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January 7, 2015

**MEMORANDUM TO:** Paul Piquado  
Assistant Secretary  
for Enforcement & Compliance

**FROM:** Gary Taverman  
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Certain Frozen Fish Fillets from the Socialist Republic of Vietnam:  
Issues and Decision Memorandum for the Final Results of the  
Tenth Antidumping Duty Administrative Review; 2012-2013

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## SUMMARY

The Department of Commerce (“the Department”) analyzed the comments submitted by the Petitioners<sup>1</sup> and the Respondents<sup>2</sup> in the tenth administrative review of the antidumping duty order on certain frozen fish fillets (“fish fillets”) from the Socialist Republic of Vietnam (“Vietnam”). Following the *Preliminary Results*,<sup>3</sup> and the analysis of the comments received, we made changes to the margin calculations for the final results. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

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<sup>1</sup> The Catfish Farmers of America and individual U.S. catfish processors (collectively, “Petitioners”).

<sup>2</sup> Case and rebuttal briefs were filed by the following respondents: (1) An Giang Fisheries Import and Export Joint Stock Company, Asia Commerce Fisheries Joint Stock Company, Cuu Long Fish Joint Stock Company, Hiep Thanh Seafood Joint Stock Company, International Development & Investment Corporation, NTSF Seafoods Joint Stock Company, QVD Food Company, Ltd., Southern Fisheries Industries Company Ltd., and TG Fishery Holdings Corporation (collectively, “HVG *et al.*”); (2) An Giang Agriculture and Food Import-Export Joint Stock Company, Cantho Import-Export Joint Stock Company (“CASEAMEX”), Fatifish Company Limited, Hoang Long Seafood Processing Co., Ltd., Nam Viet Corporation, East Sea Seafoods LLC; Saigon-Mekong Fishery Co., Ltd., Thuan An Production Trading and Service Co., Ltd. (“TAFISHCO”), Cadovimex II Seafood Import-Export and Processing Joint Stock Company, To Chau Joint Stock Company, Hoa Phat Seafood Import-Export and Processing J.S.C., Dai Thanh Seafoods Company Limited, and Anvifish Joint Stock Co. (collectively, “Afiex *et al.*”); and (3) H&N Foods International Inc., Vinh Quang Fisheries Corporation, and Ngoc Ha Co Ltd Food Processing and Trading (collectively, “H&N Foods *et al.*”).

<sup>3</sup> See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results of the Antidumping Duty Administrative Review; 2012–2013*, 79 FR 40059 (July 11, 2014) (“*Preliminary Results*”) and *Frozen Fish Fillets from the Socialist Republic of Vietnam: Decision Memorandum for the Preliminary Results of the 2012–2013 Antidumping Duty Administrative Review* (July 2, 2014) (“*Preliminary Decision Memorandum*”).



## **CASE ISSUES**

### **General Issues**

- I. Surrogate Country
  - A. Economic Comparability
  - B. Significant Producer of Comparable Merchandise
  - C. Data Considerations
- II. Surrogate Value for Whole, Live Fish
- III. Fingerlings
  - A. Surrogate Value for Fingerlings
  - B. Fingerling Yield Loss
  - C. Rejection of Fingerling Data
- IV. Surrogate Value for Fish Feed
- V. Surrogate Value for Lime
- VI. Surrogate Value for Antibiotics
- VII. Surrogate Value for Nutrition
- VIII. Surrogate Value for Salt
- IX. Surrogate Value for Preservatives
- X. Surrogate Value for Plastic Bags
- XI. Surrogate Value for Tape
- XII. Surrogate Value for Strap
- XIII. Surrogate Value for Electricity
- XIV. Surrogate Value for Diesel
- XV. Surrogate Value for Water
- XVI. Surrogate Value for Labor
- XVII. Movement Expenses
  - A. Surrogate Value for Truck Freight
  - B. Surrogate Value for Brokerage and Handling
  - C. Surrogate Value for International Freight
  - D. Surrogate Value for Boat Freight
- XVIII. Financial Ratios
- XIX. Surrogate Value for *Pangasius* By-Products

### **Company Specific Issues**

- XX. Proper Reporting Period for HVG's Factors of Production
- XXI. CASEAMEX – Separate Rate Status
- XXII. Clerical Error – Draft CBP Instructions
- XXIII. Clerical Error – Customer Code

## BACKGROUND

On July 11, 2014, the Department published the *Preliminary Results* of this administrative review. On August 7, 2014, the Department extended the deadlines for parties to submit case and rebuttal briefs.<sup>4</sup> On September 19, 2014, interested parties submitted case briefs, and TAFISHCO requested that the Department fully extend the deadline for the final results.<sup>5</sup> On September 29, 2014, the Department extended the deadline for parties to submit rebuttal briefs.<sup>6</sup> On October 2, 2014, interested parties submitted rebuttal briefs. On October 22, 2014, the Department partially extended the deadline for the final results to December 11, 2014.<sup>7</sup> On November 12, 2014, based on hearing requests received from Petitioners,<sup>8</sup> HVG *et al.*,<sup>9</sup> and Afiex *et al.*,<sup>10</sup> the Department held both a closed and a public hearing limited to issues raised in the case and rebuttal briefs. On November 19, 2014, the Department fully extended the deadline for the final results of this administrative review to January 7, 2015.<sup>11</sup>

## 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.

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<sup>4</sup> See Memorandum to the File through Scot T. Fullerton, Program Manager, AD/CVD Operations, Office V, Enforcement and Compliance, from Steven Hampton, International Trade Compliance Analyst, AD/CVD Operations, Office V, Enforcement and Compliance, regarding 2012-2013 Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, dated August 7, 2014.

<sup>5</sup> See TAFISHCO’s September 19, 2014 submission.

<sup>6</sup> See Memorandum to the File through Scot T. Fullerton, Program Manager, AD/CVD Operations, Office V, Enforcement and Compliance, from Steven Hampton, International Trade Compliance Analyst, AD/CVD Operations, Office V, Enforcement and Compliance, regarding 2012-2013 Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, dated September 29, 2014.

<sup>7</sup> See Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through James C. Doyle, Director, Office V, Antidumping and Countervailing Duty Operations, from Steven Hampton, International Trade Compliance Analyst, Office V, Antidumping and Countervailing Duty Operations, regarding Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Deadline for Final Results of Antidumping Duty Administrative Review, dated October 22, 2014.

<sup>8</sup> See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Request for Hearing, dated August 8, 2014.

<sup>9</sup> See Certain Frozen Fish Fillets from Vietnam: Request for Hearing, dated August 11, 2014.

<sup>10</sup> See Requests for Hearing: 10th Antidumping Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, dated August 8, 2014.

<sup>11</sup> See Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through James C. Doyle, Director, Office V, Antidumping and Countervailing Duty Operations from Steven Hampton, International Trade Compliance Analyst, Office V, Antidumping and Countervailing Duty Operations regarding Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Second Extension of Deadline for Final Results of Antidumping Duty Administrative Review, dated November 19, 2014.

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 code 0304.62.0020 (Frozen Fish Fillets of the species *Pangasius*, including basa and tra), and may enter under tariff article codes 0305.59.0000, 1604.19.2100, 1604.19.3100, 1604.19.4100, 1604.19.5100, 1604.19.6100 and 1604.19.8100 of the Harmonized Tariff Schedule of the United States (“HTSUS”).<sup>12</sup>

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.

### **SEPARATE RATES**

In the *Preliminary Results*, we determined that the following 23 companies, in addition to HVG<sup>13</sup>, met the criteria for separate rate status: (1) Asia Commerce Fisheries Joint Stock Company, (2) Binh An Seafood Joint Stock Company, (3) Cadovimex II Seafood Import-Export and Processing Joint Stock Company, (4) CASEAMEX, (5) C.P. Vietnam Corporation, (6) Cuu Long Fish Joint Stock Company, (7) Dai Thanh Seafoods Company Limited, (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 Corporation, (13) Nam Viet Corporation, (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., (18) Saigon-Mekong Fishery Co., Ltd., (19) Southern Fisheries Industries Company Ltd., (20) TG Fishery Holdings Corporation, (21) Thien Ma Seafood Company Limited, (22) TAFISHCO and (23) Vinh Quang Fisheries Joint-Stock Company (collectively, the “Separate Rate Respondents”).<sup>14</sup>

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<sup>12</sup> Until June 30, 2004 these products were classifiable under HTSUS 0304.20.6030, 0304.20.6096, 0304.20.6043 and 0304.20.6057. From July 1, 2004 until December 31, 2006 these products were classifiable under HTSUS 0304.20.6033. From January 1, 2007 until December 31, 2011 these products were classifiable under HTSUS 0304.29.6033. On March 2, 2011 the Department added two HTSUS numbers at the request of U.S. Customs and Border Protection (“CBP”) that the subject merchandise may enter under: 1604.19.2000 and 1604.19.3000, which were changed to 1604.19.2100 and 1604.19.3100 on January 1, 2012. On January 1, 2012 the Department added the following HTSUS numbers at the request of CBP: 0304.62.0020, 0305.59.0000, 1604.19.4100, 1604.19.5100, 1604.19.6100 and 1604.19.8100.

<sup>13</sup> 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) and accompanying Issues and Decision Memorandum at 3.

<sup>14</sup> *See Preliminary Decision Memorandum* at 5-8.

As discussed below in Comment XXI, the Department has reconsidered its separate rate determination with respect to CASEAMEX. With respect to the remaining Separate Rate Respondents, we have not received any information since the issuance of the *Preliminary Results* that provides a basis for reconsideration of these determinations. Therefore, the Department continues to find that HVG and the Separate Rate Respondents, with the exception of CASEAMEX, meet the criteria for a separate rate.

## DISCUSSION OF THE ISSUES

### General Issues

#### Comment I: Selection of Surrogate Country

##### A. Level of Economic Development

*Afrix, et al.:*

- The Department should select Bangladesh as the primary surrogate country instead of Indonesia, based on an evaluation of all of the statutory criteria and data considerations. The Department deemed Indonesia as economically comparable to Vietnam even though the country was not included in the Surrogate Country List, because its per capita GNI fell outside the bookends. The Department's rationale that, notwithstanding its absence from the Surrogate Country List, Indonesia continues to be economically comparable to Vietnam, is contrary to settled judicial precedent and the Department's practice.
- In *Dupont Teijin Films*, the CIT underscored the relevance of the Surrogate Country List when it concluded that the Department was required to consider all of the information available on the record in determining whether a particular country qualified as an appropriate surrogate.<sup>15</sup> The selection of the appropriate surrogate countries is essential to calculating the surrogate values ("SV") based on the "best information available" because pursuant to section 773(c)(4)(A) of the Tariff Act of 1930, as amended (the "Act"), SVs must be based on data from economically comparable countries. This statutory language constitutes "a clear statement that Congress intended to require use of data from economically comparable countries except in situations where such data were not available or were irretrievably tainted by some statistical flaw."<sup>16</sup>
- Should the Department determine that the controlling law and precedent do not apply in this case, and continues to consider Indonesia as a potential surrogate, then the Department is required to evaluate the relative economic comparability of potential surrogates in terms of the differences of their per capita GNIs from those of the NME country. The Court has rejected the

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<sup>15</sup> See *Dupont Teijin Films v. United States*, 896 F. Supp. 2d 1302, 1304-1313 (Court of International Trade ("CIT") 2013) ("*Dupont Teijin Films*") (Commerce's selection of India as the surrogate country is not supported by substantial evidence because Commerce based its decision on 2008 data, even though 2009 GNI data were available on the record, and because Commerce failed to provide a reasoned explanation for disregarding the 2009 data).

<sup>16</sup> See *Dorbest Ltd. v. United States*, 604 F.3d 1363, 1371-1372 (CAFC 2010) ("*Dorbest IV*") (Given that the governing statute requires the use of data from economically comparable market-economy countries that are significant producers of comparable merchandise unless such data are not available, 19 CFR 351.408(c)(3) does not comply with the statutory requirements. It improperly requires using data from both economically comparable and economically dissimilar countries, and it improperly uses data from both countries that produce comparable merchandise and countries that do not).

Department's practice of "treating all countries on the potential surrogates list as equally comparable, regardless of relative differences among them in terms of GNI comparability to the NME in question."<sup>17</sup>

- The GNI of Bangladesh is closer to that of Vietnam, qualifying it as the best choice among the countries in the Surrogate Country List. The Department's failure to compare the GNI of Bangladesh to that of Indonesia, in relation to Vietnam, is contrary to the CIT decision in *Ad Hoc Shrimp I*, which specifically requires the Department to weigh economic comparability as a threshold criterion.<sup>18</sup>
- The CIT addressed a similar situation in *Jiaxing Brother Fastener*, affirming the Department's decision to reject the choice of India (which was not present on the Surrogate Country List) as the surrogate country, thereby rejecting arguments that the alleged superiority of Indian SV data overcame its lack of economic comparability.<sup>19</sup>

*HVG, et al.:*

- In the *Preliminary Results*, the Department provided two reasons for selecting Indonesia as the surrogate country, although it was not included on the Surrogate Country List for the POR:<sup>20</sup> (1) the Surrogate Country List is not exhaustive and the Department has broad discretion on deciding the issue of "economic comparability;" and (2) the two statutory factors for a surrogate country are required to be satisfied only "to the extent possible," and when "concerns about valuation of special or unique factors of production (FOPs) can outweigh the economic comparability requirement."<sup>21</sup>
- The Department rejected the advanced alternative methodology for measuring the level of economic development,<sup>22</sup> reiterating that "it is the Department's longstanding practice to use per capita gross national income ('GNI') data reported in the *World Bank Development Report*."<sup>23</sup> The Department relied on nothing except its discretion in finding that Indonesia and Vietnam are at comparable levels of economic development, despite the fact that the Surrogate Country List states the contrary.
- The Department has found in prior reviews that Bangladesh is a significant producer of comparable merchandise and provides quality data for SVs. The Department did not provide sufficient reasons as to why Bangladesh cannot be used as the primary surrogate country, or why the "economic comparability" requirement must be sacrificed for this review.<sup>24</sup>
- The Surrogate Country List shows that during 2011, as compared to Vietnam's GNI of 1,270 U.S. Dollars ("USD") per capita, the corresponding GNI data from Bangladesh was 780 USD

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<sup>17</sup> See *Ad Hoc Shrimp Trade Action Comm. v. United States*, 882 F. Supp. 2d 1366 (CIT 2012) ("*Ad Hoc Shrimp I*"); see also *Ad Hoc Shrimp Trade Action Comm. v. United States*, 986 F. Supp. 2d 1362, 1366 (CIT 2014) ("*Ad Hoc Shrimp II*").

<sup>18</sup> See *Ad Hoc Shrimp I*, 882 F. Supp. 2d at 1371-1376 (CIT 2012).

<sup>19</sup> See *Jiaxing Brother Fastener Co. v. United States*, 961 F. Supp. 2d 1323, 1329-1332 (CIT 2014) ("*Jiaxing Brother Fastener*").

<sup>20</sup> See Letter to All Interested Parties regarding 10th Administrative Review of Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Country List, dated December 18, 2013 ("Surrogate Country List"), at 4.

<sup>21</sup> See Preliminary Decision Memorandum at 15.

