedule of the United States (“HTSUS”).²¹

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.

DISCUSSION OF THE METHODOLOGY

Preliminary Determination of No Shipments

On December 11, 2013, the following companies filed no-shipment certifications indicating that they did not export subject merchandise to the United States during the POR: An Giang Agriculture and Food Import-Export Joint Stock Company; Golden Quality Seafood Corporation; Hoa Phat Seafood Import-Export and Processing J.S.C.; and To Chau Joint Stock

²⁰ See Memorandum to Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, through James C. Doyle, Director, Office V, Antidumping and Countervailing Duty Operations regarding “Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Deadline for Preliminary Results of 2012-2013 Antidumping Duty Administrative Review,” dated June 11, 2014.

²¹ 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.

Company. In order to examine these claims, the Department sent inquiries to CBP requesting that CBP inform the Department if it had any information contrary to the no-shipment claims.

Based on the certifications submitted by the above companies, and our analysis of the CBP information, we preliminarily determine that An Giang Agriculture and Food Import-Export Joint Stock Company, Golden Quality Seafood Corporation, Hoa Phat Seafood Import-Export and Processing J.S.C., and To Chau Joint Stock Company²² did not have any reviewable transactions during the POR. The Department finds that consistent with its practice in non-market economy (“NME”) cases, it is appropriate not to rescind the review in part in this circumstance but, rather, to complete the review with respect to the above named companies and issue appropriate instructions to CBP based on the final results of the review.²³

NME Country Status

In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the Department. The Department considers Vietnam to be an NME country.²⁴ Therefore, we continue to treat Vietnam as an NME country for purposes of these preliminary results.

Separate Rates

Pursuant to section 771(18)(C)(i) of the Act, a designation of a country as an NME remains in effect until it is revoked by the Department. Accordingly, there is a rebuttable presumption that all companies within an NME are subject to government control, and thus, should be assessed a single AD rate.²⁵ In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.²⁶ It is the Department’s policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Sparklers*,²⁷ as amplified by *Silicon Carbide*.²⁸ However, if the Department

²² See Memorandum to the File through Scot T. Fullerton, Program Manager, Office V, Enforcement and Compliance, through Steven Hampton, International Trade Compliance Analyst, Office V, Enforcement and Compliance, regarding “2012-2013 Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,” dated February 28, 2014.

²³ See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694, 65694-65695 (October 24, 2011).

²⁴ See, e.g., *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) (“*Ninth AR Prelim*”), unchanged in *Ninth AR Final*, 79 FR 19053.

²⁵ See *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People’s Republic of China*, 71 FR 53079, 53082 (September 8, 2006) (“*Lined Paper*”); *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People’s Republic of China*, 71 FR 29303, 29307 (May 22, 2006) (“*Sawblades*”).

²⁶ See *Initiation Notice*, 78 FR at 60835.

²⁷ See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People’s Republic of China*, 56 FR 20588 (May 6, 1991) (“*Sparklers*”), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People’s Republic of China*, 59 FR 22585 (May 2, 1994) (“*Silicon Carbide*”), and 19 CFR 351.107(d).

determines that a company is wholly foreign-owned by individuals or companies located in a market economy (“ME”), then a separate rate analysis is not necessary to determine whether it is independent from government control.²⁹

The Department received separate rate applications or certifications, between November 22 and December 17, 2013, from the following 23 companies (“Separate-Rate Applicants”):

1. Asia Commerce Fisheries Joint Stock Company
2. Binh An Seafood Joint Stock Company³⁰
3. Cadovimex II Seafood Import-Export and Processing Joint Stock Company
4. Can Tho Import-Export Joint Stock Company³¹
5. C.P. Vietnam Corporation
6. Cuu Long Fish Joint Stock Company
7. Dai Thanh Seafoods Company Limited³²
8. Fatifish Company Limited
9. GODACO Seafood Joint Stock Company
10. Hiep Thanh Seafood Joint Stock Company
11. Hoang Long Seafood Processing Company Limited
12. International Development and Investment Corporation³³
13. Nam Viet Corporation³⁴
14. Ngoc Ha Co., Ltd. Foods Processing and Trading
15. NTSF Seafoods Joint Stock Company
16. Quang Minh Seafood Company Limited
17. QVD Food Company Ltd. (“QVD”)
18. Saigon-Mekong Fishery Co., Ltd.³⁵
19. Southern Fisheries Industries Company Ltd.³⁶
20. TG Fishery Holdings Corporation
21. Thien Ma Seafood Company Limited³⁷
22. Thuan An Production Trading and Service Co., Ltd.
23. Vinh Quang Fisheries Joint-Stock Company³⁸

²⁸ See *Silicon Carbide*, 59 FR at 22585.

²⁹ See, e.g., *Wooden Bedroom Furniture from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011*, 78 FR 9493 (February 6, 2013), and accompanying Decision Memorandum at 9, unchanged in final results, 78 FR 35249 (June 12, 2013); *Certain Pneumatic Off-the-Road Tires from the People’s Republic of China, Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 9278, 9284 (February 20, 2008), unchanged in final affirmative determination, 73 FR 40485 (July 15, 2013).

³⁰ Also known as Bianfishco. See Binh An Seafood Joint Stock Company’s December 6, 2013 submission.

³¹ Also known as CASEAMEX. See Can Tho Import-Export Joint Stock Company’s December 17, 2013 submission.

³² Also known as DATHACO. See Dai Thanh Seafoods Company Limited’s December 12, 2013 submission.

³³ Also known as IDI. See International Development and Investment Corporation’s December 12, 2013 submission.

³⁴ Also known as NAVICO. See Nam Viet Corporation’s December 17, 2013 submission.

³⁵ Also known as SAMEFICO. See Saigon Mekong Fishery Co., Ltd.’s December 17, 2013 submission.

³⁶ Also known as South Vina. See Southern Fisheries Industries Company Ltd.’s November 22, 2013 submission.

³⁷ Also known as THIMACO. See Thien Ma Seafood Company Limited’s November 22, 2013 submission.

³⁸ Also known as Vinh Quang Fisheries Corp. See Vinh Quang Fisheries Joint-Stock Company’s December 2, 2013 submission.