<sup>22</sup> I.e., "purchasing power parities".

<sup>23</sup> *Id.*

<sup>24</sup> Bangladesh satisfies all requirements for surrogate country, including "economic comparability."

per capita.<sup>25</sup> Therefore, Bangladesh is the country most economically comparable to Vietnam, and Indonesia fails to satisfy the threshold criterion of economic comparability.

*Petitioners:*

- The selection of Indonesia as the primary surrogate country is supported by substantial record evidence and is fully in accordance with the statute, regulations, and precedent.
- The Department explained previously that it does not specify a certain percentage range of country GNIs that are comparable to the GNI of the NME in question and then automatically exclude from its surrogate country list any country whose GNI falls outside of this range;<sup>26</sup> nor has the Department ever set such parameters.<sup>27</sup> The Surrogate Country List, states that it is “not exhaustive” and the Department may consider “other countries on the case record if the record provides adequate information to evaluate them.”<sup>28</sup>
- In *Shrimp from Vietnam*, the Vietnamese respondents argued for the selection of Indonesia as the primary surrogate country and the rejection of Bangladesh, even though Indonesia was not included on the surrogate country list.<sup>29</sup> The Vietnamese respondents asserted that the omission of Indonesia from the surrogate country list did not automatically disqualify it from consideration as a surrogate country, emphasizing that the 2011 GNI data relied upon by the Department to generate its surrogate country list (the same date used in this administrative review) demonstrated that Indonesia was economically comparable to Vietnam.<sup>30</sup>
- The central issue before the CIT in *Dupont Teijin Films* was whether India’s GNI data supported the determination that India was economically comparable to the PRC.<sup>31</sup> Based on case-specific facts, the CIT found that the Department’s determination that India was economically comparable to the PRC was not adequately supported.<sup>32</sup> The facts in this review are not analogous because the record unequivocally establishes that Indonesia is economically comparable to Vietnam. Moreover, Afiex, *et al.* have failed to offer any evidence that suggests otherwise.

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<sup>25</sup> See Surrogate Country List at 4.

<sup>26</sup> See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2011–2012*, 79 FR 19053 (April 7, 2014) (“*Ninth AR*”) and accompanying Issues and Decision Memorandum at Comment I.

<sup>27</sup> See *Hardwood and Decorative Plywood from the People’s Republic of China*, 78 FR 58273 (September 23, 2013) (“*Plywood*”) and accompanying Issues and Decision Memorandum at Comment 7 (“The list itself provides a starting point for what set of countries the Department considers being at the same level of economic development as the {PRC}”).

<sup>28</sup> See Surrogate Country List.

<sup>29</sup> See *Certain Warmwater Shrimp from the Socialist Republic of Vietnam*, 78 FR 56211 (September 12, 2013) and accompanying Issues and Decision Memorandum at Comment 1 (“*Shrimp from Vietnam*”).

<sup>30</sup> *Id.*

<sup>31</sup> See *Dupont Teijin Films*, 896 F. Supp. 2d 1302, 1306-10 (CIT 2013).

<sup>32</sup> Afiex, *et al.*’s reference to *Dorbest IV* to suggest that the Department erred in determining that Indonesia is a reliable surrogate country choice is entirely inapposite. *Dorbest IV* concerned the agency’s labor rate methodology under 19 CFR 351.408(c)(3), which is no longer in effect. See *Dorbest IV*, 604 F.3d 1363, 1371-72 (CAFC 2010). Under this revoked regulation, the Department estimated labor rates for NME countries using a regression model that included labor rates from 61 countries that were both economically comparable and not economically comparable to the NME in question (and many of those countries were not significant producers of comparable merchandise). The circumstances under review in *Dorbest IV* do not exist here; the Department is not invoking the outdated 19 CFR 351.408(c)(3) to calculate labor rates nor is it determining surrogate values from countries that are not economically comparable to Vietnam.

- In *Jiaxing Brother Fastener*, the CIT determined that the Department’s selection of India as the primary surrogate country was not appropriate because India was not economically comparable to the PRC, and there were other suitable surrogate country candidates that were economically comparable.<sup>33</sup>
- Contrary to respondents’ assertions, the Department’s economic comparability analysis in the *Preliminary Results* did not substitute the category of “same” in the place of “comparable” and then impermissibly expand the economic comparability determination to include countries that are not economically comparable to Vietnam. Rather, consistent with its practice, the Department created a “non-exhaustive” surrogate country list and considered those countries to be “equivalent” in terms of economic development.<sup>34</sup> The Department then determined that Indonesia was economically comparable to Vietnam, even though it was omitted from the surrogate country list, because the record provided sufficient evidence to permit an analysis.
- Respondents incorrectly state that the Department relied on nothing except its discretion in finding that Indonesia and Vietnam are at comparable levels of economic development, despite the fact that the surrogate country list it published earlier states the contrary.
- Respondents incorrectly posit that data quality concerns are secondary surrogate country considerations, and that the Department elevated concerns about data quality over the need for economic comparability. However, the Department has stated that the surrogate country selection criteria of economic comparability, significant production of comparable merchandise, and data quality, are equally important and “the relative importance that the {agency} attaches to each {eligibility criterion} will necessarily vary depending on the specific facts of each case.”<sup>35</sup> The CIT has recognized that “none of the three surrogate country eligibility criteria - economic comparability, significant production of comparable merchandise, and quality data - is preeminent,” and has underscored the need for Department to weigh “the relative strengths and weaknesses among potential surrogates...by evaluating the extent to which the potential surrogates satisfy each of the three criteria.”<sup>36</sup>
- Indonesia continues to be economically comparable to Vietnam, just as it has been in every review since 2005.<sup>37</sup> World Bank GNI data show Indonesia’s GNI to be 2.3 times Vietnam’s GNI in 2010 when Indonesia was included in the Surrogate Country List, precisely the same relationship shown by the 2011 World Bank data used in this review.<sup>38</sup> In all antidumping proceedings involving Vietnamese imports covering the same review periods, the Department relied on these GNI figures, and consistently found Indonesia’s level of economic development to be comparable to that of Vietnam.<sup>39</sup>
- The *World Bank Development Report* classifies Indonesia, the Philippines, and Vietnam as

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<sup>33</sup> See *Jiaxing Brother Fastener*, 96 F. Supp. 2d 1323, 1327-1332 (CIT 2014).

<sup>34</sup> See Preliminary Decision Memorandum at 14.

<sup>35</sup> See *Policy Bulletin*.

<sup>36</sup> See *Ad Hoc Shrimp I*, 882 F. Supp. 2d. 1366, 1374 (CIT 2012).

<sup>37</sup> See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 54007, 54011 (September 13, 2005).

<sup>38</sup> See Petitioners’ October 2, 2014 submission at 23.

<sup>39</sup> See, e.g., *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 56158 (September 12, 2011) and accompanying Issues and Decision Memorandum at Comment 2.E.

“lower-middle-income” economies, and Bangladesh as a “low-income” economy.<sup>40</sup> In *Vietnam Shrimp*, the Vietnamese producers opposed Petitioners’ argument that the Department should select the country with the closest GNI to the NME as the primary surrogate country, and advocating for Indonesia, asserted that the Department should, “treat a group of countries within a certain per-capita GNI range who are significant producers of comparable merchandise equally until it determines which countries have the best data.”<sup>41</sup> In other words, they objected to the very position that the Vietnamese producers advance in this review.

- Should the Department not choose Indonesia as the surrogate country, the record establishes that the Philippines is a suitable alternative surrogate country.

**Department’s Position:** Because Vietnam is an NME country, when calculating normal value (“NV”), section 773(c)(4) of the Act requires the Department to value the FOPs, to the extent possible, in a surrogate country that is (a) at a level of economic development comparable to Vietnam, and (b) a significant producer of comparable merchandise.<sup>42</sup>

Section 773(c)(4)(A) of the Act is silent with respect to how the Department may determine that a country is at a level of economic development comparable to the NME country. As such, the Department’s longstanding practice has been to identify those countries which are at a level of economic development similar to Vietnam based on GNI data reported in the *World Bank Development Report* provided by the World Bank.<sup>43</sup> Using 2011 GNI data, the Department provided parties with a list of potential surrogate countries found to be at Vietnam’s level of economic development, including Bangladesh, Bolivia, India, Nicaragua, Pakistan, and the Philippines.<sup>44</sup> Given that the surrogate country list is non-exhaustive, as stated specifically in the surrogate country memo, interested parties identified another surrogate country, Indonesia, for consideration. In the *Preliminary Results*, the Department found Indonesia to be at a “higher and, thus, less comparable level of economic development than that represented by the six countries on the initial surrogate country candidate list, but still comparable to that of Vietnam.”<sup>45</sup>

With respect to HVG, *et al.*’s argument that the Department “relied on nothing except its discretion” in finding that Indonesia and Vietnam are at a comparable level of economic development, we disagree. In the *Preliminary Results*, the Department explained that the decision was based on a consideration of Indonesia’s GNI in relation to Vietnam and the six countries on the Surrogate Country List.<sup>46</sup> The Department has not received any information since the *Preliminary Results* that undermines this finding, or the reliance on GNI as the basis for

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<sup>40</sup> See Petitioners’ May 12, 2014 submission at Exhibit 2. Petitioners understand that the Department has rejected analyses of economic comparability that are based on PPP-based GNIs in the past. However, it may nevertheless be a useful analytical tool to supplement and corroborate its examination of GNI data.

<sup>41</sup> See *Shrimp from Vietnam*, 78 FR 56211 at Comment 1.

<sup>42</sup> See also *Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process* (March 1, 2004) (“*Policy Bulletin*”).

<sup>43</sup> See *Pure Magnesium from the People’s Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 75 FR 80791 (December 23, 2010) and accompanying Issues and Decision Memorandum at Comment 4.

<sup>44</sup> See Surrogate Country List.

<sup>45</sup> See Preliminary Decision Memorandum at 15.

<sup>46</sup> *Id.* at 14.

this finding. Moreover, the Court has upheld the Department’s use of GNI as “a reasonable interpretation of the statutory mandate to identify and select a primary surrogate country ‘at a level of economic development comparable’ to the nonmarket economy country.”<sup>47</sup> As explained in the *Policy Bulletin*, “[t]he surrogate countries on the list are not ranked.”<sup>48</sup> This lack of ranking reflects the Department’s longstanding practice that, for the purpose of surrogate country selection, the countries on the list “should be considered equivalent”<sup>49</sup> from the standpoint of their level of economic development based on GNI as compared to Vietnam’s level of economic development, and recognition of the fact that the concept of “level” in an economic development context necessarily implies a range of GNIs, not a specific GNI. This longstanding practice of providing a non-exhaustive list of countries at the same level of economic development as the NME country 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....”<sup>50</sup>

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, are still at a level comparable to that of the NME country, such as Indonesia in this review. The latter countries are considered when data or significant producer considerations potentially outweigh the fact that these countries are not at the same level of economic development as the NME country. Indonesia satisfies the statutory requirement that the surrogate country be at a comparable level of economic development to the NME country. Further, data considerations, explained in greater detail below, weigh heavily in favor of Indonesia’s selection over the other countries that were initially identified in the Surrogate Country List.

As explained in the *Preliminary Results*, 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.<sup>51</sup> As we noted in the *Preliminary Results*, few countries produce *pangasius* fish;<sup>52</sup> consequently, whole live *pangasius* fish is a special or unique input.<sup>53</sup> Of this small set of countries that produce *pangasius* fish, only three were included in the Surrogate Country List: Bangladesh, India, and the Philippines. Petitioners

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<sup>47</sup> See *Jiaying Brother Fastener*, 961 F.Supp.2d 1323, 1328 (CIT 2014) (the Department’s utilization of GNI is a consistent, transparent, and objective metric to identify and compare a country’s level of economic development, and is a reasonable interpretation of the statute).

<sup>48</sup> See *Policy Bulletin*.

<sup>49</sup> *Id.*

<sup>50</sup> See section 773(c)(4) of the Act.

<sup>51</sup> See Preliminary Decision Memorandum at 15.

<sup>52</sup> 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*.

<sup>53</sup> See Preliminary Decision Memorandum at 15; *Ninth AR*, 79 FR 19053 at Comment I.A; see also Petitioners’ May 12, 2014, submission at Exhibit 9.

placed information on the record addressing the Department's surrogate country selection criteria, including voluminous amounts of information concerning SVs in Indonesia.<sup>54</sup> HVG, *et al.* and Afiex, *et al.* also placed Indonesian SVs on the record including values for whole, live *pangasius*.<sup>55</sup>

With respect to HVG, *et al.*'s and Afiex, *et al.*'s arguments that Bangladesh is the country most economically comparable to Vietnam, we disagree. As explained above, the "statute does not require that the Department use a surrogate country that is at a level of economic development most comparable to the NME."<sup>56</sup> Within a given range, differences in per-capita GNI between the countries do not imply any difference in level of economic development.<sup>57</sup> Once a country is determined to be at the same level of economic development as the NME country, it is not the Department's practice to pick the surrogate country closest to the NME country *solely* based on GNI.<sup>58</sup> In instances where other facts on the record warrant the selection of a surrogate country other than the one with the closest GNI to the NME, the Court has upheld the Department's practice to not select the country with the closest GNI to the NME.<sup>59</sup>

Regarding Petitioners' arguments concerning the World Bank's classification of economies, and the relative GNIs of Indonesia and Vietnam in past administrative reviews, we disagree. The Department consistently rejects parties' arguments to use the World Bank's reported upper-middle or lower-middle income thresholds or categories for the purposes of determining the level of economic development. The band of countries that the Department selected in this review, in absolute terms, is a reasonable range of countries given the entire worldwide range of GNIs. The fact that a small subset of the band lies above or below the World Bank's threshold for an income group is not a basis to reject it for factor valuation purposes.<sup>60</sup> Furthermore, in past cases the Department has rejected the use of relative measures of GNI comparison.<sup>61</sup>

Neither the statute nor the Department's surrogate country selection criteria include, or consider, whether countries have been selected in previous and unrelated proceedings. The Department selects the primary surrogate country for each segment of a proceeding based on the record facts of that individual segment, regardless of whether the potential surrogate countries under

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<sup>54</sup> See Surrogate Country List at Attachment I; see also Petitioners' submissions of March 25, 2014, May 12, 2014, and June 19, 2014.

<sup>55</sup> See generally, HVG, *et al.*'s submission on May 12, 2014, and Afiex, *et al.*'s submission on May 12, 2014.

<sup>56</sup> See *Policy Bulletin*; see also section 773(c)(4) of the Act.

<sup>57</sup> See *Shrimp from Vietnam*, 78 FR 56211 at Comment 1.A.

<sup>58</sup> See *Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2010-2011*, 78 FR 11682 (May 16, 2013) ("*Hangers*") and accompanying Issues and Decision Memorandum at Comment I.A (quoting the *Policy Bulletin*). For example, in *Hangers* the Department determined that, although Thailand's GNI was closest in absolute terms to the PRC's GNI, Thailand was not the most appropriate surrogate country because the data it provided were inferior to the data from the selected surrogate country, the Philippines.

<sup>59</sup> See, e.g., *Ad Hoc Shrimp Trade Action Comm. v. United States*, No. 12-00314, Slip Op. 14-59 at 9-13 (CIT May 29, 2014); *Fujian Lianfu Forestry*, 638 F. Supp. 2d 1325 (CIT 2009) (the Department selected India as the primary surrogate country even though there were other economically comparable countries with GNIs closer to the GNI of China).

<sup>60</sup> See *Wooden Bedroom Furniture from the People's Republic of China: Final Results and Final Rescission in Part*, 75 FR 50992 (August 18, 2010).

<sup>61</sup> See *Vietnam Shrimp 2011-2012* at Comment 1.A.

consideration have been previously selected as surrogate countries.<sup>62</sup> In other words, each segment of an antidumping proceeding is an independent segment with separate records which lead to independent determinations.<sup>63</sup> As a result, we have not considered decisions in past segments of this case in considering whether Indonesia is at a level of economic development comparable to Vietnam in this review.

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

## **B. Significant Producer of Comparable Merchandise**

*Afiex, et al.:*

- The purpose of this statutory criterion is to ensure that the country selected as the primary surrogate country provides the Department with price data for the inputs used in producing comparable merchandise. The production of a broad category of products, such as “frozen fish fillets,” does not ensure that the surrogate country selected will replicate the specific production experience and characteristics of *pangasius* frozen fillets. For example, a country may be a significant producer of frozen tilapia fillets, while having no reliable SV data for the single most important input – whole, live *pangasius* fish.
- Since the record contains numerous production data relating to *pangasius hypophthalmus*, one of three *pangasius* species covered by the scope, the Department should compare the quantity of whole, live *pangasius hypophthalmus* produced by Bangladesh, Indonesia, and the Philippines.<sup>64</sup> Bangladesh is a significant whole, live *pangasius* producer, which produced 300,000 metric tons (“mt”) of whole, live *pangasius*, while the Philippines only produced 72 mt in 2011.<sup>65</sup>
- Although the Department found Indonesia to be a significant producer of frozen fish fillets in the *Preliminary Results*,<sup>66</sup> as noted above, Indonesia fails to meet the first and most critical statutory criterion, economic comparability.

*HVG, et al.:*

- The Department considered Bangladesh and Indonesia to be significant producers of comparable merchandise.<sup>67</sup> However, Indonesia fails to meet the criterion of economic comparability as recognized by the Department in this and prior administrative reviews.

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<sup>62</sup> See *Plywood* at Comment 7 (“The surrogate country selection criteria do not include or consider whether countries have been selected in previous and unrelated proceedings. The Department selects the primary surrogate country for each proceeding based on the facts of that individual proceeding, regardless of whether the potential surrogate countries under consideration have been previously selected as surrogate countries.”).

<sup>63</sup> See, e.g., *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47551 (September 16, 2009) and accompanying Issues and Decision Memorandum at Comment 8.

<sup>64</sup> *Afiex, et al.* notes that in a prior review, the Department determined that for purposes of surrogate country selection the comparable merchandise is whole pangasius fish used to produce the frozen fish fillets. See Memorandum to the File, from Michael Holton, Senior Case Analyst, “3rd Antidumping Duty Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Selection of a Surrogate Country,” dated August 31, 2007 at 5.

<sup>65</sup> See *Afiex, et al.*’s May 12, 2014 submission at Exhibits 25D, 25E, and 25H.

<sup>66</sup> *Id.*

<sup>67</sup> See Preliminary Decision Memorandum at 16.

Between Bangladesh and Indonesia, Bangladesh alone satisfies both of the primary statutory criteria and, thus qualifies for the status of the primary surrogate country.

*Petitioners:*

- In the absence of reliable, worldwide *pangasius* frozen fillet production data, and consistent with established agency practice in this proceeding, the Department defined comparable merchandise to encompass frozen fish fillets.<sup>68</sup> In prior reviews, the Department considered and rejected attempts to define comparable merchandise as whole live *pangasius* production.<sup>69</sup>
- The 2011 United Nations Food and Agriculture Organization (“FAO”) data, upon which the Department relied to measure significant production of comparable merchandise, shows that Indonesia is the largest producer of frozen fish fillets and ranks the highest in volume of frozen fish fillet exports, second only to Vietnam.<sup>70</sup> Even if the Department, as Afiex, *et al.* propose, were to consider whole *pangasius* fish to be comparable merchandise to frozen *pangasius* fillets, it must still find that Indonesia is a significant producer of *pangasius* given that it is the second largest *pangasius* producer in the world.<sup>71</sup>
- The Department has no basis to conclude that Bangladesh was a significant producer of frozen fish fillets during the POR. The 2011 FAO data show that while Indonesia and the Philippines remained substantial exporters of frozen fish fillets through 2011, Bangladesh’s exports of frozen fish fillets dropped by 89 percent between 2007 and 2011.<sup>72</sup> This trend, if continued, would have resulted in Bangladesh having no exports of frozen fillets during the POR and a conclusion that Bangladesh is no longer a “significant” producer of comparable merchandise.
- Moreover, the record does not contain reliable evidence of *pangasius* processing in Bangladesh. The information included in Respondents’ SV submission is outdated and includes materials from various sellers of *pangasius* fish or fillets, but provides no basis to conclude that the products offered were produced in Bangladesh.<sup>73</sup>
- Respondents argue that the Department’s reliance on Bangladesh as the primary surrogate country in prior reviews demonstrates its superiority in this review, and that based on these prior decisions, the Department should select Bangladesh as the primary surrogate country.<sup>74</sup>

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<sup>68</sup> See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews*, 75 FR 12726 (March 17, 2010) (“*Fifth AR*”) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>69</sup> See, e.g., *Ninth AR* at Comment I.B.

<sup>70</sup> See Petitioners’ May 12, 2014 submission at Exhibit 5; Preliminary Decision Memorandum at 16.

<sup>71</sup> The record shows that, in 2008 Vietnam accounted for 90 percent of the world’s *pangasius* production, while Indonesia ranked second accounting for 5.5 percent. Moreover, from 2008 to 2011, Indonesia’s share of global production has grown, and by 2011, Indonesia accounted for a 16 percent share of global *pangasius* production and more than 80 percent of global *pangasius* production outside of Vietnam. See Petitioners’ May 12, 2014 submission at Exhibit 10.A.

<sup>72</sup> *Id.* at Exhibit 5.

<sup>73</sup> See Petitioners’ May 12, 2014 submission at Exhibit 26; Petitioners’ May 22, 2014 submission at Exhibit 62.

<sup>74</sup> See HVG *et al.*’s Case Brief at 7 and Afiex, *et al.*’s Case Brief at 19.

However, each administrative review is distinct and built upon its own independent record.<sup>75</sup> Thus, the Department's surrogate country determinations in prior administrative reviews cannot dictate the decisions in subsequent reviews with different records.

**Department's Position:** Section 773(c)(4)(B) of the Act requires the Department to value FOPs, to the extent possible, in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department's regulations provide further guidance on what may be considered comparable merchandise. Afiex *et al.* argue that the Department should select whole, live *pangasius hypophthalmus*, the main input to producing subject merchandise, as comparable merchandise for purposes of selecting a surrogate country. Given the absence of any definition in the statute or regulations, the Department's *Policy Bulletin* provides guidance on defining comparable merchandise.

The *Policy Bulletin* states that "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."<sup>76</sup> In the *Preliminary Results* and in past reviews, we noted that, because there is no world production data of *pangasius* frozen fish fillets to identify producers of identical merchandise, the Department's practice is to compare, wherever possible, data for comparable merchandise and establish whether any economically comparable country was a significant producer.<sup>77</sup>

The *Policy Bulletin* further notes that in cases where the identical merchandise is not produced, the Department must determine if other merchandise that is comparable is produced on a case-by-case basis.<sup>78</sup> The *Policy Bulletin* also states that:

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

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<sup>75</sup> See *Folding Metal Tables and Chairs from the People's Republic of China: Final Results of 2007-2008 Deferred Antidumping Duty Administrative Review and Final Results of 2008-2009 Antidumping Duty Administrative Review*, 76 FR 2883 (January 18, 2011) and accompanying Issues and Decision Memorandum at Comment 2 (Explaining that individual administrative reviews "are each separate and distinct proceedings, with independent records"); *Plywood* at Comment 7 ("The surrogate country selection criteria do not include or consider whether countries have been selected in previous and unrelated proceedings. The Department selects the primary surrogate country for each proceeding based on the facts of that individual proceeding, regardless of whether the potential surrogate countries under consideration have been previously selected as surrogate countries.").

<sup>76</sup> See *Policy Bulletin* at 2.

<sup>77</sup> See, e.g., Preliminary Decision Memorandum at 15-17; *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results and Partial Rescission of the Seventh Antidumping Duty Administrative Review*, 77 FR 15039 (March 4, 2012) ("*Seventh AR*") and accompanying Issues and Decision Memorandum at Comment I.B.

<sup>78</sup> See *Policy Bulletin* at 3.

a case, “significant producer” could mean a country that is a net exporter, even though the selected surrogate country may not be one of the world’s top producers.<sup>79</sup>

We continue to find that frozen fish fillets are a more suitable product to consider as comparable merchandise than whole, live *pangasius hypophthalmus*. Although frozen fish fillets are a broader category than in-scope *pangasius* frozen fish fillets, it is nonetheless comparable and superior to consideration of the main input because it allows for the selection of surrogate financial ratios from producers of similar products with similar capital structures.<sup>80</sup>

With respect to Petitioners’ argument that the FAO data show a decline in Bangladeshi exports, and thus Bangladesh is not a significant producer, we disagree. The *Policy Bulletin* states that there may not be adequate data available from major producing countries.<sup>81</sup> As noted above, we relied on FAO data concerning frozen fish fillet exports in 2011, the latest available data. The FAO data indicate that Bangladesh, India, Indonesia, Nicaragua, Pakistan, and the Philippines are exporters of fish fillets, and thus, significant producers of comparable merchandise.<sup>82</sup> Petitioners speculate that should Bangladesh’s frozen fish fillets export trend continue, Bangladesh would have produced no frozen fish fillets during the POR. Petitioners’ extrapolation, based on 2011 FAO data, that Bangladesh exported no frozen fish fillets during the POR, is mere speculation that is not supported by record evidence. In any event, as noted above, the Department relied on 2011 FAO data, the latest data available, to make this determination. Thus, we consider Bangladesh to be a significant producer of comparable merchandise.

We agree with Petitioner with respect to *HVG et. al.*’s argument that the Department’s reliance on Bangladesh as the primary surrogate country in prior segments demonstrates its superiority in this review. As noted above, each segment of an antidumping proceeding is an independent segment with separate records which lead to independent determinations.<sup>83</sup> As a result, we have not considered decisions in past segments of this case in considering whether Bangladesh is a significant producer of comparable merchandise in this review.

We continue to find that Bangladesh, India, Indonesia, Nicaragua, Pakistan, and the Philippines are exporters of frozen fish fillets and significant producers of comparable merchandise.<sup>84</sup> Because Bolivia was not a producer of comparable merchandise, we have not considered it for surrogate country selection purposes.

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<sup>79</sup> *Id.*

<sup>80</sup> We made an identical finding in the last three reviews. *See, e.g., Ninth AR* at Comment I.B.

<sup>81</sup> *See Policy Bulletin* at 3.

<sup>82</sup> *See Preliminary Decision Memorandum* at 16.

<sup>83</sup> *See, e.g., Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47551 (September 16, 2009) and accompanying Issues and Decision Memorandum at Comment 8.

<sup>84</sup> *See Memorandum to the File* through Scot T. Fullerton, Program Manager, Office V, Enforcement & Compliance, from Paul Walker, Case Analyst, regarding Tenth Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results, dated July 2, 2014 (“Prelim SV Memo”).

### C. Data Considerations

*Afiex, et al.:*

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

*HVG, et al.:*

- Except for the final results in the last two prior reviews, the Department consistently found that Bangladesh afforded the best quality SV data for valuing all factors of production. The record in this review establishes that the SV data from Bangladesh is superior to the available data from Indonesia.

*Petitioners:*

- The *Policy Bulletin* recognizes that data quality is a critical consideration affecting surrogate country selection, and hence, the search for countries that provide reliable data may necessitate a need to “go off the list” in search of a viable primary surrogate country. The ability to go “off the list” affords the Department with the needed flexibility to find the “best available” SV information to calculate the most reliable and accurate dumping margins possible.<sup>85</sup> The record reflects that Indonesia offers the most robust and reliable SVs for HVG’s reported FOPs, including the key inputs of whole live fish, fish feed, fingerlings, and surrogate financial ratios.<sup>86</sup>

**Department’s Position:** We agree with Petitioners that Indonesia offers the best available SV information. As noted above, we conclude for the final results that Bangladesh, India, Indonesia, Nicaragua, Pakistan, and the Philippines are all economically comparable to Vietnam and significant producers of comparable merchandise. The *Policy Bulletin* states that, if more than one country satisfies the economically comparable and significant producer criteria for surrogate country selection purposes, “then the country with the best factors data is selected as the primary surrogate country.”<sup>87</sup> Specifically, 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.”<sup>88</sup>

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<sup>85</sup> See *Policy Bulletin; Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (CAFC 1990) (noting the Department’s statutory goal of determining dumping margins as accurately as possible).

<sup>86</sup> See, generally, Petitioners’ May 12, 2014 submission.

<sup>87</sup> See *Policy Bulletin*.

<sup>88</sup> *Id.*

Section 773(c)(1) of the Act instructs the Department to value the FOPs with the best available information from a market economy country, or countries, that the Department considers appropriate. When considering what constitutes the best available information, the Department considers several criteria, including whether the SV data are contemporaneous, publicly available, tax and duty exclusive, representative of a broad market average, and specific to the inputs in question.<sup>89</sup> The Department's preference is to satisfy the breadth of the aforementioned selection criteria.<sup>90</sup> Moreover, it is the Department's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing FOPs.<sup>91</sup> 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.<sup>92</sup>

No party argued for valuing inputs from India, Nicaragua, or Pakistan, or argued that one of these countries be selected as the surrogate country. The Department does not have any information suggesting any of these three countries would be appropriate surrogate countries for this case. Therefore, we have not considered them for surrogate country selection purposes. As a consequence, the Department has examined the available record evidence from Bangladesh, Indonesia, and the Philippines.

After examining all of the SV choices, the Department finds that the Indonesian data on the record vastly is superior and offers the best information available for SVs. HVG, *et al.* and Afiex, *et al.* contend that Bangladesh offers the best available information for SVs. The Petitioners argue for Indonesia, and in the event Indonesia is not selected, the Philippines. In the comments below, we analyze each of the parties' comments on SVs in detail.

In previous administrative reviews, the Department stated that the whole, live fish SV and financial ratios accounted for the vast majority of normal value.<sup>93</sup> However, in the *Eighth AR*, in response to an increase in fish farming among Vietnamese subject merchandise producers, we examined each factor of production's contribution to each respondent's normal value calculation, and determined that "factors other than the whole fish and surrogate ratios account for a significant portion of direct materials and normal value, and we have taken this into account in

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<sup>89</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079 (September 8, 2006) and accompanying Issues and Decision Memorandum at Comment 3.

<sup>90</sup> 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.