Two companies did not submit either a separate-rate application or certification, East Sea Seafoods Limited Liability Company and Thuan Hung Co., Ltd. However, the Department notes that QVD's separate rate certification³⁹ is applicable to Thuan Hung Co., Ltd.⁴⁰ Therefore, because East Seafoods Limited Liability Company did not demonstrate its eligibility for separate rate status, it remains preliminarily included as part of the Vietnam-wide entity.⁴¹

A. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.⁴² The evidence provided by HVG and the Separate-Rate Applicants supports a preliminary finding of *de jure* absence of government control based on the following: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of companies.⁴³

B. Absence of *De Facto* Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices ("EPs") are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.⁴⁴ The Department determines that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.⁴⁵

³⁹ See QVD Food Company Ltd.'s November 22, 2013 submission.

⁴⁰ This rate is also applicable to QVD Dong Thap Food Co., Ltd. ("QVD DT") and Thuan Hung Co., Ltd. ("THUFICO"). In the second review of this AD order, the Department found QVD, QVD DT and THUFICO to be a single entity and, because there has been no evidence submitted on the record of this review that calls this determination into question, we continue to find these companies to be part of a single entity. Therefore, we will assign this rate to the companies in the single entity. See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 53387 (September 11, 2006).

⁴¹ As noted below, although Anvifish submitted a separate rate application, because Anvifish withdrew from the review, we preliminarily determine that Anvifish has not demonstrated eligibility for a separate rate and is properly considered part of the Vietnam-wide entity.

⁴² See *Sparklers*, 56 FR at 20589.

⁴³ See, e.g., HVG's January 17, 2014 submission, at 2 and Exhibit 2.

⁴⁴ See *Silicon Carbide*, 59 FR at 22586-87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

⁴⁵ *Id.*, 60 FR at 22544, 22544.

The evidence provided by HVG and the Separate-Rate Applicants supports a preliminary finding of *de facto* absence of government control based on the following: (1) the companies set their own EPs independent of the government and without the approval of a government authority; (2) the companies have authority to negotiate and sign contracts and other agreements; (3) the companies have autonomy from the government in making decisions regarding the selection of management; and (4) there is no restriction on any of the companies' use of export revenue.⁴⁶ Therefore, the Department preliminarily finds that HVG and the Separate-Rate Applicants established that they qualify for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers*.

C. Separate Rate Calculation for Companies Not Individually Examined

As noted above, we stated that the Department employed a limited examination methodology, as it did not have the resources to examine all companies for which a review request was made, and selected exporters as mandatory respondents in this review. However, only HVG participated in the administrative review as a mandatory respondent. As noted above, 23 additional companies submitted timely information and remained subject to review as separate rate respondents.

The statute and the Department's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for individual examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Section 735(c)(5)(A) of the Act instructs that we do not calculate an all-others rate using any zero or *de minimis* weighted-average dumping margins or any weighted-average dumping margins based entirely on facts available. Accordingly, the Department's usual practice has been to average the rates for the selected companies excluding rates that are zero, *de minimis*, or based entirely on facts available.⁴⁷

In this review, we calculated a weighted-average dumping margin for HVG which is above *de minimis* and is not based on facts available. Accordingly, for the preliminary results, consistent with the Act and the Department's practice, the Department preliminarily determines that the margin to be assigned to the Separate Rate Applicants is the calculated margin of HVG.

Vietnam-Wide Entity

As discussed above, Anvifish declined to participate in this review. As a result, Anvifish has become part of the Vietnam-wide entity by virtue of its failure to respond to the AD questionnaire.⁴⁸ Specifically, the Department preliminarily finds that Anvifish has not established that it is separate from the Vietnam-wide entity and, consequently, that the Vietnam-

⁴⁶ See, e.g., HVG's January 17, 2014 submission, at 2 and Exhibit 2; see also the Separate-Rate Applicants' submissions dated from November 22, 2013 - December 17, 2013.

⁴⁷ See *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Review in Part*, 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16.

⁴⁸ On November 4, 2013, the Department announced a change in practice with respect to the conditional review of the NME entity. See *Antidumping Proceedings; Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Proceedings*, 78 FR 65963 (November 4, 2013). This review initiated before this change in practice became effective; therefore, the Department's new practice does not apply to this segment.

wide entity is under review. Because the Vietnam-wide entity, of which Anvifish is a part, did not cooperate, the Department preliminarily determines it is appropriate to assign the Vietnam-wide entity, as AFA, the highest rate calculated in any segment of the proceeding. As discussed below, the Department preliminarily determines that the rate applied to the Vietnam-wide entity should change from \$2.11/kg to \$2.39/kg.

A. Use of Facts Available and Adverse Facts Available

Section 776(a) of the Act provides that the Department shall apply “facts otherwise available” if (1) necessary information is not on the record or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Furthermore, section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act provides further that such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Adverse inferences are appropriate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”⁴⁹

B. Application of Total Adverse Facts Available to the Vietnam-Wide Entity

In the *Initiation Notice*, the Department stated that if one of the above-named companies does not qualify for a separate rate, all other exporters who have not qualified for a separate rate are deemed to be covered by this review as part of the Vietnam-wide entity of which the named exporters are a part.⁵⁰

The Department preliminarily determines that the Vietnam-wide entity, which includes Anvifish, failed to cooperate to the best of its ability by withholding information requested by the Department, failing to provide the requested information within the established deadlines, significantly impeding the proceeding, and provided information that cannot be verified.⁵¹ As a result, pursuant to section 776(a)(2)(A)-(D) of the Act, the Department preliminarily determines that the Department must rely on facts otherwise available to assign a dumping margin to the Vietnam-wide entity. Further, the Department finds that the Vietnam-wide entity’s failure to provide the requested information constitutes circumstances under which the Department concludes that less than full cooperation was shown. Hence, pursuant to section 776(b) of the Act, the Department preliminarily determines that because the Vietnam-wide entity failed to cooperate by not acting to the best of its ability, when selecting from among the facts otherwise available, an adverse inference is warranted with respect to the Vietnam-wide entity.

⁴⁹ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, at 870 (1994) (“SAA”).

⁵⁰ See *Initiation Notice*, 78 FR at 60834 & fn 3.

⁵¹ See Anvifish’s December 2, 2013 submission.