<sup>91</sup> See *Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) ("*Mushrooms*") and accompanying Issues and Decision Memorandum at Comment 1; see also *Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002) ("*Crawfish*") and accompanying Issues and Decision Memorandum at Comment 2.

<sup>92</sup> See, e.g., *Mushrooms* at Comment 1.

<sup>93</sup> See *Seventh AR* at Comment I.C.

selecting the primary surrogate country.”<sup>94</sup> Specifically, the increased vertical integration of producers and exporters in the Vietnamese industry caused the Department to consider the effect of other factors on normal value.<sup>95</sup> In the *Ninth AR*, we performed a similar examination of each factor of production’s contribution to each respondent’s normal value calculation, and came to the same conclusion we did in the *Eighth AR*; specifically, that FOPs other than whole, live *pangasius* and the financial ratios accounted for significant portions of normal value.<sup>96</sup> We conducted this exercise for the current review, and have come to an identical conclusion based on the facts on this record.<sup>97</sup>

In many cases, the Department values FOPs using import statistics because they fulfill the Department’s SV selection criteria, *i.e.*, import statistics are publicly-available, represent a broad market average, are contemporaneous, sufficiently specific, and are tax and duty exclusive.<sup>98</sup> With respect to contemporaneity, since the *Fifth AR*, no party has submitted contemporaneous import statistics for Bangladesh, including this review.<sup>99</sup> However, contemporaneous import statistics have been submitted for Indonesia and the Philippines in this review. All other things being equal, we prefer contemporaneous SV information to non-contemporaneous SV information.<sup>100</sup> In addition, the record does not contain contemporaneous Bangladeshi data for other non-import statistics SVs such as whole, live *pangasius* fish, water or truck freight.<sup>101</sup>

In addition to examining the contemporaneous nature of Indonesian and Philippine SVs, as compared to Bangladeshi SVs, we examined the specificity of each country’s data. For example, fingerlings have a significant impact on HVG’s normal value. HVG is significantly integrated, *i.e.*, it purchases *pangasius* fingerlings which grow in ponds until they are ready to be harvested and processed, rather than purchasing all of the whole, live *pangasius* they consume from suppliers. As explained in Comment III below, the Indonesian choices for this SV are more specific than their Bangladeshi counterparts. Because HVG purchases fingerlings on a size-specific basis, and only the Indonesian government data provides values based on multiple

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<sup>94</sup> See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2010-2011*, 78 FR 17350 (March 21, 2013) (“*Eighth AR*”) and accompanying Issues and Decision Memorandum at Comment I.C.

<sup>95</sup> *Id.*

<sup>96</sup> See *Ninth AR* at Comment I.C.

<sup>97</sup> See Memo to the File, from Steven Hampton, International Trade Compliance Analyst, Office V, “Tenth Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results Analysis Memorandum for the Hung Vuong Group,” dated July 2, 2014, at Attachment 1.

<sup>98</sup> For example, in *Carbon*, we found that Global Trade Atlas (“GTA”) data fulfilled all of these criteria. See, *e.g.*, *Certain Activated Carbon from the People’s Republic of China; 2010-2011; Final Results of Antidumping Duty Administrative Review*, 77 FR 67337 (November 9, 2012) (“*Carbon*”) and accompanying Issues and Decision Memorandum at Comment I.C.A. In past segments of this case we found that United Nations ComTrade data fulfilled all of the Department’s surrogate value criteria. See, *e.g.*, *Fifth AR* at Comment II.F.

<sup>99</sup> See *Fifth AR*.

<sup>100</sup> See *Frontseating Service Valves from the People’s Republic of China; 2010-2011 Antidumping Duty Administrative Review; Final Results*, 77 FR 67334 (November 9, 2012) and accompanying Issues and Decision Memorandum at Comment 2 (the Department’s general practice and preference is to use contemporaneous surrogate value information when it is available over non-contemporaneous information); *Fresh Garlic from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 36168 (June 17, 2013) and accompanying Issues and Decision Memorandum Comment 6 (the Department prefers contemporaneous data over non-contemporaneous data, all other factors being equal).

<sup>101</sup> *Id.* at Attachment I.

fingerling sizes, we find that the Indonesian data is significantly more specific to HVG's reported input than the Bangladeshi data, which does not provide size-specific fingerling data.

We also examined whether Indonesian or Bangladeshi SVs are representative of a broad market average and found Indonesia data to be superior with respect to this factor for most values. An illustrative example is salt, which HVG reported consuming in the processing of frozen *pangasius* fillets.<sup>102</sup> As explained in Comment VIII below, the contemporaneous Indonesian GTA import data for this SV represents country-wide data,<sup>103</sup> whereas the Bangladeshi data is from a newspaper article which reflects a single company's experience in 2008.<sup>104</sup> As such, we find the country-wide Indonesian data to represent more contemporaneous broad market average, whereas the Bangladeshi data is neither a broad market average, nor contemporaneous.

Finally, in Comment II below, we examined the three sources on the record that parties propose to value the whole, live *pangasius* fish – *Indonesian Aquaculture Statistics* (“*Indonesian AS*”), online data from the Bangladeshi Department of Agriculture Marketing (“*DAM Data*”), and the *Philippines Fishery Statistics* (“*Philippines FS*”). After examining whether these three sources are contemporaneous with the POR, publicly available, free of taxes and duties, representative of a broad market average, and specific to the input, we find that the *Indonesian AS* is the *only* data source that satisfies the breadth of the Department's SV criteria.

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

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

### **A. *Indonesian AS***

*Afiex, et al.:*

- *Indonesian AS* does not provide the type of price detail that the *DAM Data* does.<sup>105</sup> *Indonesian AS* is an estimated, annual figure of quantities and values, of all sizes and species of *pangasius* cultivated, based on periodic sample surveys of a small group of selected respondents. *Indonesian AS* does not capture the actual prices of *pangasius* fish sold from ponds and other types of aquaculture areas, which are spread out over large geographic regions. *Indonesian AS* is not a broad market average of whole, live *pangasius* pricing, but a broad market survey of aquaculture.

*Petitioners:*

- The Department should continue to value the whole, live *pangasius* using *Indonesian AS*

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<sup>102</sup> See HVG's February 18, 2014 submission at 23-24.

<sup>103</sup> See HVG's February 18, 2014 submission at 23.

<sup>104</sup> See *Afiex, et al.*'s May 12, 2014 submission at Exhibit 4.

<sup>105</sup> See *Petitioners'* May 12, 2014 submission at Exhibit 9.A for the *Indonesian AS* data used in the *Preliminary Results*. See *Afiex, et al.*'s May 12, 2014 submission at Exhibit 14.A for the *DAM Data*.

because it is publicly available, contemporaneous, tax and duty exclusive, specific to the input in question and representative of a broad market average.

- *Indonesian AS* represents a broad market average because the information is gathered at the national level using a statistically sound survey method, intended to ensure accurate data which represents countrywide values and production volumes.

## **B. Bangladeshi DAM Data**

*Afiex, et al.:*

- An official letter issued by the Deputy Director of DAM states that the wholesale prices of *pangasius* in the *DAM Data* refer to the price of whole, live *pangasius* sold in the marketplace.<sup>106</sup> An affidavit concerning an interview with a DAM official further reiterates this point.<sup>107</sup> Even though both live and dead *pangasius* may be sold in wholesale markets in Bangladesh, DAM officials are required to gather and publish the price data pertaining to live fish only, *i.e.*, the *DAM Data* is not distorted by the price of dead fish.
- The Field Survey Report indicates that a minor percentage of fish are dead at the time of arrival to the wholesale market, a smaller percentage are less fresh (sluggish), but the vast majority are whole, live fish.<sup>108</sup> These data provide a quantitative basis to refute Petitioners' dead fish arguments. The survey is further supported by an affidavit from the counsel to *Afiex et al.*, based on his interview with a DAM official, confirming that the fish sold in the wholesale markets are live or sluggish, rather than dead. This affidavit states that DAM surveyors are instructed to take prices for fresh live fish, in order to avoid distortions.<sup>109</sup>
- The Department's reliance on the Petitioners' affidavit concerning the *DAM Data* is misplaced because this affidavit is not from a DAM official, but from Petitioners' paid consultant, which recites alleged conversations with DAM officials.<sup>110</sup>
- The *DAM Data* represents a broad market average of actual point-of-sale weekly prices of two sizes of *pangasius*.<sup>111</sup> The fact that *DAM Data* does not contain the quantities of sale is irrelevant to the breadth and coverage of the dataset. The *DAM Data* contains actual weekly point of sale prices.
- Because Mymensingh<sup>112</sup> is not listed as a distinct district in the *DAM Data*, that does not mean that significant quantities of fish cultured in Mymensingh are not included in the data from other districts.<sup>113</sup> The record confirms that the absence of a separate reporting of the Mymensingh data may not be important because the fish produced in that district may be sold in other markets and, thus, are represented in the *DAM Data*.<sup>114</sup> DAM officials explained that the apparent missing Mymensingh data can be explained by the survey methods or resale methods.<sup>115</sup> The record contains several independent surveys and research

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<sup>106</sup> See *Afiex, et al.*'s May 12, 2014 submission at Exhibit 13.B.

<sup>107</sup> See *Afiex, et al.*'s May 19, 2014 submission at Exhibit 1.A.

<sup>108</sup> *Id.* at Exhibit 2, "Bangladesh Fish Project Plan Research Report" (December 5, 2013) ("Field Survey Report").

<sup>109</sup> See *Afiex, et al.*'s May 19, 2014 submission at Exhibit 1.A.

<sup>110</sup> See Petitioners' May 22, 2014 submission at Exhibit 62.

<sup>111</sup> See *Afiex, et al.*'s May 12, 2014 submission at Exhibit 14.A.

<sup>112</sup> The largest pangasius producing district in Bangladesh.

<sup>113</sup> See *Afiex, et al.*'s May 19, 2014 submission at Exhibit 1.A.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

papers reporting farmgate prices of whole, live *pangasius* from Mymensingh.<sup>116</sup>

- While in the *Preliminary Results* the Department stated that it was unclear how DAM collects or vets the information it publishes, record evidence elaborates on the methodologies used by DAM field officials to gather data and vet the data collected.<sup>117</sup>

*Petitioners:*

- HVG stated that it consumes live fish.<sup>118</sup> The record indicates that a significant percentage of dead fish are represented in the *DAM Data*, and dead fish sell for less than live fish.<sup>119</sup> The Field Survey Report, commissioned by Afiex, *et al.*, stated that when the fish arrive at the market, a substantial number are dead, or near dead.<sup>120</sup>
- There are numerous conflicting statements by Bangladeshi officials concerning the content of the *DAM Data* with respect to the inclusion of dead fish. In past reviews, DAM failed to respond to the Department's request for information concerning whether the *DAM Data* fish prices represented live or dead fish.<sup>121</sup>
- DAM surveyors do not employ statistically valid sampling procedures to collect data, and DAM does not follow any protocols to check or corroborate the validity of the *pangasius* prices that it ultimately publishes, and as a result, the *DAM Data* contain errors. DAM failed to respond to the Department's request for information concerning DAM's data collection methods.<sup>122</sup>
- The *DAM Data* contains no pricing information from Mymensingh. Although Afiex, *et al.* claim that Mymensingh's data is included in other districts data, there is no record evidence to support this assertion. Compared to *Indonesian AS*, the *DAM Data* represent a substantially smaller quantity of *pangasius*.
- Although Afiex, *et al.* describes certain affidavits submitted by Petitioners as self-serving because local Bangladeshi counsel performed research activities on Petitioners' behalf, many of the affidavits relied upon by Afiex, *et al.*, arguably, are also self-serving because they were conducted by Afiex, *et al.*'s local Bangladeshi counsel.

### C. *Philippines FS*

*Afiex, et al.:*

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

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<sup>116</sup> See Afiex, *et al.*'s May 12, 2104 submission at Exhibits 14.B, 15, 16 and 17.

<sup>117</sup> See Afiex, *et al.*'s May 19, 2014 submission at Exhibit 1.A.

<sup>118</sup> See HVG's February 18, 2014 submission at 20.

<sup>119</sup> See, e.g., Petitioners' May 22, 2014 submission at Exhibits 43 & 52.

<sup>120</sup> See Afiex, *et al.*'s May 19, 2014 submission at Exhibit 2.

<sup>121</sup> See *Eighth AR* at Comment I.C; *Ninth AR* at Comment I.C.

<sup>122</sup> *Id.*

*Petitioners:*

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

**Department’s Position:** For the final results we have valued HVG’s whole, live fish using *Indonesian AS*, as we did in the last administrative review. We note that the live whole fish data submitted by parties in this review are identical to the data submitted in the last review, and as no new information or argument has been presented to call into question the selection of *Indonesian AS*, we have reached an identical conclusion regarding the selection of this SV.

The record contains three sources to value the whole, live *pangasius* fish: *Indonesian AS*, *DAM Data*, and *Philippines FS*. In evaluating the data from Bangladesh, Indonesia, and the Philippines, we note that we are, as in the preceding three reviews, in the unusual situation of having on the record three sources of information issued by governments, which represent official statements of those governments, as to the price of whole, live *pangasius* fish. While we typically do not scrutinize official government statistics in such detail,<sup>123</sup> the necessity to respond to the comments raised by interested parties, and to select one of the sources, compels us to do so in this case. We also note that, at various points in their case and rebuttal briefs, parties referred to affidavits submitted from other parties as “self-serving.”<sup>124</sup> The CIT rejected such claims by parties in past segments of this case, explaining that “if an affidavit is made from personal knowledge and sets forth specific facts, then whether it is ‘self-serving’ is beside the point.”<sup>125</sup> The Department agrees, and we considered the merits of such affidavits submitted by parties. Below, we analyzed each of these data sources using the Department’s criteria for determining the best available information. As explained below, we determine that the *Indonesian AS* data constitutes the best information available on the record for valuing whole, live *pangasius* fish.

Section 773(c)(1) of the Act instructs the Department to value the FOPs based upon the best available information from an ME country or countries that the Department considers appropriate. As noted above, when considering what constitutes the best available information, the Department considers several criteria, including whether the SV data is contemporaneous, publicly available, tax and duty exclusive, representative of a broad market average, and specific to the input.<sup>126</sup> Below, we used these criteria to examine the *DAM Data*, *Indonesian AS*, and *Philippines FS*, and to determine which of these sources represents the best available data to value HVG’s whole, live *pangasius* fish input.

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<sup>123</sup> See, e.g., *Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of the Eleventh Administrative Review and New Shipper Reviews*, 72 FR 34438 (June 22, 2007) (“Garlic”) and accompanying Issues and Decision Memorandum at Comment 2.B (the Department typically finds that official government data and publications to be reliable and credible sources of information).

<sup>124</sup> See, e.g., *Afiex, et al.’s* September 19, 2014 submission at 23.

<sup>125</sup> See *Catfish Farmers of Am. v. United States*, 35 I.T.R.D. 1491, Slip Op. 13-63 (CIT 2013) at \*13 (citing *Caterpillar Inc. v. Sturman Industries, Inc.*, 387 F.3d 1358, 1374-75 (CAFC); *Payne v. Pauley*, 337 F.3d 767 (7th Cir. 2003)).

<sup>126</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People’s Republic of China*, 71 FR 53079 (September 8, 2006) (“CLPP”) and accompanying Issues and Decision Memorandum at Comment 3.