C. Selection of Adverse Facts Available Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record. The Department's practice in reviews, when selecting a rate as total AFA, is to use the highest rate determined for any respondent in any segment of the proceeding that, to the extent practicable, can be corroborated.⁵² The Court of International Trade ("CIT") and the Court of Appeals for the Federal Circuit ("CAFC") upheld decisions to select the highest margin from any prior segment of the proceeding as the AFA rate on numerous occasions.⁵³ The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."⁵⁴ The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."⁵⁵

In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's commercial activity, selecting the highest prior margin reflects a "common sense inference that the highest prior margin is the most probative evidence of current rates because, if it were not so, the importer, knowing the rule, would have produced current information showing the respondent's rate to be less."⁵⁶

Consistent with the statute, court precedent, and its normal practice, the Department is preliminarily assigning as AFA a rate of \$2.39/kg to the Vietnam-wide entity, including

⁵² See, e.g., *Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 15683 (March 12, 2013) and accompanying Preliminary Decision Memorandum at "Adverse Facts Available," unchanged in *Certain Preserved Mushrooms from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 34037 (June 6, 2013) (where the Department applied, as AFA, a calculated rate from a respondent from a prior review); see also *Fujian Lianfu Forestry Co., Ltd. v. United States*, 638 F. Supp. 2d 1325, 1336 (CIT August 10, 2009) ("Commerce may, of course, begin its total AFA selection process by defaulting to the highest rate in any segment of the proceeding, but that selection must then be corroborated, to the extent practicable").

⁵³ See *KYD, Inc. v. United States*, 607 F.3d 760, 766-67 (CAFC 2010) ("KYD"); *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (CAFC 1990) ("Rhone Poulenc"); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a less-than-fair-value investigation); *Kompass Food Trading Int'l v. United States*, 24 CIT 678, 684 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd. v. United States*, 360 F. Supp. 2d 1339, 1348 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

⁵⁴ See SAA at 870.

⁵⁵ *Id.*; see also *Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910, 76912 (December 23, 2004); *D&L Supply Co. v. United States*, 113 F.3d 1220, 1223 (CAFC 1997).

⁵⁶ See *KYD*, 607 F.3d at 766 (citing *Rhone Poulenc*, 899 F.2d at 1190).

Anvifish. This margin, which was a calculated rate for Anvifish, is the highest dumping margin on the record of any segment of this proceeding.⁵⁷

D. Corroboration of Secondary Information

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 {of the Act} concerning the subject merchandise.”⁵⁸ To corroborate means that the Department must find the information has probative value, meaning that the information must be both reliable and relevant.⁵⁹ Independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.⁶⁰

Pursuant to section 776(c) of the Act, the Department corroborated the \$2.39/kg rate assigned as AFA to the Vietnam-wide entity in this review. Specifically, the selected AFA margin is reliable because it is based upon the calculated rate for an exporter that is now part of the Vietnam-wide entity in a recent segment and therefore reflects the commercial behavior and commercial reality of the entity.⁶¹ Moreover, there is no information that was presented in the current review that calls into question the reliability of this information. Thus, the Department finds that the information continues to be reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico*,⁶² the Department disregarded the highest margin in that case as adverse best information available (the predecessor to “facts available”) because the margin was based on

⁵⁷ See *Eighth AR Amended Final*, 78 FR at 29324.

⁵⁸ See SAA at 870.

⁵⁹ *Id.*; see also *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

⁶⁰ See SAA at 870; see also *Notice of Final Determination of Sales at Less Than Fair Value: Live Swine from Canada*, 70 FR 12181, 12183 (March 11, 2005).

⁶¹ See *Eighth AR Amended Final*, 78 FR at 29324.

⁶² See *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (“*Fresh Cut Flowers from Mexico*”).

another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been judicially invalidated.⁶³

The selected AFA margin is relevant and, thus, probative of commercial behavior for the current review period for the following reasons: (1) Anvifish's rate which was applicable during the current POR was \$2.39/kg⁶⁴; (2) this rate was a calculated rate based upon Anvifish's full cooperation⁶⁵; (3) during the current review period, Anvifish was selected as a mandatory respondent based upon its status as one of the largest exporters subject to review, and during the POR, Anvifish continued to pay cash deposits at a rate of \$2.39/kg on imports of fish fillets⁶⁶; (4) Anvifish's rate of \$2.39/kg did not induce the company to cooperate in the current review and, therefore, a rate higher than their previous rate is necessary to induce cooperation; (5) Anvifish was on notice that, if it did not cooperate in the instant review, it could receive a higher AD rate than the cooperative rate from the immediately-preceding review⁶⁷; and (6) nothing on the record of this review indicates a change in the U.S. market that would call into question the relevance of the \$2.39/kg rate. Based upon the foregoing, we determine the \$2.39/kg rate is probative of current commercial behavior and, thus, is corroborated to the extent practicable, in accordance with section 776(c) of the Act. Therefore, we assign this rate as AFA to exports of the subject merchandise by the Vietnam-wide entity, including Anvifish.

Surrogate Country

As noted above, on December 18, 2013, the Department sent interested parties a letter inviting comments on surrogate country selection and SV data.⁶⁸ Also, as noted above, between May 9 and May 19, 2014, interested parties submitted comments and rebuttal comments on surrogate country selection and SVs.

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production ("FOP"), valued using the best available information in a surrogate ME country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (a) at a level of economic development comparable to that of the NME country; and (b) significant producers of comparable merchandise.⁶⁹ Reading sections 773(c)(1) and (c)(4) of the Act in concert, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data.⁷⁰ Accordingly, we examine each factor below.

⁶³ See *D&L Supply Co.*, 113 F.3d at 1221 (explaining that the Department will not use a margin that has been judicially invalidated).

⁶⁴ See *Eighth AR Amended Final*, 78 FR at 29324.

⁶⁵ *Id.*

⁶⁶ See Second Respondent Selection Memo at Attachment I; see also Letter to all Interested Parties regarding "2012-2013 Administrative Review of the Antidumping Duty Order on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: CBP Data for Respondent Selection," dated November 4, 2013.

⁶⁷ See the Department's February 10, 2014 antidumping duty questionnaire at G-2.

⁶⁸ See Surrogate Country Memo.

⁶⁹ See *Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process* (March 1, 2004) ("*Policy Bulletin*").