### *Contemporaneity*

We note that the *Indonesian AS*, and *Philippines FS* overlap the POR to varying degrees.<sup>127</sup> As such, we find the *Indonesian AS*, and *Philippines FS* to be contemporaneous. The *DAM Data* submitted by Afiex, *et al.* covers the immediately preceding POR.<sup>128</sup> Although this data is not contemporaneous, as it falls just outside the POR, we find that this lack of contemporaneity of the *DAM Data* is not as much of an issue as its serious shortcomings regarding representation of a broad market average, its specificity and reliability, as noted below.

### *Public Availability*

In the last two administrative reviews, we found the *DAM Data* (which is available online), *Indonesian AS*, and *Philippines FS* to be publicly available.<sup>129</sup> All three sources are published by the respective governments for public consumption. No record evidence in this review points to the contrary, nor has any party argued these sources are not publicly available. Therefore, we continue to find the *DAM Data*, *Indonesian AS*, and *Philippines FS* to be publicly available.

### *Tax and Duty Exclusive*

In the last two administrative reviews, we found the *DAM Data*, *Indonesian AS*, and *Philippines FS* to be tax and duty exclusive.<sup>130</sup> No record evidence in this review points to the contrary, nor has any party argued these sources are not tax and duty exclusive. Therefore, we continue to find all three sources to be tax and duty exclusive.

### *Broad Market Average*

We consider *Indonesian AS* to be the most robust source of whole, live *pangasius* fish on the record. We note that the 2012 data contain data from 29 of 33 districts in Indonesia, including the largest producing district.<sup>131</sup> We also note that this data represents a significant quantity of *pangasius*, 293,000 mt, which is especially meaningful when compared to the *DAM Data* and *Philippines FS*.<sup>132</sup> In addition, the *Indonesian AS* states that it issues customized national questionnaires, indicating that they are meant to capture all-encompassing, species-specific whole country data.<sup>133</sup> Therefore, we find that the *Indonesian AS* represents a broad market average.

In the last several administrative reviews, the Department rejected using *Philippines FS* to value whole, live *pangasius* because it was not as robust of a broad market average as *Indonesian AS*.<sup>134</sup> We note that *Philippines FS* only represents 72 mt.<sup>135</sup> We disagree with Afiex, *et al.*'s contention that, because *Philippines FS* is annual national data, it is less of a broad market

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<sup>127</sup> See, e.g., *Frontseating Service Valves from the People's Republic of China: Final Results of the 2008-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 76 FR 70706 (November 15, 2011) and accompanying Issues and Decision Memorandum at Comment 9 (the Department found that SV data from a period that overlaps a part of the POR is contemporaneous with that review period).

<sup>128</sup> See Afiex, *et al.*'s May 12, 2014 submission at Exhibit 14.A

<sup>129</sup> See *Eighth AR* at Comment I.C; *Ninth AR* at Comment I.C.

<sup>130</sup> *Id.*

<sup>131</sup> See Petitioners' May 12, 2014 submission at Exhibit 9.a.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> See, e.g., *Eighth AR* at Comment I.C; *Ninth AR* at Comment I.C.

<sup>135</sup> See Petitioners' May 12, 2014 submission at Exhibit 25.A.

average, as it is collected quarterly by professional data collectors using detailed statistical methods and the data are reviewed quarterly to ensure accuracy and that producers in both large and small provinces are represented in the sampling methods.<sup>136</sup> On a routine basis, the Department values FOPs using, for example, GTA to determine the SVs for certain inputs, which represents annualized, cumulative quantities and values for the applicable POR.<sup>137</sup> However, given that *Philippines FS* does not represent as robust a data source as *Indonesian AS*, we find that the *Philippines FS* does not represent the best available information for valuing HVG's whole fish input, in light of the suitability of the remaining sources on the record.

In the last administrative review, the Department rejected using the identical *DAM Data* to value whole, live *pangasius* because it was not a broad market average as compared to *Indonesian AS*.<sup>138</sup> We note that the *DAM Data* represents 39,000 mt<sup>139</sup>, and as noted above, *Indonesian AS* represents 293,000 mt.<sup>140</sup> Moreover, the *DAM Data* represents only 25 of 68 districts in Bangladesh<sup>141</sup>, whereas *Indonesian AS* contains data from 29 of 33 districts.<sup>142</sup> Further, the *DAM Data* contains no information from the largest *pangasius* producing district in Bangladesh, Mymensingh.<sup>143</sup> These stark differences between the market coverage of the *DAM Data* and *Indonesian AS* lead us to continue to conclude that the *DAM Data* do not represent nearly as much of a broad market average as *Indonesian AS*.

Afiex, *et al.* argue that the *DAM Data* represents a broad market average because data from Mymensingh is captured by data from other districts because *pangasius* grown in Mymensingh may be sold in other areas, and provide an affidavit in support of their position.<sup>144</sup> We addressed this argument in the last segment of this proceeding, and come to the same conclusion here.<sup>145</sup> In the last administrative review we found: (a) not every district produces or sells *pangasius* each day or week, sometimes there are technical difficulties in transmitting data from the wholesale markets to DAM headquarters, certain types of markets are preferred in data gathering, or that

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<sup>136</sup> See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Notice of Preliminary Results and Partial Rescission of the Sixth Antidumping Duty Administrative Review and Sixth New Shipper Review*, 75 FR 56061 (September 15, 2010) (where the Department indicated that quality, national level data represents a broad market average regardless of the quantity of that data); unchanged in final.

<sup>137</sup> See, e.g., *Utility Scale Wind Towers from the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 77 FR 75984 (December 26, 2012) and accompanying Issues and Decision Memorandum at Comment 1. In addition, the Department based whole live fish for many segments of this proceeding on the aggregated sales quantity and value data reported in financial statements. See, e.g., *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Review*, 74 FR 13349 (March 9, 2009) ("Fourth AR") and accompanying Issues and Decision Memorandum at Comment 2.A.

<sup>138</sup> See *Ninth AR* at Comment I.C.

<sup>139</sup> See Afiex, *et al.*'s May 12, 2014 submission at Exhibit 14.A

<sup>140</sup> See Petitioners' May 12, 2014 submission at Exhibits 25.A.

<sup>141</sup> See Afiex, *et al.*'s May 12, 2014 submission at Exhibit 14.A. This contrasts sharply with the *Seventh AR*, where we selected the *DAM Data* to value whole, live *pangasius*, the *DAM Data* represented 31 of 68 districts in Bangladesh, representing approximately 115,000 mt. See *Seventh AR* at Comment I.C.

<sup>142</sup> See Petitioners' May 12, 2014 submission at Exhibit 25.A.

<sup>143</sup> See Afiex, *et al.*'s May 12, 2014 submission at Exhibit 14.A.

<sup>144</sup> See Afiex, *et al.*'s May 19, 2014 submission at Exhibit 1.A & B. Interestingly, these affidavits, counsel's interviews with Bangladeshi government officials, is the exact type of affidavit provided by Petitioners that Afiex, *et al.* argues should not be considered by the Department because it is self-serving.

<sup>145</sup> See, e.g., *Ninth AR* at Comment I.C.

there may not be significant sales; (b) although *pangasius* from Mymensingh *may* be sold in other markets, thus the prices of fish from this district *could* be included in other districts, there is no affirmative evidence that Mymensingh-sourced pangasius sales are included; (c) over time the *DAM Data* has covered less and less of Bangladesh's production of *pangasius*, when the production of *pangasius* rose dramatically; (d) DAM's website may be operated on an experimental basis, and due to technical difficulties and logistical limitations, it is not possible for DAM to consistently publish price data from all districts in Bangladesh during any given year.<sup>146</sup> As the *DAM Data* and other evidence submitted by Afiex, *et al.* are identical to the last administrative review, we reached the same conclusion, *i.e.*, the affidavits submitted by parties which recount conversations with DAM officials further support the Department's finding that the *DAM Data* do not represent as broad a market average as *Indonesian AS*.

#### *Specific to the Input*

*Indonesian AS* represents quantities and values of whole, live *pangasius*. *Indonesian AS* states that discarded fish (whether because of poison, pollution, disease, or age) are not included in the statistics.<sup>147</sup> In addition, *Indonesian AS* states that the quantities represent the wet weight at landed harvest time, and any fish which may have been processed are converted to the initial live weight.<sup>148</sup> Moreover, the value represents the landed value of the whole, live fish.<sup>149</sup> Thus, specific steps are taken to ensure that the *Indonesian AS* data is specific to whole, live fish, which is corroborated by a statement from the current director of the DGA, whose signature appears in the *Indonesian AS* from 2012.<sup>150</sup> We note that Afiex, *et al.* have not argued that *Indonesia AS* contains prices for dead fish or are not specific to *pangasius hypophthalmus*. Consequently, we find *Indonesian AS* to be specific to the input in question - whole, live *pangasius*.

As noted above, we find that *Philippines FS* does not represent as robust a data source as compared to the *DAM Data* and *Indonesian AS*. An additional concern is the specificity of the *Philippines FS*. We find, as we did in the last two administrative reviews, that this data source may include prices for fish that have been further processed, which the Department finds causes price distortions and is not specific to whole, live *pangasius*.<sup>151</sup> As a result, we do not find *Philippines FS* to be as specific as *Indonesia AS*.

We continue to find, as we did in the last review, that substantial quantities of dead fish may be included in the *DAM Data*. HVG only consumes live fish in its production process.<sup>152</sup> Multiple sources on the record indicate that dead fish may be included in the *DAM Data*. Two affidavits,

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<sup>146</sup> See *Ninth AR* at Comment I.C. In addition, while the DAM official speculates that *pangasius* fish from Mymensingh *may* be sold in other districts which *could* reflect Mymensingh's prices, he did not address why there has been *no* data for *any pangasius* sales for two years in Bangladesh's largest *pangasius* producing district. See Afiex, *et al.*'s May 19, 2014 submission at Exhibit 1.A & B. This is an especially important question given that, according to this DAM official, DAM sends surveyors to farms to gather data, and larger districts have more surveyors. Accordingly, we would expect Mymensingh to have a large number of DAM surveyors visiting farms and markets and reporting prices.

<sup>147</sup> See Petitioners' May 12, 2014 submission at Exhibit 9.D.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> See Petitioners' May 12, 2014, submission at Exhibit 9.D.

<sup>151</sup> See, *e.g.*, *Seventh AR* at Comment I.C.

<sup>152</sup> See HVG's February 18, 2014 submission at 20.

submitted by Petitioners, which detail interviews with DAM officials, indicate that the *DAM Data* contains prices for both live and dead fish.<sup>153</sup> An affidavit detailing interviews of *pangasius* traders at two large markets which are included in the *DAM Data*, notes that live *pangasius* transported from farms to the marketplace die during transit (in some cases the mortality rate is 50 percent), that vendors sell live and dead fish at the markets side-by-side, that the fish are kept in little or no water, and that dead fish are sold at lower prices than live fish.<sup>154</sup> A *pangasius* market survey, submitted by Afiex, *et al.*, provides similar evidence that 18 percent of fish are dead or sluggish upon arrival at the market.<sup>155</sup> Record evidence also indicates that *pangasius* cannot survive more than three to four hours without sufficient water.<sup>156</sup> An affidavit, submitted by Afiex, *et al.*, which details an interview with DAM officials, indicates that both live and dead fish are sold in Bangladeshi markets.<sup>157</sup> Also, an article published by the U.S. Agency for International Development indicates that up to 29 percent of the *pangasius* sold in Bangladeshi wholesale markets are dead, and that dead fish sell for less than live fish.<sup>158</sup>

Afiex, *et al.* argue that record evidence indicates that, while live and dead fish may be sold at wholesale markets, DAM surveyors are instructed to only report the prices of live *pangasius* fish.<sup>159</sup> Afiex, *et al.* also cite to letters submitted by a DAM official, on government letterhead, which indicates that DAM prices are for whole, live *pangasius*.<sup>160</sup> However, these letters also state that certain off-line DAM data, considered in a prior review, was publicly available, but the Department previously determined that this data was not publicly available.<sup>161</sup> Because this letter was not specific to the *DAM Data* on the record of this review, and contained a statement that we found to be incorrect, we assigned little probative value to this letter, as we have in past reviews.<sup>162</sup>

In the *Seventh AR* and *Eighth AR*, the Department issued questionnaires to DAM in order to clarify conflicting information on the record.<sup>163</sup> With regard to the contradictory information on the record as to whether the *DAM Data* includes prices for dead fish, we stated the following in the *Eighth AR*:

It is precisely because of this conflicting information that the Department requested that DAM clarify this issue. However, although provided two opportunities in this administrative review, DAM did not respond to the Department's questions, nor did DAM respond to the Department's questions in the last review. In this case, because

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<sup>153</sup> See Petitioners' May 22, 2014 submission at Exhibit 21 (the prices collected by DAM refer to whole *pangasius*, but not exclusively to live *pangasius*, as many of the fish are dead when sold at the market); *Id.* at Exhibit 62 (DAM market surveyors collect prices of whole fish, both live and dead, live and dead fish are sold side by side in wholesale markets, and DAM prices are an average price that includes the prices for live and dead fish).

<sup>154</sup> *Id.* at Exhibit 29.

<sup>155</sup> See Afiex, *et al.*'s May 19, 2014 submission at Exhibit 2.A.

<sup>156</sup> See Petitioners' May 22, 2014 submission at Exhibit 43.

<sup>157</sup> See Afiex, *et al.*'s May 19, 2014 submission at Exhibit 1.A (fish brought to and sold in the wholesale markets are typically dead, but may also be alive depending on the distance traveled in transporting the fish from farms).

<sup>158</sup> See Petitioners' May 22, 2014 submission at Exhibit 57.

<sup>159</sup> See Afiex, *et al.*'s May 19, 2014 submission at Exhibit 1.A.

<sup>160</sup> See Afiex, *et al.*'s May 12, 2014 submission at Exhibit 13.B.

<sup>161</sup> See *Seventh AR* at Comment I.C.

<sup>162</sup> *Id.*; *Eighth AR* at Comment I.C.; see also *Ninth AR* at Comment I.C.

<sup>163</sup> See, e.g., *Eighth AR* at Comment I.C.

DAM has not responded to the Department's questions concerning whether dead fish are included in the *DAM Data*, we cannot discern with certainty whether and to what extent the *DAM Data* represents prices only for whole live fish.<sup>164</sup>

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

#### *Data Reliability*

The Department does not have any concerns with regard to the reliability of *Indonesian AS*. According to *Indonesian AS*, data for *pangasius* production is collected in stages at the household, village, and municipal level, using random sampling to determine the surveyed villages and households which conduct *pangasius* aquaculture activities.<sup>165</sup> Moreover, revisions and corrections are made to *Indonesian AS* data when necessary.<sup>166</sup> We note that Afiex, *et al.* and HVG, *et al.* do not contest the reliability of *Indonesian AS*.