⁷⁰ *Id.*

A. Comparable Level of Economic Development

Pursuant to section 773(c)(4) of the Act, the Office of Policy memorandum identified Bangladesh, Bolivia, India, Nicaragua, Pakistan, and the Philippines as being at the same level of economic development as Vietnam.⁷¹ Section 773(c)(4)(A) of the Act is silent with respect to how or on what basis the Department may make this determination, but it is the Department's long standing practice to use *per capita* gross national income ("GNI") data reported in the World Bank's World Development Report.⁷²

According to Petitioners⁷³, although Indonesia is not on the surrogate country list in the current review, it appeared on the surrogate country list in every past review, and should be selected.⁷⁴ The Petitioners argue that: (a) Indonesia continues to be at a level of economic development comparable to that of Vietnam because its GNI remained about twice that of Vietnam's for the past several reviews; (b) using purchasing power parity ("PPP") is a better measure of countries' economic development, and using this method places Indonesia within the countries identified on the surrogate countries list; and, (c) given the limited number of significant producers of live *pangasius* worldwide, the Department should first give priority to the significant producer prong of the surrogate country selection process before economic comparability.⁷⁵ In the event that the Department does not select Indonesia as the surrogate country, the Petitioners contend the Philippines is economically comparable to Vietnam, is on the surrogate country list, and should be selected.⁷⁶

Certain separate rate respondents ("SR Respondents")⁷⁷ note that the *Policy Bulletin* indicates that the Department will use the most recent GNI data in selecting economically comparable countries and that the absence of Indonesia on the surrogate country list renders its selection inconsistent with the requirements in section 773(c)(4) of the Act.⁷⁸ HVG did not make arguments concerning this issue, but submitted SV data for Indonesia.⁷⁹

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 country and that is the *most* significant producer of comparable merchandise.⁸⁰ The statute requires only that the Department use a

⁷¹ See Surrogate Country Memo.

⁷² See, e.g., *Ninth AR Final*, 79 FR 19053 at Comment I.a.

⁷³ The Catfish Farmers of America and individual U.S. catfish processors, collectively "Petitioners."

⁷⁴ See Memorandum to the File, from Paul Walker, Case Analyst, "Tenth Administrative Review, and New Shipper Review, of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Prior Surrogate Country Lists," dated May 12, 2014.

⁷⁵ See Petitioners' May 12, 2014 submission, at 6 – 18.

⁷⁶ *Id.*

⁷⁷ The SR Respondents commenting upon surrogate country selection include the following companies: Cadovimex II Seafood Import-Export and Processing Joint Stock Company, Hoang Long Seafood Processing Co., Ltd., Saigon- Mekong Fishery Co., Ltd., Cantho Import-Export Joint Stock Company, Nam Viet Corporation, East Sea Seafoods LLC, Thuan An Production Trading and Service Co., Ltd., Dai Thanh Seafoods Company Limited, Hoa Phat Seafood Import-Export and Processing JSC, To Chau Joint Stock Company, An Giang Agriculture and Food Import-Export Joint Stock Company, and Fatifish Company Limited.

⁷⁸ See SR Respondents' May 12, 2014 submission, at 7.

⁷⁹ See HVG's May 12, 2014 submission.

⁸⁰ See *Policy Bulletin*.

surrogate market economy country that is at a level of economic development comparable to that of the NME country and that is a significant producer of comparable merchandise. Even these requirements are not binding, as the statute requires that they be met *only to the extent possible*.

As explained in the Department's *Policy Bulletin*, "{t}he surrogate countries on the (non-exhaustive) surrogate country list are not ranked."⁸¹ 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" from the standpoint of their level of economic development, based on *per capita* GNI, as compared to Vietnam's level of economic development.⁸² This also recognizes that the "level" in an economic development context necessarily implies a range of *per capita* GNI, not a specific *per capita* GNI.⁸³ The Department's long-standing practice of selecting, if possible, a surrogate country from a non-exhaustive list of countries at the same level of economic development as the NME country, or another country at the same level of economic development, fulfills the statutory requirement to value FOPs 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"⁸⁴ In this regard, "countries that are at a level of economic development comparable to that of the NME 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.

As a general rule, the Department selects a surrogate country that is at the same level of economic development as the NME unless it is determined that none of the countries are viable options because (a) they either are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available SV data, or (c) are not suitable for use based on other reasons.⁸⁵ Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development.⁸⁶

⁸¹ See *Policy Bulletin*.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ See section 773(c)(4) of the Act.

⁸⁵ See, e.g., *Chlorinated Isocyanurates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 4386 (January 22, 2013) and the accompanying Issues and Decision Memorandum at Comment 2; *Certain Steel Threaded Rod From the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 67332 (November 9, 2012) and the accompanying Issues and Decision Memorandum at Comment 1; *Certain Steel Wheels From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 76 FR 67703, 67708 (November 2, 2011), unchanged in *Certain Steel Wheels From the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances*, 77 FR 17021 (March 23, 2012).

⁸⁶ See Surrogate Country Memo.

As we noted in the *Ninth AR Final*, 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.⁸⁷ Few countries in the world produce *pangasius* fish;⁸⁸ consequently, whole live *pangasius* fish is a special or unique input.⁸⁹ 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 Final* or *Ninth AR Final* provided the best available information with which to calculate SVs, such that any of those countries should be selected as the surrogate country.⁹⁰ 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.

Regarding the Petitioners’ argument that the Department adopt the PPP method for surrogate country selection, we note that 19 CFR 351.408 makes no reference to relying on PPP as the appropriate measure of economic comparability; it simply references per capita gross domestic product gross domestic product.⁹¹ The Department has a long practice of relying on per capita GNI, *i.e.*, the Atlas Method.⁹² Since 1995, the Department also has on numerous occasions explicitly rejected parties’ arguments to rely on alternative measures of economic comparability, including PPP measures.⁹³

B. Significant Producers of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department’s regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as the *Policy Bulletin* for guidance on defining comparable merchandise. The *Policy Bulletin* states that “in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise.”⁹⁴ Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.⁹⁵ Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the

⁸⁷ See *Ninth AR Final*, 79 FR 19053 at Comment I.

⁸⁸ 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*.

⁸⁹ See *Ninth AR Final*, 79 FR 19053 at Comment I.a..

⁹⁰ See, e.g., *Eighth AR*, and accompanying Issues and Decision Memorandum at Comment I.

⁹¹ See 19 CFR 351.408(b).

⁹² See, e.g., *Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Manganese Metal from the People’s Republic of China*, 60 FR 56045, 56048 (November 6, 1995) (“*PRC Manganese*”).

⁹³ *Id.*; see also *Ninth AR Prelim*, 78 FR 55676, and accompanying Preliminary Decision Memorandum at 14, unchanged in *Ninth AR Final*, 79 FR 19053.

⁹⁴ See *Policy Bulletin* at 2.

⁹⁵ The *Policy Bulletin* also states that “if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise.” *Id.* at note 6.

industry.⁹⁶ “In cases where the identical merchandise is not produced, the Department must determine if other merchandise that is comparable is produced. How the Department does this depends on the subject merchandise.”⁹⁷ In this regard, the Department recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

In other cases, however, where there are major inputs, *i.e.*, inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, *e.g.*, processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.⁹⁸

Further, the statute grants the Department discretion to examine various data sources for determining the best available information.⁹⁹ Moreover, while the legislative history provides that the term “significant producer” includes any country that is a significant “net exporter,”¹⁰⁰ it does not preclude reliance on additional or alternative metrics.