An affidavit recounting an interview with a DAM official, submitted by Afiex, *et al.*, indicates that DAM has six data reviewers that provide manual reviews of the DAM data, and an internal check conducted by DAM software.<sup>167</sup> Also, to correct an error in the system, an administrator accesses the computer coding level to correct the error.<sup>168</sup> However, this same official also admitted that there can be technical difficulties with the program, the software filter does not always work, and anomalies may be missed.<sup>169</sup> These statements lend support to affidavits recounting interviews with DAM officials, submitted by Petitioners, which indicates that DAM does not regularly vet its data for errors.<sup>170</sup>

Further supporting this premise, in Afiex, *et al.*'s affidavit, the same DAM official was asked about data from the Khagracharia district, and indicated that this must be an error, or typo.<sup>171</sup> As indicated above, we considered the identical *DAM Data* in the last review and found: (a) in the Khagracharia district DAM had six months of anomalous data on its website (until April 2012), and kept the anomalous data on the website for at least eighteen months; (b) anomalous data for the Narail district appears in the *DAM Data*; and (c) anomalous data for the Munshigonj district appears in the *DAM Data*.<sup>172</sup> In addition, we found the affidavit submitted by Afiex, *et al.* concerning the vetting process DAM undertakes, which we do not dispute, to be of limited value in supporting the *DAM data*. Indeed, this affidavit lends further credence to the affidavits submitted by Petitioners that indicate DAM does not regularly vet its data for errors. While we

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<sup>164</sup> See *Eighth AR* at Comment I.C.; see also, *Ninth AR* at Comment I.C.

<sup>165</sup> See Petitioners' May 12, 2014 submission at Exhibits 9.A & D.

<sup>166</sup> *Id.*

<sup>167</sup> See Afiex, *et al.*'s May 19, 2014 submission at Exhibit 1.A.

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> See Petitioners' May 22, 2014 submission at Exhibits 22 & 62.

<sup>171</sup> See Afiex, *et al.*'s May 19, 2014 submission at Exhibit 1.A.

<sup>172</sup> See *Ninth AR* at Comment I.C.

normally find government data such as the *DAM Data* to be reliable, the above-detailed concerns lead us to find that the *DAM Data* is not reliable.<sup>173</sup>

In conclusion, given the analysis above, we find that *Indonesian AS* represents data that are contemporaneous, publicly available, tax and duty exclusive, a broad market average and specific to the input. Moreover, the *Indonesian AS* data does not give rise to the unanswered questions posed by the extent to which dead fish are represented in the *DAM Data*, and the extent to, and processes by, which the *DAM Data* is examined for errors. As a result we find that *Indonesian AS* represents the best available information to value HVG's whole, live *pangasius* input.

### **Comment III: Fingerlings**

#### **A. Surrogate Value for Fingerlings**

*Afiex, et al.:*

- In the *Preliminary Results*, the Department valued fingerlings using information contained in an affidavit from Dr. Djumbuh Rukmono (“Rukmono Affidavit”), a senior official (Director of Hatcheries) from the Indonesian Directorate General of Aquaculture (“DGA”).<sup>174</sup> Because the data in the Rukmono Affidavit is not from a focused survey, it lacks credibility. In addition, the circumstances under which the Petitioners approached Dr. Rukmono and persuaded him to provide this data is unclear; thus, the Rukmono Affidavit has little merit and should not be used to value fingerlings in the final results.
- Instead, fingerlings should be valued using the *Bangladeshi Aquaculture Study*, which focuses on the aquaculture farming of *pangasius* in Bangladesh.<sup>175</sup> Price quotes from the *Bangladeshi Aquaculture Study* were used to value *pangasius* fingerlings in the *Seventh AR*.<sup>176</sup> The Field Survey Report corroborates the *Bangladeshi Aquaculture Study*.<sup>177</sup>
- The CIT's opinions direct the Department to prefer domestic prices, such as the *Bangladeshi Aquaculture Study*, over import data.<sup>178</sup> Because HVG is an integrated respondent that consumes domestic fingerlings, instead of imported fingerlings, under the *Hebei Metals* rationale the Department should select Bangladeshi domestic price data to value fingerlings. Support for the choice of price quotes, such as those found in the *Bangladeshi Aquaculture*

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<sup>173</sup> See, e.g., *Garlic* at Comment 2.B (the Department typically finds that official government publications to be reliable and credible sources of information).

<sup>174</sup> See Prelim SV Memo at 3. See also Petitioners' May 12, 2014 submission at Exhibit 16.B.

<sup>175</sup> See *Afiex, et al.*'s May 12, 2014 submission at Exhibit 28, “Measuring technical, allocative and cost efficiency of pangas (*Pangasius hypophthalmus*: Sauvage 1878) fish farmers of Bangladesh,” by Perdous Alam, *Aquaculture Research*, (2011) (“*Bangladeshi Aquaculture Study*”).

<sup>176</sup> See *Seventh AR* at Comment II.D.1.

<sup>177</sup> See *Afiex, et al.*'s May 19, 2014 submission at Exhibit 2.A.

<sup>178</sup> See, e.g., *Hebei Metals & Minerals Imp. & Exp. Corp. v. United States*, 29 CIT 288, 294-303 (CIT 2005) (“*Hebei Metals*”).

*Study* - either as source or corroborative data - is based on the CIT's guidelines and the Department's consistent and longstanding policy to prefer specific price quotes.<sup>179</sup>

- Although the data in the *Bangladeshi Aquaculture Study* is not contemporaneous with the POR, it may be inflated to be contemporaneous. The Department's policy is not to attach equal weight to all of the SV selection criteria, nor weigh all of them simultaneously; it is to begin by comparing the available choices of SV data on the scale of specificity in relation to the FOP being valued. In other words, product specificity must be the primary consideration in determining the best available information.<sup>180</sup>

*HVG, et al.:*

- In the *Preliminary Results*, the Department valued fingerlings by taking the 5.0 - 6.0 inch price per fingerling from the Rukmono Affidavit, and used the 5.0 - 6.0 inch fingerlings per kilogram ("piece-per-kg") conversion factor from the Indonesian government to convert the SV from a per piece basis to a per kilogram basis.
- If the price per fingerling from the Rukmono Affidavit is used in the final results, the Department must alter its valuation methodology due to the errors and inconsistencies outlined below. In addition to the Rukmono Affidavit, Petitioners submitted an affidavit from an additional Indonesian fisheries official, the Soetrisno Affidavit.<sup>181</sup> When the prices in the Rukmono Affidavit and Soetrisno Affidavit are converted to a per kilogram basis, the prices, which appear to be reasonable on a per piece basis, are unreasonable, which calls into question the piece-per-kg conversion factor.
- A close examination of the requests for affidavits, and the affidavits themselves, demonstrate that in Indonesia, fingerlings are sold in terms of length and not weight, which likely is the cause of the piece-per-kg conversion factor errors/discrepancies in the two affidavits. Specifically, when examining the data from the Rukmono Affidavit and Soetrisno Affidavit for the 4.0 – 5.0 inch fingerlings, there are differing values in the number of fingerlings per kg (6.25 to 8 grams per piece versus 28.8 grams per piece, respectively), and different prices (53,625 Indonesian Rupiah ("IDR")/kg versus 13,000 IDR/kg, respectively).<sup>182</sup>
- There may be several methods to weigh fish: pulling them from the water in nets; in clean water; in original transport water; or even dried (to completely remove any possible water weight), each of which would have a different calculation methodology to remove the weight of the non-fish material being weighed. The Rukmono Affidavit and Soetrisno Affidavit do not provide an explanation on which methodology was used to calculate the piece-per-kg conversion factor.

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<sup>179</sup> See *Jinan Yipin Corp. v. United States*, 31 CIT 1901, 1937, 526 F. Supp. 2d 1347, 1378-79 (2007) ("*Yipin*"); *Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China*, 68 FR 47538 (August 11, 2003) ("*PVA*") and accompanying Issues and Decision Memorandum at Comment 5; *Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, and Determination to Revoke Order in Part*, 67 FR 69719 (November 19, 2002) ("*Sebacic Acid*") and accompanying Issues and Decision Memorandum at Comment 2.

<sup>180</sup> See *Taian Ziyang Food Co. v. United States*, 783 F. Supp. 2d 1292, 1330 (CIT 2011) ("*Taian Ziyang*"), citing *Hebei Metals*, 29 CIT 288, 300, 366 (explaining that, where the Department failed to demonstrate Indian import statistics were sufficiently product specific, it was irrelevant whether statistics satisfied other criteria, such as contemporaneity).

<sup>181</sup> See Petitioners' May 12, 2014 submission at Exhibit 16.B. The affidavit is from Mr. Soetrisno, the Director of Production, from the DGA ("*Soetrisno Affidavit*").

<sup>182</sup> See *HVG, et al.*'s September 19, 2014 submission at 14.

- Although HVG reported consumption of fingerlings on a kg basis, HVG also reported a piece-per-kg conversion factor using its own data to convert the fingerling FOP to a per piece basis<sup>183</sup>, *i.e.*, the same basis as the Rukmono Affidavit. As a result, for the final results the Department could use the Rukmono Affidavit prices as reported, and avoid the errors and inconsistencies in the Rukmono Affidavit's piece-per-kg conversion factor. The fewer conversions required, the more accurate the valuation calculation.

*Petitioners:*

- The Department should continue to value HVG's fingerlings using the prices for 5.0 - 6.0 inch fingerlings found in the Rukmono Affidavit, without making any of the proposed adjustments suggested by HVG, *et al.*, since that data is the most specific to the fingerlings consumed by HVG.<sup>184</sup>
- Regarding the *Bangladeshi Aquaculture Study* proposed by Afiex, *et al.*, a careful review of the data indicates that this value is on a per piece basis, whereas HVG reported its fingerling usage on a per kg basis, rendering the *Bangladeshi Aquaculture Study* per piece price unusable as an SV. For the final results, the Department should rely only on the Rukmomo Affidavit because it contains fingerling prices that include both per piece and per kg prices.
- The proposed adjustments to the Rukmono Affidavit are premised on alleged errors in the piece-per-kg conversion factors reported in the Rukmono Affidavit and the Soetrisno Affidavit. HVG's examination of the 4.0 - 5.0 inch fingerling prices in the Soetrisno Affidavit and Rukmono Affidavit, *i.e.*, deriving a 28.8 grams per fingerling figure, is flawed since dividing one price by another price yields a ratio of two prices, not the weight of a fingerling.
- HVG, *et al.* argues that the piece-per-kg conversion factors found in the Rukmono Affidavit and Soetrisno Affidavit lead to fingerling SVs which are high. By merely pointing to high values for smaller sized fingerlings, without specific and objective record evidence to support their position that the values are aberrational, HVG, *et al.* have not provided a colorable claim that the Rukmono Affidavit and Soetrisno Affidavit data are not reliable.<sup>185</sup>
- HVG has derived its own piece-per-kg conversion factor by dividing the total number of all fingerlings purchased during the POR, by the total weight of all fingerlings purchased, regardless of size, to produce a single piece-per-kg conversion factor for all sizes of fingerlings purchased.<sup>186</sup> HVG's summary of its fingerling purchases during the POR does not reconcile to the record evidence which indicates that the relationship between the sizes and weights of fingerlings is not linear, but rather varies by orders of magnitude. Further, HVG has not provided for the record the data to support its piece-per-kg conversion factor, *i.e.*, there is no record evidence which demonstrates the volumes associated with fingerling purchases or their associated weights.

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<sup>183</sup> See HVG's May 2, 2014 submission at Exhibit 2. HVG's consumption data, over 260 individual delivery records, shows that there are 17.74 fingerlings per kg. *Id.* This number can be applied to HVG's fingerling FOP ratio to convert it from a kg of fingerlings/kg of finished product basis to fingerlings/kg of finished product basis.

<sup>184</sup> See HVG's May 2, 2014 submission at Exhibit 2.

<sup>185</sup> See, *e.g.*, *Tapered Roller bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China*, 75 FR 844 (January 6, 2010) and accompanying Issues and Decision Memo at Comment 2.

<sup>186</sup> See HVG's June 16, 2014 submission at Exhibit 2.

**Department’s Position:** We agree with the Petitioners that the Rukmono Affidavit provides the best available information to value HVG’s *pangasius* fingerling input. Section 773(c)(1)(B) of the Act, instructs the Department to “use the best available information” on the record when selecting SVs with which to value FOPs. It is the Department’s practice to choose SVs that are specific to the input, representative of broad market averages, net of taxes and import duties, contemporaneous with the POR, publicly-available, and from a single surrogate ME country.<sup>187</sup>

The Rukmono Affidavit is a response to the Petitioners’ letter to the Indonesian government, specifically the DGA, which is a part of the Ministry of Marine Affairs and Fisheries of the Republic of Indonesia. This is the same department that publishes *Indonesian AS*. The Rukmono Affidavit is signed and on Ministry of Marine Affairs and Fisheries letterhead.<sup>188</sup> Importantly, Petitioners have provided all correspondence undertaken to gain this information, making circumstances under which the Petitioners approached Dr. Rukmono very clear. Thus, we find the prices in the affidavit to be Indonesian government information and to be reliable.<sup>189</sup> According to the Rukmono Affidavit, the *pangasius* fingerling prices it provides are publicly available, contemporaneous, and tax exclusive.<sup>190</sup> The fingerling prices in the affidavit are from the largest three (of five) *pangasius* producing areas in Indonesia, Sumatera (Jambi), Java (Sukabumi), and Kalimantan (Mandiangan).<sup>191</sup> As such, we find that this data sufficiently represents a broad market average. We also find that the Rukmono Affidavit provides the most specific *pangasius* fingerling prices on the record. HVG reported purchasing fingerlings of specific sizes.<sup>192</sup> The Rukmono Affidavit provides fingerling prices based on eight size bands.<sup>193</sup> Although the Soetrisno Affidavit provides all of the information the Rukmono Affidavit provides, we note that the Soetrisno Affidavit only contains seven size bands and, therefore, is less specific than the Rukmono Affidavit.<sup>194</sup> However, because the prices and piece-per-kg conversion factors found in the affidavits are similar, we find that the Soetrisno Affidavit corroborates the Rukmono Affidavit. For these reasons we find that the Rukmono Affidavit meets the Department’s SV criteria and, consequently, represents the best available information to value HVG’s *pangasius* fingerling input.

Regarding HVG *et al.*’s proposed adjustments to the Rukmono affidavit, we disagree. HVG has reported fingerling sizes and weights which are at odds with other record information. Specifically, record evidence indicates that as fingerlings increase in size (length), the number of fingerlings per kilogram declines exponentially.<sup>195</sup> Put another way, a kilogram of very small fingerlings could contain thousands of fish, while a kilogram of larger fingerlings may contain

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<sup>187</sup> See *Carbazole Violet Pigment 23 from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 36630 (June 28, 2010) and accompanying Issues and Decision Memorandum at Comment 4; see also 19 CFR 351.408(c)(2).

<sup>188</sup> See Petitioners’ May 12, 2104 submission at Exhibit 16.B.

<sup>189</sup> See, e.g., *Garlic* at Comment 2.B (the Department typically finds that official government data to be a reliable, credible source of information).

<sup>190</sup> See Petitioners’ May 12, 2104 submission at Exhibit 16.B.

<sup>191</sup> *Id.*

<sup>192</sup> See HVG’s June 16, 2014 submission at Exhibit 1.