The Petitioners assert that Indonesia has a significant fish fillet industry, is the largest producer of *pangasius* outside of Vietnam, and the most recent FAO data indicates that Indonesia exported frozen fish fillets.¹⁰¹ The Petitioners also claim that the most recent Food and Agriculture Organization of the United Nations (“FAO”) data indicate that the Philippines is a producer of comparable merchandise.¹⁰² The SR Respondents contend that Bangladesh is a significant producer of subject merchandise.¹⁰³

Consistent with past reviews, we examined fish fillet export information from *Fisheries Statistics*, an online data source published by the Food and Agriculture Organization of the United Nations.¹⁰⁴ Consistent with the *Ninth AR Final*, after an examination of this information based on the latest *Fisheries Statistics*, we find that Bangladesh, India, Indonesia, Nicaragua, Pakistan, and the Philippines are exporters of fish fillets, and thus, significant producers of comparable merchandise.¹⁰⁵

We note that the *Fisheries Statistics* indicate that there were no exports of fish fillets from Bolivia.¹⁰⁶ No party has provided evidence that Bolivia is a producer of fish fillets and, thus, we

⁹⁶ See *Sebacic Acid from the People’s Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 65674, 65675-76 (December 15, 1997) (“{T}o impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.”).

⁹⁷ See *Policy Bulletin* at 2.

⁹⁸ *Id.* at 3.

⁹⁹ See section 773(c) of the Act; see also *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1990).

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

¹⁰¹ See Petitioners’ May 12, 2014 submission, at Exhibit 5.

¹⁰² *Id.*

¹⁰³ See SR Respondents’ May 12, 2014 submission, at 7.

¹⁰⁴ See Petitioners’ May 12, 2014 submission, at Exhibit 5.

¹⁰⁵ See *Ninth AR Final*, 79 FR 19053 and accompanying Issues and Decision Memorandum at Comment I.b.

¹⁰⁶ See Petitioners’ May 12, 2014 submission, at Exhibit 5.

find that it is not a producer of comparable merchandise and has not been considered for the purposes of surrogate country selection purposes.

C. Data Availability

The *Policy Bulletin* states that, if more than one country is at a level of economic development comparable to that of the NME and is a significant producer, “then the country with the best factors data is selected as the primary surrogate country.”¹⁰⁷ Importantly, the *Policy Bulletin* explains further that “data quality is a critical consideration affecting surrogate country selection” and that “a country that perfectly meets the requirements of economic comparability and significant producer is not of much use as a primary surrogate if crucial factor price data from that country are inadequate or unavailable.”¹⁰⁸

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 a countries that the Department considers appropriate. When considering what constitutes the best available information, the Department considers several criteria, including whether the SV data are contemporaneous, publicly available, tax and duty exclusive, represent a broad-market average, and are specific to the input.¹⁰⁹ The Department’s preference is to satisfy the breadth of the aforementioned selection criteria.¹¹⁰ Moreover, it is the Department’s practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the FOPs.¹¹¹ 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.¹¹²

No party placed FOP information on the record for Nicaragua or Pakistan. Moreover, no party argued that India, Nicaragua, or Pakistan be selected as the surrogate country. As a result, we have not considered India, Nicaragua, or Pakistan for surrogate country selection purposes.

Interested parties have placed SV data on the record for Bangladesh, Indonesia, and the Philippines. We examined the available data with respect to Bangladesh, Indonesia, and the Philippines to determine which contained the best available information for valuing FOPs.

¹⁰⁷ See *Policy Bulletin*.

¹⁰⁸ *Id.*

¹⁰⁹ See, e.g., *Lined Paper*, and accompanying Issues and Decision Memorandum at Comment 3.

¹¹⁰ See, e.g., *Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 51940, 51943 (August 19, 2011), and accompanying Issues and Decision Memorandum at Comment 2.

¹¹¹ 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) (“*Sixth Mushrooms AR*”), 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.

¹¹² See, e.g., *Sixth Mushrooms AR*, 71 FR 40477 and accompanying Issues and Decision Memorandum at Comment 1.

In the last two administrative reviews, the Department found that the contemporaneous nature of SVs other than the live whole fish SV was an important factor in surrogate country selection because the respondents were integrated companies, *i.e.*, because the respondents grew their own fish, factors other than whole live fish constituted a large portion of NV.¹¹³ In this review, as in the last review, HVG is significantly integrated.¹¹⁴ We note that many separate rate respondents are significantly integrated.¹¹⁵ Consequently, the Department continues to place increased emphasis on the importance of the contemporaneous nature of SVs other than the whole live fish SV in the surrogate country selection process. A review of the record indicates that, with the exception of by-products, SVs submitted for Indonesia are contemporaneous with the POR and otherwise satisfy the breadth of the SV criteria, whereas the majority of Bangladeshi SVs do not.¹¹⁶

As indicated above, another fact, albeit ancillary, supports choosing Indonesia. There are a limited number of significant producers of live *pangasius* worldwide. As a result, in this unique industry, the Department necessarily is faced with a limited pool of potential countries at a level of economic development comparable to that of the NME-subject country, Vietnam, with which to value HVG's FOPs. Due to this limited pool, data quality becomes an even more critical factor in our surrogate country selection, and consistent with the Act, the Department will use the best available information as long as it satisfies the requirements articulated in section 773(c)(4) of the Act, including being at a level of economic development comparable to that of the NME.

Interested parties proposed three data sources to value the live whole *pangasius* fish: online data from the Bangladeshi Department of Agriculture Marketing ("*DAM Data*"), a publication by the Indonesian government *Indonesian Aquaculture Statistics* ("*Indonesian AS*"), and a publication by the Philippine government *Philippines Fisheries Statistics* ("*Philippines FS*"). We note that the values submitted in these reviews are identical to the values submitted in the last administrative review.

With regard to the Philippines data, consistent with the last review, we note that *Philippines FS* are not as robust as *Indonesian AS* because the quantity of *pangasius* data they represent are small by comparison (*i.e.*, 72 metric tons ("*mt*") for the *Philippines FS* data source versus 293,000 *mt* for the *Indonesian AS* data source, respectively, in 2012), the data contain few data points, and the data may represent further processed fish.¹¹⁷ As a result, we find that the *Philippines FS* do not represent a broad-market average similar to *Indonesian AS* and because the

¹¹³ See, *e.g.*, *Ninth AR Final*, and accompanying Issues and Decision Memorandum at Comment I.c; *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 Final*") and accompanying Issues and Decision Memorandum at Comment I.b.