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> Moreover, a statement on the record by an aquaculture expert and producer of *pangasius* indicates that the piece-per-kg conversion factors found in the Rukmono Affidavit and Soetrisno Affidavit are correct. See Petitioners’ May 22, 2014 submission at Exhibit 68.

only a few hundred fish. HVG reported that it consumed varying amounts of fingerlings per kg; however, the size (length) of its fish did not vary. This contradiction in HVG's own data brings into question the piece-to-kg conversion ratio proposed by HVG, *et al.* based on HVG's own experience.

On the other hand, we find the piece-to-kg conversion ratio found in the Rukmono Affidavit to be reliable. The Rukmono Affidavit provides piece-to-kg conversion ratios which are promulgated by the National Standardization Agency of Indonesia, and are known as an Indonesian National Standard (abbreviated SNI).<sup>196</sup> We note that the piece-to-kg conversion ratios found in the Soetrino Affidavit, as well as the prices, are nearly identical to those found in the Rukmono Affidavit, thus, the information in the Soetrino Affidavit corroborates the Rukmono Affidavit. Contrary to HVG, *et al.*'s assertions, the Soetrino Affidavit and Rukmono Affidavit reported the weights of fingerlings per kilogram; therefore, no examination of the affidavits is required to derive the weight per piece of fingerlings.<sup>197</sup>

Although HVG, *et al.* argue that the Rukmono Affidavit provides prices for smaller fingerlings which are aberrational, to discern whether a particular value is aberrational, the Department typically compares the prices for an input from all countries found to be at a level of economic development comparable to the NME whose products are under review.<sup>198</sup> In this review, with data points from only two such countries, it is not possible to draw any reasonable conclusions as to whether the Rukmono Affidavit is aberrational relative to the Bangladeshi price.<sup>199</sup> In any event, the Department has not used the lower end of the per kg fingerling prices that HVG, *et al.* have argued is aberrational.<sup>200</sup>

Regarding the *Bangladeshi Aquaculture Study* proposed by Afiex, *et al.*, we find this source to be non-contemporaneous. Although published in 2011, the data underlying the publication was gathered in September and October of 2007.<sup>201</sup> Like the Rukmono Affidavit, the data was gathered from three of the larger *pangasius* producing regions in Bangladesh (Bogra, Mymensingh and Jessor); however, it only covers two months of data, whereas the Rukmono Affidavit covers two years of data.<sup>202</sup> Consequently, we do not find that this data represents as broad of a market average as the Rukmono Affidavit. Moreover, this data does not provide size

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<sup>196</sup> As the SNI conversion ratios are official Indonesian government data, we find them to be reliable. *See, e.g., Garlic* at Comment 2.B (the Department typically finds official government data to be a reliable, credible source of information).

<sup>197</sup> The Soetrino Affidavit states that 4-5 inch fingerlings weigh 6.5-8.0 grams each, and the Rukmono Affidavit states that 4-5 inch fingerlings weigh 7 grams each. *See* Petitioners' May 12, 2014 submission at Exhibit 16.B.

<sup>198</sup> *See, e.g., Certain Preserved Mushrooms from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 55808 (September 11, 2012) ("*Mushrooms 2012*") and accompanying Issues and Decision Memorandum at Comments 3 & 4.

<sup>199</sup> *See Shandong Huarong Gen. Corp. v. United States*, 159 F. Supp. 2d 714, 719 (CIT 2001) (holding that if plaintiff does not provide sufficient data for the Department to use, the Department has much latitude in choosing the best available information); *see also QVD Food Co. v. United States*, 658 F.3d 1318, 1324 (CAFC 2011) (citations omitted) (explaining that "the burden of creating an adequate record lies with {interested parties} and not with Commerce").

<sup>200</sup> Because the discussion of the size of fingerlings consumed by HVG, and the application of those sizes to the Soetrino affidavit are proprietary, we provided more explanation in the Final SV Memo. *See* Final SV Memo.

<sup>201</sup> *See* Afiex, *et al.*'s May 12, 2014 submission at Exhibit 28.

<sup>202</sup> *Id.*; *see also* Petitioners' May 12, 2014 submission at Exhibit 16.B.

specific values for fingerlings; thus, the Department finds that it is not as specific as the Rukmono Affidavit. In sum, we find that the *Bangladeshi Aquaculture Study* does not fulfill the SV selection criteria as well as the Rukmono Affidavit.

In support of the *Bangladeshi Aquaculture Study*, Afiex, *et al.* contend that the CIT's opinions and the Department's policy require the Department to select more specific price quotes over broad price data, such as import statistics. We disagree. When considering what constitutes the best available information, the Department considers several criteria, including whether the SV data is contemporaneous, publicly available, tax and duty exclusive, representative of a broad market average, and specific to the input.<sup>203</sup> The Department's preference is to satisfy the breadth of the aforementioned selection criteria, not one alone.<sup>204</sup> Moreover, on many occasions, the Court sustained the Department's use of broader basket HTS categories for SVs as supported by substantial evidence.<sup>205</sup>

## B. Fingerling Yield Loss Ratio

*HVG, et al.*:

- In the *Preliminary Results*, the Department applied a yield loss ratio of 12.9 percent to HVG's fingerling FOP usage rate. Since the *Preliminary Results*, based on a request from the Department, HVG provided information which indicates that it used the actual delivery amounts when calculating its fingerling FOP.<sup>206</sup> As such, no yield loss ratio is warranted for the final results.

*Petitioners*:

- Although HVG argues that it purchases fingerlings on the basis of what it terms "actual delivery" amounts, it does not. As a result, the Department must continue to apply a yield loss ratio. There is no record evidence to indicate that the fingerling SVs are adjusted for any yield loss.

**Department's Position:** HVG reported that it monitors the death of fingerlings on a daily basis during the warranty period, 18 - 25 days, and on that basis, the total number of dead fingerlings are determined.<sup>207</sup> The amounts of dead fingerlings are subtracted from the number of fingerlings delivered, and this number was used by HVG to calculate its fingerling FOP usage ratio.<sup>208</sup> Thus, in the calculation of its fingerling usage ratio, HVG did not use the number of fingerlings delivered to it, but the number of fingerlings delivered minus an amount of fingerling

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<sup>203</sup> See, e.g., *CLPP* at Comment 3.

<sup>204</sup> See, e.g., *China Shrimp* at Comment 2.

<sup>205</sup> See, e.g., *Writing Instrument Mfrs. Ass'n, Pencil Section v. Dep't of Commerce*, 984 F. Supp. 629, 640 (CIT 1997) ("*Writing Instruments*"); *Guangdong Chems. Imp. & Exp. Corp. v. United States*, 460 F. Supp. 2d 1370-71 (CIT 2006) ("*Guangdong Chems*"); *Peer Bearing Co. Changshan v. United States*, 752 F. Supp. 2d 1333, 1335 (CIT 2011) ("*Peer Bearing*"); *Dorbest Ltd. v. United States*, 462 F. Supp. 2d 1289-90 (CIT 2006) ("*Dorbest*") (sustaining the Department's use of a data set that included merchandise other than that being valued).

<sup>206</sup> See, e.g., HVG, *et al.*'s September 19, 2014 submission at Exhibit 2.

<sup>207</sup> See HVG's June 16, 2014 submission at 2.

<sup>208</sup> *Id.*

yield loss, in the numerator.<sup>209</sup> In order to capture the actual amount of fingerlings consumed by HVG, the Department adjusted HVG's fingerling FOP by the amount of fingerling yield loss. It is the Department's practice to adjust the margin calculation for yield losses in order to accurately capture FOPs consumed in the production of subject merchandise, as we have done here.<sup>210</sup> As a result, we have continued to apply a yield loss ratio to HVG's fingerling consumption for the final results.

### C. Rejection of Fingerling Data

*HVG, et al.:*

- When responding to a supplemental questionnaire, after providing size information (in terms of pieces per kg), HVG remembered that in the last administrative review the Department used Indonesian SV data based on fingerling length. Therefore, HVG supplemented its size information to also include the length of fingerlings consumed, so that the Department would have available to it a full set of size data (kilograms, pieces per kilogram, and length).<sup>211</sup> The Department rejected those portions HVG's supplemental response that provided the Department with fingerling lengths consumed by HVG (along with sample contracts demonstrating those lengths).<sup>212</sup>
- The fingerling length data should not have been stricken from the record because the Department had requested fingerling size data. While HVG responded with pieces per kg size data, fingerling length is also size data, and in fact directly relevant to the Indonesian SV data for fingerlings. As such, HVG believes that this length data was requested. While HVG initially interpreted the request for size data to refer to pieces per kilogram, it reasonably supplemented that requested size information with additional length data.
- The Department has the discretion to allow such information on the record, and the accuracy of the Department's margin calculations would have been greatly enhanced if this data were left on the record.<sup>213</sup> For the final results, the Department should allow the HVG fingerling size data, based on length, back on the record.

*Petitioners:*

- The Department was correct in rejecting certain portions of HVG's May 22, 2014 submission, as it contained untimely factual information. This information should remain off the record of this review.

**Department's Position:** On April 15, 2014, the Department issued HVG a supplemental questionnaire concerning its Section D responses. Specifically, with respect to fingerlings, the Department requested that HVG, "provide the size of fingerlings purchased at each of HVG's

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<sup>209</sup> Although HVG labelled the fingerling amount used in its calculation as "actual" this amount was, not full amount of fingerlings delivered. *Id.*

<sup>210</sup> See, e.g., *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews*, 71 FR 26329 (May 4, 2006) and accompanying Issues and Decision Memorandum at Comment 1, and Attachment 1.

<sup>211</sup> Originally submitted May 22, 2014, this submission was rejected and re-submitted on June 16, 2014. The Department accepted this resubmission from *HVG, et al.* on June 16, 2014. See HVG's June 16, 2014 submission.

<sup>212</sup> See the Department's letter dated June 11, 2014.

<sup>213</sup> See 19 CFR 351.302(b).

farms and provide invoices which support {its} answer.”<sup>214</sup> On May 2, 2014 HVG submitted its response, which consisted of a fingerling purchase chart, invoice and contract.<sup>215</sup> On May 8, 2014 the Department issued a questionnaire related to HVG’s fingerlings, which requested more complete translations of the documents submitted, an electronic version of the fingerling purchase chart, and an explanation as to how HVG calculated three columns of data in the fingerling purchase chart.<sup>216</sup> In responding to these questions, HVG submitted unrequested new factual information on May 22, 2014, which the Department rejected.<sup>217</sup>

The Department properly rejected HVG’s untimely new factual information pursuant to section 351.302(d)(1)(i) of the Department’s regulations, which state that the Secretary’s will not consider or retain on the record untimely filed factual information. HVG had an opportunity to submit additional information regarding fingerling length in response to the Department’s April 15 supplemental questionnaire. It did not provide the information then, but rather, submitted the information in response to a subsequent questionnaire that requested only limited clarifying information.

#### **Comment IV: Surrogate Value for Fish Feed**

*Afiex, et al.:*

- In the *Preliminary Results*, the Department valued fish feed using an article from *Trobas Aqua*, an Indonesian magazine.<sup>218</sup>
- For the final results, fish feed should be valued using the *Bangladeshi Aquaculture Study*.<sup>219</sup> This pricing data was used to value fish feed in the *Seventh AR*.<sup>220</sup> The Field Survey Report corroborates this study.<sup>221</sup>
- The CIT’s opinions direct the Department to prefer domestic prices over import data.<sup>222</sup> Here, the integrated respondent in this case, HVG, consumes domestic instead of imported feed. Therefore, under the *Hebei Metals* rationale, the Department should apply specific domestic price data of farming inputs reported from Bangladesh.
- Support for the choice of price quotes - either as source or corroborative data - is based on the CIT’s guidelines and the Departments consistent and longstanding policy to prefer specific price quotes.<sup>223</sup>
- Moreover, although the data in the *Bangladeshi Aquaculture Study* is not contemporaneous, it may be inflated to be contemporaneous. The Department’s policy is not to attach equal weight to all of the SV selection criteria, nor weigh all of them simultaneously; it is to begin by comparing the available choices of SV data on the scale of specificity in relation to the FOP being valued. In other words, product specificity must be the primary consideration in

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<sup>214</sup> See the Department’s letter to HVG, dated April 14, 2014 at 8.

<sup>215</sup> Indeed HVG’s May 2, 2014 response to the Department’s question, concerning its fingerling consumption, was “See requested document at Exhibit 2.” See HVG’s May 2, 2014 submission at Exhibit 2.

<sup>216</sup> See the Department’s letter to HVG, dated May 8, 2014.

<sup>217</sup> See the Department’s letter to HVG, dated June 11, 2014.

<sup>218</sup> See Prelim SV Memo at 3.

<sup>219</sup> See *Afiex, et al.*’s May 12, 2014 submission at Exhibit 28.

<sup>220</sup> See *Seventh AR* at Comment II.D.1.

<sup>221</sup> See *Afiex, et al.*’s May 19, 2014 submission at Exhibit 2.A.

<sup>222</sup> See *Hebei Metals*, 29 CIT 288, 294-303.

<sup>223</sup> See *Yipin*, 31 CIT 1901, 1937; *PVA* at Comment 5; *Sebacic Acid* at Comment 2.

determining best available information.<sup>224</sup> Thus, if SV data is clearly inferior in terms of specificity, its higher ranking on any other consideration, such as contemporaneity, does not make it preferable over more specific data.<sup>225</sup>

*HVG, et al.:*

- The *Trobos Aqua* feed prices are specific to the input being valued, *pangasius* feed. While the protein content of the *pangasius* feed, or the type of feed (adult *pangasius* feed and *pangasius* fingerling feed), is not mentioned in the article, that does not make the *Trobos Aqua* data not specific.
- First, there is no evidence on the record to suggest the *Trobos Aqua* feed prices are unreliable. Indeed, the article appeared in the publicly available publication *Trobos Aqua*, and it quotes the head of the Indonesian Feed Mills Association.
- While the Petitioners critique various documents related to feed prices placed on the record by HVG *et al.*, Petitioners miss the point that these sources were submitted to serve as benchmarks for the *Trobos Aqua* price. The Department is required to evaluate benchmark data differently than that of data presented as a SV source. As the CIT recently held, the Department is required to evaluate benchmark data on the record to determine if its selected SVs are aberrational.<sup>226</sup>
- The *Trobos Aqua* prices represent a broad market average as the quantity and value data cover 2011 through the 1<sup>st</sup> quarter of 2013 for all of Indonesia. The Rukmono Affidavit is simply not a broad market average as it is representative of prices for a single month, January 2014.

*Petitioners:*

- Because the *Bangladeshi Aquaculture Study* does not indicate the protein content or type of feed (adult versus fingerling), it is not specific to the *pangasius* feed inputs used by HVG. Moreover, the data from this study was collected in 2007, and thus, is not contemporaneous with the POR. Many of the Bangladeshi price quotes which purportedly corroborate the *Bangladeshi Aquaculture Study* are either not specific to *pangasius* or are illegible, and none provide information on the protein content. As a result, this source should not be used to value fingerlings for the final results.
- The *Trobos Aqua* article does not constitute the best available information to value HVG's *pangasius* feed inputs. HVG's responses establish that it consumed *pangasius* feed with a protein content of 26 and 28 percent during the POR.<sup>227</sup> The lack of protein content specificity in the *Trobos Aqua* article is particularly problematic because record evidence

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<sup>224</sup> See *Taian Ziyang*, 783 F. Supp. 2d 1292, 1330, citing, *Hebei Metals* (explaining that, where the Department failed to demonstrate Indian import statistics were sufficiently product specific, it was irrelevant whether statistics satisfied other criteria, such as contemporaneity).