¹¹⁴ See, *e.g.*, HVG's February 18, 2014 submission, at 5.

¹¹⁵ See Memorandum to the File, from Paul Walker, Case Analyst, "Tenth Administrative Review, and New Shipper Review, of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Value Source Documents," dated May 12, 2014 at Exhibit 4.

¹¹⁶ See, *e.g.*, Petitioners' May 12, 2014 submission, at Exhibit 7; SR Respondents' May 12, 2014 submission, at Exhibit 1.

¹¹⁷ See Petitioners' May 12, 2014 submission, at Exhibits 9-A & 25-A.

data include further processed fish, they are not as specific to the input, whole live fish, as *Indonesian AS*.¹¹⁸

With regard to the Bangladeshi online *DAM Data*, we note that data are missing for the largest *pangasius* producing district in Bangladesh, Mymensingh, and only 37 percent of districts reported pricing data.¹¹⁹ Consequently, we continue to find that the *DAM Data* represent as limited of a broad market average as in the last review,¹²⁰ and less of a broad-market average than in the review before that.¹²¹ Further, credible information has been placed on the record which indicates that a significant portion of the *pangasius* sold in Bangladeshi wholesale markets are dead, and prices for live fish are greater than that of dead fish, which would undervalue the live whole fish SV.¹²² Given the large volume of dead fish sold in Bangladeshi markets, and the existence of admitted errors¹²³ in the data, it is highly probably that dead fish are in the *DAM Data* prices. Record evidence indicates that whole live *pangasius* fish is a completely different product from dead *pangasius* fish, the inclusion of which in the *DAM Data* severely undercuts their specificity to HVG's whole live *pangasius* fish input. Thus, we find that the *DAM Data*, through their likely inclusion of dead fish, do not represent data that are specific to HVG's main input, whole live fish. Finally, we do not know how *DAM* collects or vets the information it publishes, and as the Department found in the *Ninth AR Final*, the *DAM Data* contain errors.¹²⁴ As a result, we find the *DAM Data* to be unreliable. For the reasons noted above, we regard the Bangladeshi and Philippine data as grossly inadequate.

In contrast to *Philippines FS* and the *DAM Data*, we note that the 2012 *Indonesian AS* data contain data points for 29 of 33 districts in Indonesia, including the largest, which represent a significant quantity of *pangasius*, 293,000 mt.¹²⁵ The data are gathered with customized national questionnaires, which requests information on specific species, including *pangasius*, and are meant to capture all-encompassing whole country data.¹²⁶ Therefore, we find that the *Indonesian AS* represent a broad-market average. *Indonesian AS* also represents quantities and values of whole live fish because data collectors take specific steps to ensure that the *Indonesian AS* data are specific to whole live fish, which are corroborated by a statement from its director.¹²⁷ Moreover, *Indonesian AS* state that they use statistically valid sampling procedures, and that revisions and corrections are made when errors are found.¹²⁸ As a result, we find the *Indonesian AS* to be reliable. As we concluded in the *Ninth AR Final*,¹²⁹ we similarly find that SV data from Indonesia represent the best available information with which to value HVG's whole live fish

¹¹⁸ See Petitioners' May 12, 2014 submission, at Exhibit 25-A, 25-B, and 25-C.

¹¹⁹ See SR Respondents' May 12, 2014 submission, at Exhibit 14.

¹²⁰ See *Ninth AR Final*, and accompanying Issues and Decision Memorandum at Comment II.

¹²¹ See *Eighth AR Final*, and accompanying Issues and Decision Memorandum at Comment I.c.

¹²² See, e.g., Petitioners' May 22, 2014 submission, at Exhibits 30 & 62. We note that HVG stated that it does not purchase dead fish. See, e.g., HVG's February 18, 2014 submission, at 3-4 and Exhibit 12; see also *Ninth AR Final*, and accompanying Issues and Decision Memorandum at Comment II.

¹²³ See *Ninth AR Final*, and accompanying Issues and Decision Memorandum at Comment II.

¹²⁴ *Id.*

¹²⁵ See Petitioners' May 12, 2014 submission, at Exhibit 9.a.

¹²⁶ *Id.*

¹²⁷ *Id.* at Exhibit 9d.

¹²⁸ *Id.* at Exhibit 9.

¹²⁹ See *Ninth AR Final*, and accompanying Issues and Decision Memorandum at Comment II.

input, as well as most other FOPs due to the fact that data from Indonesia satisfies the breadth of the SV criteria.¹³⁰

D. Conclusion

In light of the record evidence, the Department finds Indonesia to be a reliable source for SVs because Indonesia is at a level of economic development comparable to Vietnam based on GNI, is a significant producer of comparable merchandise, and has contemporaneous, publicly available, and reliable data. Given the above facts, the Department selects Indonesia as the primary surrogate country for this review. A detailed explanation of the SVs appears below in the “Normal Value” section of this notice.

Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates individual dumping margins by comparing weighted-average NVs to weighted-average EPs or constructed export prices (“CEPs”) (the average-to-average (“A-A”) method) unless the Secretary determines that another method is appropriate in a particular situation. In AD investigations, the Department examines whether to compare weighted-average NVs to the EPs or CEPs of individual transactions (the average-to-transaction (“A-T”) method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department’s examination of this question in the context of administrative reviews, the Department finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in AD investigations.¹³¹ In recent investigations, the Department applied a “differential pricing” analysis for determining whether application of A-T comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.¹³² The Department finds the differential pricing analysis used in those recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department’s additional experience with addressing the

¹³⁰ See Memorandum to the File, from Paul Walker, Case Analyst, “Tenth Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results,” dated concurrently with and hereby adopted by this memorandum (“Prelim SV Memo”).

¹³¹ See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012).

¹³² Public versions of the following memoranda have been added to the record of this case: Memoranda to Paul Piquado, Assistant Secretary for Import Administration, from Abdelali Elouaradia, Director of AD/CVD Operations Office 4, “Less Than Fair Value Investigation of Xanthan Gum from Austria: Post-Preliminary Analysis and Calculation Memorandum;” “Less Than Fair Value Investigation of Xanthan Gum from the People’s Republic of China: Post-Preliminary Analysis and Calculation Memorandum for Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., TJD.) and Shandong Fufeng Fermentation Co., Ltd.,” and “Less Than Fair Value Investigation of Xanthan Gum from the People’s Republic of China: Post-Preliminary Analysis and Calculation Memorandum for Deosen Biochemical Ltd,” all dated March 4, 2013. See Memorandum to the File, from Paul Walker, Case Analyst, “Tenth Administrative Review of Certain Frozen fish Fillets from the Socialist Republic of Vietnam: Surrogate Value Source Documents,” dated May 12, 2014.

potential masking of dumping that can occur when the Department uses the A-A method in calculating weighted-average dumping margins.¹³³

The differential pricing analysis used in these preliminary results requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differs significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the A-A method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer code. Regions are defined using the reported destination code (*e.g.*, zip codes or cities) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.¹³⁴

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen’s *d* test is applied when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is calculated to evaluate the extent to which the net prices to a particular purchaser, region or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application

¹³³ As noted above, differential pricing was used in recent investigations. It was also used in the recent AD administrative review of polyester staple fiber from Taiwan. *See Polyester Staple Fiber from Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 17637 (March 22, 2013).

¹³⁴ *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 Value Source Documents,” dated May 12, 2014.

of the A-T method to all sales as an alternative to the A-A method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an A-T method to those sales identified as passing the Cohen's *d* test as an alternative to the A-A method, and application of the A-A method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the A-A method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, we examine whether using only the A-A method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the A-A method only. If the difference between the two calculations is meaningful, this demonstrates that the A-A method cannot account for differences such as those observed in this analysis, and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if (1) there is a 25 percent relative change in the weighted-average dumping margin between the A-A method and the appropriate alternative method where both rates are above the *de minimis* threshold, or (2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

Interested parties may present arguments in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

Results of the Differential Pricing Analysis

Based on the results of the differential pricing analysis, for HVG, the Department finds that the value of U.S. sales passing the Cohen's *d* test is substantial (*i.e.*, between 33 percent and 66 percent) such that we should consider as an alternative comparison method applying the average-to-transaction method to a portion of U.S. sales.¹³⁵ However, the Department determines that the A-A method can appropriately account for such differences because there is no meaningful difference between the weighted-average dumping margin calculated using the A-A method and when using the alternative method.¹³⁶ Accordingly, the Department determines to use the A-A method in making comparisons of EP (or CEP) and NV for HVG.¹³⁷

¹³⁵ See Hung Vuong Group Preliminary Analysis Memorandum, dated concurrently with and hereby adopted by this memorandum ("HVG Analysis Memo").

¹³⁶ *Id.*

¹³⁷ In these preliminary results, the Department applied the weighted-average dumping margin calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) ("*Final Modification for Reviews*"). In particular, the Department compared monthly weighted-average CEPs with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin. *Id.*

Comparisons to Normal Value

To determine whether HVG's sales of subject merchandise were made at less than fair value, we compared its EP, or CEP, to NV in accordance with section 777A(d)(2) of the Act as described below in the "EP" and "CEP" and "Normal Value" sections of this memorandum. In these preliminary results, the Department applied the A-to-A comparison methodology adopted in the *Final Modification for Reviews*. In particular, the Department compared monthly, weighted-average EPs with monthly, weighted-average NVs, and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

U.S. Price

A. EP

Pursuant to section 772(a) of the Act, the EP is "the price at which subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States," as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, the Department calculated EP for some sales by HVG because the first sale to an unaffiliated party was made before the date of importation and the use of CEP was not otherwise warranted on those sales.¹³⁸ The Department calculated EP based on the sales price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, as appropriate, the Department deducted from the sales price certain foreign inland freight, brokerage and handling ("B&H"), and international movement costs using SVs.¹³⁹

B. CEP

Pursuant to section 772(b) of the Act, the CEP is "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter," as adjusted under section 772(c) and (d) of the Act. For some of HVG's sales, the Department based U.S. price on CEP in accordance with section 772(b) of the Act, because sales were made on behalf of the Vietnam-based company by a U.S. affiliate to unaffiliated purchasers in the United States.¹⁴⁰ For these sales, the Department based CEP on prices to the first unaffiliated purchaser in the United States. Where appropriate, the Department made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, U.S. movement expenses, and appropriate selling adjustments, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, the Department also deducted those selling expenses associated with economic activities occurring in the United States. The Department

¹³⁸ See, e.g., HVG's January 17, 2014, response at 2.

¹³⁹ See Prelim SV Memo for details regarding the SVs for movement expenses.

¹⁴⁰ See, e.g., HVG's January 17, 2014 response at 2.

deducted, where appropriate, commissions, inventory carrying costs, interest revenue, credit expenses, warranty expenses, and indirect selling expenses. Where foreign movement expenses, international movement expenses, or U.S. movement expenses were provided by NME service providers or paid for in an NME currency, the Department valued these services using SVs. For those expenses that were provided by an ME provider and paid for in an ME currency, the Department used the reported expense. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for each company, *see* HVG's analysis memorandum, dated concurrently with and hereby adopted by this memorandum.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(e) of the Act. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. The Department's questionnaire requires that the respondents provide information regarding the weighted-average FOPs across all of the companies' plants and suppliers that produce the merchandise under consideration, not just the FOPs from a single plant or supplier.¹⁴¹ This methodology ensures that the Department's calculations are as accurate as possible.¹⁴²

The Department calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). Under section 773(c)(3) of the Act, FOPs used by HVG in the production of frozen fish fillets include, but are not limited to, (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs.¹⁴³ The Department based NV on HVG's reported FOPs for materials, energy, and labor.

Factor Valuations

In accordance with section 773(c) of the Act, for subject merchandise produced by HVG, the Department calculated NV based on the FOPs reported by HVG for the POR. The Department used Indonesian import data and other publicly available Indonesian sources in order to calculate SVs. To calculate NV, the Department multiplied the reported per-unit FOP quantities by publicly available SVs. The Department's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.¹⁴⁴

¹⁴¹ See the Department's original antidumping duty questionnaire, dated December 12, 2013, at Section D.

¹⁴² See, e.g., *Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings from the People's Republic of China*, 68 FR 61395 (October 28, 2003), and accompanying Issues and Decision Memorandum at Comment 19.

¹⁴³ See, e.g., HVG's February 18, 2014, Section D submission, at Exhibit 1.

¹⁴⁴ See, e.g., *Electrolytic Manganese Dioxide from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

As appropriate, the Department adjusted input prices by including freight costs to render them delivered prices. Specifically, the Department added to Indonesian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where it relied on an import value. This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997). Additionally, where necessary, the Department adjusted SVs for inflation and exchange rates, taxes, and converted all applicable FOPs to a per-kg basis.

Furthermore, with regard to the Indonesian import-based SVs, we disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from India, South Korea, and Thailand may have been subsidized because we have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies.¹⁴⁵ Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.¹⁴⁶ Further, guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized.¹⁴⁷ Rather, the Department bases its decision on information that is available to it at the time it makes its determination. Additionally, consistent with our practice, we disregarded prices from NME countries and excluded imports labeled as originating from an "unspecified" country from the average value because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.¹⁴⁸ Therefore, we have not used prices from these countries either in calculating the Indonesian import-based SVs or in calculating ME input values.

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (*i.e.*, not insignificant quantities) and pays in an ME currency, the Department uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping and/or subsidization.¹⁴⁹ Where the Department finds ME purchases to be of significant quantities (*i.e.*, 85 percent or more), in

¹⁴⁵ See, *e.g.*, *Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4-5; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19-20.

¹⁴⁶ See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People's Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 7.

¹⁴⁷ See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988); see also *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758, 30763 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 60632 (October 25, 2007).

¹⁴⁸ See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates from the People's Republic of China*, 69 FR 75294, 75300 (December 16, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 24502 (May 10, 2005) ("*Isos*").

¹⁴⁹ See, *e.g.*, *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997).

accordance with our statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs*,¹⁵⁰ the Department uses the actual purchase prices to value the inputs. Information reported by HVG demonstrate that certain inputs were sourced from an ME country and paid for in ME currencies.¹⁵¹ However, the information reported by HVG also demonstrates that such inputs were purchased from countries which maintain broadly available, non-industry-specific export subsidies; thus, consistent with our practice, we have not used the actual price paid for these inputs and instead valued them using an SV.¹⁵²

The Department used Indonesian Import Statistics from the *Global Trade Atlas* (“GTA”) to value certain raw materials, certain energy inputs, and packing material inputs that HVG used to produce subject merchandise during the POR, except where listed below.

We valued electricity and water using values from Indonesian utilities. Specifically, we valued electricity using an average value from an Indonesian electricity company, PT PLN (Persero). We valued water using a value from an Indonesian water utility, Pam Jaya, specifically tariff IV-B for food factories.¹⁵³

We valued brokerage and handling (“B&H”) using a price list of export procedures necessary to export a standardized cargo of goods in Indonesia. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in Indonesia that is published in *Doing Business 2014: Indonesia* by the World Bank.¹⁵⁴

We used Indonesian transport information in order to value the freight-in cost of the raw materials. The Department determined the best available information for valuing truck freight to be from *Doing Business 2014: Indonesia*. This World Bank report gathers information concerning the distance and cost to transport products in a 20-foot container, weighing 10 metric tons, from the largest city in Indonesia to the nearest seaport. We calculated the per-unit inland freight costs using the distance from Jakarta to the nearest seaport. We calculated a per-kg, per-kilometer surrogate inland freight rate based on the methodology used by the World Bank. The Department determined the best available information for valuing boat freight to be a rate published by the Indonesian freight forwarder, PT. Mantap Abiah Abadi. Rates were given on a per cubic meter basis, by city. We calculated a per-kg, per-kilometer surrogate boat freight rate using this data.¹⁵⁵

In NME AD proceedings, the Department prefers to value labor solely based on data from the primary surrogate country.¹⁵⁶ In *New Labor Methodology*, the Department explained that industry-specific wage data from the primary surrogate country was the best available

¹⁵⁰ See *Use of Market Economy Input Prices in Nonmarket Economy Proceedings*, 78 FR 46799 (August 2, 2013) (“*Market Economy Inputs*”).

¹⁵¹ See, e.g., HVG’s February 18, 2014, Section D submission, at 11 and Exhibit 15.

¹⁵² *Id.*

¹⁵³ For more information on the electricity and water SV calculations, see the Prelim SV Memo.

¹⁵⁴ For more information on the B&H SV calculation, see the Prelim SV Memo.

¹⁵⁵ For more information on the truck and boat freight SV calculations, see the Prelim SV Memo.

¹⁵⁶ 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*”).

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.¹⁵⁷ It is the Department’s practice to value labor using industry-specific data reported by the International Labor Organization’s (“ILO”) in Chapter 6A of the *Yearbook of Labor Statistics* (“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.¹⁵⁸ However, in this review, there is no ILO Chapter 6A data on the record from Indonesia. As a consequence, for the preliminary results, the Department finds that the best available information for valuing labor is “Fishing, operation of fish hatcheries and fish farms; Service activities incidental to fishing” the Indonesian ILOSTAT data from 2010 because it is specific to the industry being examined, a broad-market average, closely contemporaneous with the POR, and covers the entire industry.¹⁵⁹

The Department’s criteria for choosing surrogate financial statements from which we derive the financial ratios are the availability of contemporaneous financial statements, comparability to the respondent’s experience, and publicly available information.¹⁶⁰ Moreover, for valuing factory overhead, selling, general and administrative expenses (“SG&A”), and profit, the Department normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.¹⁶¹ In addition, the CIT held that in the selection of surrogate producers, the Department may consider how closely the surrogate producers approximate the NME producer’s experience.¹⁶² To value factory overhead, selling, general, and administrative expenses (“SG&A”), and profit, the Department used the 2013 financial statements from an Indonesian fish fillet processor, PT Dharma Samudera Fishing Industries (“DSFI”).¹⁶³

Currency Conversion

Where necessary, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank. These exchange rates are available on the Enforcement and Compliance website at <http://enforcement.trade.gov/exchange/>.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*, 76 FR at 36093.

¹⁵⁹ For more information on the labor SV calculations, *see* the Prelim SV Memo. We note that we used this data in the ninth administrative review. *See Ninth AR Final*, and accompanying Issues and Decision Memorandum at Comment VI.

¹⁶⁰ *See, e.g., Isos*, and accompanying Issues and Decision Memorandum at Comment 3.

¹⁶¹ *See, e.g., Sawblades*, and accompanying Issues and Decision at Comment 2.

¹⁶² *See Rhodia, Inc. v. United States*, 240 F. Supp. 2d 1247, 1253-1254 (CIT 2002); *see also Persulfates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005), and accompanying Issues and Decision Memorandum at Comment 1.

¹⁶³ For more information on the surrogate financial ratios calculations, *see* the Prelim SV Memo.

RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

✓

Agree

Disagree

Ronald K. Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

July 2, 2014

(Date)