<sup>225</sup> See *Home Meridian International Inc. D/B/A Samuel Lawrence Furniture Co. and Import Services, Inc. v. United States*, Slip Op. 12-120 (September 19, 2012) (“*Meridian*”).

<sup>226</sup> See *Blue Field (Sichuan) Food Industrial Co., Ltd. v. United States*, No. 12-00320, Slip Op. 13-142 (CIT November 14, 2013).

<sup>227</sup> See HVG's May 2, 2014 submission at Exhibit 1.

indicates that in Indonesia there are wide ranges of protein content in *pangasius* feed, and that the protein variations influence the price of feed.<sup>228</sup>

- The *Trobos Aqua* article does not specify whether its price reflects values of feed for *pangasius* fingerlings, adult *pangasius* fish, or both. HVG reported that it has *pangasius* farming operations in which fingerlings are grown into food sized fish.<sup>229</sup> As shown by the Rukmono Affidavit, feed prices for *pangasius* fingerlings in Indonesia are over 50 percent higher than feed prices for adult *pangasius* fish.<sup>230</sup>
- Record evidence also demonstrates that the price contained in the *Trobos Aqua* article is not otherwise reliable as it is a single statement within the article.<sup>231</sup> Neither the quote, nor its surrounding context, identifies the source or geographic area from which the value was derived, calling into question the reliability of the quote and whether it represents a broad market average.
- The price quotes submitted to corroborate the *Trobos Aqua* article either: (1) do not specify the protein content of the feed being valued, (2) do not specify whether the price is for fingerlings or adult fish; (3) are feed for types of fish other than *pangasius* (*i.e.*, *clarias* or American catfish), and/or (4) provide no basis to determine whether the price represents a broad market average.<sup>232</sup>
- For the final results the Department should value *pangasius* feed based on the Rukmono Affidavit, as this information reflects the type of feed (*i.e.*, fingerling and adult fish) and is specific to the protein content of feed used by HVG. In the *Ninth AR* the Department recognized that the Rukmono Affidavit “provides the most specific *pangasius* feed prices on the record because the protein content matches that of the feed used by {HVG} and includes fingerling feed, which {HVG} consumed.”<sup>233</sup> In selecting SVs, the Department has frequently placed more weight on specificity than other criteria used to select SVs, particularly when the factor is an important FOP in producing the subject merchandise.<sup>234</sup>
- The Rukmono Affidavit is from the governmental authority that oversees the aquaculture industry in Indonesia, the DGA, and was obtained from multiple *pangasius* hatcheries. Although the pricing information is from January 2014, only a few months outside the POR, it is sufficiently contemporaneous with the POR.<sup>235</sup>
- Although in the *Ninth AR* the Department asserted that the Rukmono Affidavit price information did not represent a broad market average, in the same paragraph, the Department noted that the feed prices are from the largest three (of five) *pangasius* producing areas in Indonesia, Sumatera, Java, and Kalimantan.<sup>236</sup> In this review the record reflects that these

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<sup>228</sup> For example, price quotes by Indonesian feed producers show that *pangasius* fish feed with a protein content of 20-22 percent is sold at 5,500 IDR/kg, while *pangasius* fish feed with a protein content of 31-33 percent is sold at 10,523 IDR/kg. See Petitioners’ May 12, 2014 submission at Exhibit 16.C.

<sup>229</sup> See HVG’s March 20, 2014 submission at 11.

<sup>230</sup> See Petitioners’ May 12, 2014 submission at Exhibit 16.B.

<sup>231</sup> See HVG’s May 12, 2014 submission at Exhibit. 1.A.

<sup>232</sup> See HVG’s May 12, 2014 submission at Exhibit 1; Afiex, *et al.*’s May 19, 2014 submission at Exhibits 5 and 13.

<sup>233</sup> See *Ninth AR* at Comment IV.

<sup>234</sup> See, *e.g.*, *Ninth AR* at Comment X (where the Department used Philippine price quotes to value fish waste because of their “superior specificity” despite not being from the surrogate country and not being precisely contemporaneous to the POR).

<sup>235</sup> While in the last review, the Rukmono affidavit was only 17 months outside the POR, in this review, the Rukmono affidavit is only 5 months outside the POR.

<sup>236</sup> See *Ninth AR* at Comment IV.

three provinces, Sumatera, Java, and Kalimantan accounted for 99.8 percent of Indonesia's total *pangasius* production in 2012.<sup>237</sup> The Rukmono Affidavit makes clear that the information contained therein reflects prices of *pangasius* feed throughout Indonesia.

**Department's Position:** The record contains many alternative SVs from Bangladesh and Indonesia which are specific to *pangasius* feed. We evaluated these sources and, as explained below, find prices in the Rukmono Affidavit to be the best available information to value this input.

As noted above, when considering what constitutes the best available information, the Department considers several criteria, including whether the SV data is representative of a broad market average.<sup>238</sup> For example, the Department does not prefer regional data,<sup>239</sup> or data representative of single company's experience.<sup>240</sup> Moreover, we attempt to find the most representative and least distortive market-based value, because the more broad-based the value, the greater the likelihood that the value is representative.<sup>241</sup> Parties note that they submitted price quotes as corroborating evidence. The Department does not consider the experience of a single company to represent a broad market average when better information is available on the record. Thus, as no party has argued that we treat them so, we have not considered the submitted price quotes as SVs.<sup>242</sup>

Regarding the *Bangladeshi Aquaculture Study*, we find this source to be non-contemporaneous. Although published in 2011, the data was gathered in September and October of 2007.<sup>243</sup> Thus, the *Bangladeshi Aquaculture Study* is significantly less contemporaneous than the Rukmono Affidavit. In support of the *Bangladeshi Aquaculture Study*, Afiex, *et al.* contend that the CIT's opinions and the Department's policy direct us to prefer more specific price quotes over broad price data such as import statistics. As noted above, we disagree. When considering what constitutes the best available information, the Department considers several criteria, including whether the SV data is contemporaneous, publicly available, tax and duty exclusive, representative of a broad market average, and specific to the input.<sup>244</sup> The Department's preference is to satisfy the breadth of the aforementioned selection criteria, not one alone.<sup>245</sup> Moreover, on many occasions, the CIT sustained the Department's use of broader basket HTS categories for SVs as supported by substantial evidence.<sup>246</sup> In sum, we find that the *Bangladeshi Aquaculture Study* does not fulfill the SV selection criteria as well as other sources on the record.

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<sup>237</sup> See Prelim SV Memo at Exhibit 3.

<sup>238</sup> See, e.g., *CLPP* at Comment 3.

<sup>239</sup> See *Wuhan Bee Healthy Co., Ltd. v. United States*, 29 CIT 1275, 1277-78 (CIT 2005).

<sup>240</sup> See, e.g., *Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review*, 71 FR 66304 (November 14, 2006) ("*Brake Rotors*") and accompanying Issues and Decision Memorandum at Comment 3.

<sup>241</sup> See *Fresh Garlic from the People's Republic of China: Final Results of the 2009-2010 Administrative Review of the Antidumping Duty Order*, 77 FR 34346 (June 11, 2012) and accompanying Issues and Decision Memorandum at Comment 5.

<sup>242</sup> See, e.g., *Brake Rotors* at Comment 3.

<sup>243</sup> See Afiex, *et al.*'s May 12, 2014 submission at Exhibit 28.

<sup>244</sup> See, e.g., *CLPP* at Comment 3.

<sup>245</sup> See, e.g., *China Shrimp* at Comment 2.

<sup>246</sup> See, e.g., *Writing Instruments*, 984 F. Supp. 629, 640 (CIT 1997); *Guangdong Chems*, 460 F. Supp. 2d 1370-71 (CIT 2006); *Peer Bearing*, 752 F. Supp. 2d 1333, 1335 (CIT 2011); *Dorbest*, 462 F. Supp. 2d 1289-90 (CIT 2006).

As noted above in the Department's position at Comment III, the Rukmono Affidavit is a response to Petitioners' letter to the Indonesian government, specifically the DGA, which is a part of the Ministry of Marine Affairs and Fisheries of the Republic of Indonesia. This is the same department which publishes *Indonesian AS*. The Rukmono Affidavit is signed and on Ministry of Marine Affairs and Fisheries letterhead.<sup>247</sup> Importantly, Petitioners have provided all correspondence undertook to gain this information, making circumstances under which the Petitioners approached Dr. Rukmono very clear. Thus, we find the prices in the affidavit to be Indonesian government information and to be reliable.<sup>248</sup>

The Rukmono Affidavit states that the prices contained therein are current, as the affidavit was submitted in January 2014, the data fall five months outside the POR, and is not contemporaneous. However, the prices in the Rukmono Affidavit satisfy the other SV criteria. According to the Rukmono Affidavit, the *pangasius* feed prices it provides are publicly available and tax exclusive.<sup>249</sup> The Rukmono Affidavit also provides the most specific *pangasius* feed prices on the record because the protein content matches that of the feed used by HVG<sup>250</sup> and includes fingerling feed, which HVG also consumed.<sup>251</sup> Finally, the feed prices are from the largest three (of five) *pangasius* producing areas in Indonesia, Sumatera (Jambi), Java (Sukabumi), and Kalimantan (Mandiangan), representing a broad market average.<sup>252</sup> Although the time period covered by the Rukmono Affidavit (one month) is more limited than that of the *Trobos Aqua* article (twelve months), this limitation on the time period covered by the Rukmono Affidavit is offset by the fact that the the Rukmono Affidavit data comes from the regions which produce the vast majority of Indonesia's *pangasius*.<sup>253</sup>

The article appearing in the publicly available publication *Trobos Aqua*, which quotes the head of the Indonesian Feed Mills Association, represents data that is contemporaneous with the POR and represents national Indonesian data for 2012.<sup>254</sup> Therefore, we find this represents a broad market average. The record is silent with respect to whether this value is tax and duty exclusive. The *Trobos Aqua* article does not provide the feed protein percentages, nor does it state whether the feed price are for fingerlings, adult fish or both.<sup>255</sup>

The Department has concluded, based on the above analysis of the data, that the Rukmono Affidavit represent the best available information to value fish feed. The *Trobos Aqua* information represents more of a broad market average, while the Rukmono Affidavit, although not contemporaneous, is significantly more specific to the input in question, reflects tax and duty free prices, and represents prices from three of the five largest producing areas in Indonesia. The

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<sup>247</sup> See Petitioners' January 10, 2014 submission at Exhibit 3.

<sup>248</sup> See, e.g., *Garlic* at Comment 2.B (the Department typically finds official government data to be a reliable, credible source of information).

<sup>249</sup> See Petitioners' May 12, 2014 submission at Exhibit 16.B.

<sup>250</sup> See HVG's May 2, 2014 submission at Exhibit 1.

<sup>251</sup> See HVG's March 20, 2014 submission at 11. The record also shows that HVG consumes both small and larger pellet sizes, indicating that it consumes feed for both *pangasius* fingerlings and adult fish. See HVG's May 2, 2014 submission at Exhibit 1.

<sup>252</sup> *Id.*; see also Prelim SV Memo at Exhibit 3.

<sup>253</sup> See Petitioners' Petitioners' May 12, 2014 submission at Exhibit 16.B. The Rukmono affidavit notes that the fingerling prices are for 2011 and 2012, however, the feed prices are "current" prices.

<sup>254</sup> See HVG's May 12, 2014 submission at Exhibit 1.A.

<sup>255</sup> *Id.*

Department undertakes its analysis of valuing the FOPs on a case-by-case basis, carefully considering available record evidence regarding the particular facts of each industry.<sup>256</sup> There is no hierarchy for applying the SV selection criteria, as the Department weighs available information with respect to each input value and make a product specific and case specific decision as to what the “best” SV is for each input.<sup>257</sup> For this factor of production, record evidence indicates that the protein content of *pangasius* feed<sup>258</sup> and the size of *pangasius* feed pellets<sup>259</sup> are important factors in determining the price of feed. In past cases where the Department has made determinations on aquatic feed, we have found that protein content is an important factor in the feed price.<sup>260</sup> As such, we have weighed the desire for a more broad market average and contemporaneity against the superior specificity found in the Rukmono Affidavit, and find that the Rukmono Affidavit best meets the Department’s SV criteria, and represents the best available information to value HVG’s *pangasius* feed input.<sup>261</sup> This decision aligns with a past Department determination in *Garlic*, where the Department selected a SV for garlic bulbs based on specificity to garlic size because size was “a strong determinant of the grade and price of garlic,” just as protein content and type are strong determinants in the price of *pangasius* feed.<sup>262</sup>

#### **Comment V: Surrogate Value for Lime**

*Afiex, et al.*:

- In the *Preliminary Results*, the Department used Indonesian GTA import data under HTS 2522.10, “Quicklime,” to value lime.<sup>263</sup>
- Lime should be valued using the *Bangladeshi Aquaculture Study*.<sup>264</sup> This pricing data was used to value lime in the *Seventh AR*.<sup>265</sup> The Field Survey Report corroborates this study.<sup>266</sup>

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<sup>256</sup> See *Glycine from the People’s Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 70 FR 47176 (August 12, 2005) at Comment 1.

<sup>257</sup> See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039 (September 24, 2008) and accompanying Issues and Decision Memo at Comment 2.

<sup>258</sup> See Petitioners’ May 12, 2014 submission at Exhibit 16-C (showing *pangasius* feed with protein contents ranging from 20-22 percent to 30-34 percent). See Petitioners’ May 12, 2014 submission at Exhibit 16.C.

<sup>259</sup> See Petitioners’ May 12, 2014 submission at Exhibit 16.B (feed pricing information for *pangasius* fingerling feed and adult *pangasius* fish feed).

<sup>260</sup> See *Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not To Revoke in Part*, 77 FR 53856 (September 4, 2012) (“*China Shrimp*”) and accompanying Issues and Decision Memorandum at Comment 10 (“Because shrimp produced in Thailand requires feed with lower protein content than feed for black tiger shrimp one would expect to see lower prices for feed where white shrimp is the primary species produced.”)

<sup>261</sup> See, e.g., *Multilayered Wood Flooring from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 26712 (May 9, 2014) and accompanying Issues and Decision Memorandum at Comment 9 (where the Department used non-contemporaneous data from a single month to value an FOP because that data was the most specific to the input in question).

<sup>262</sup> See, e.g., *Final Results of Redetermination Pursuant to Court Remand Order in Jinan Yipin Corp., Ltd., et al. v. United States*, Court No. 06-00189, Slip Op. 09-39 at 8.

<sup>263</sup> See Prelim SV Memo at 3 and Exhibit 1.

<sup>264</sup> See *Afiex, et al.*’s May 12, 2014 submission at Exhibit 28.

<sup>265</sup> See *Seventh AR* at Comment II.D.1.

<sup>266</sup> See *Afiex, et al.*’s May 19, 2014 submission at Exhibit 2.A.

- The CIT’s opinions direct the Department to prefer domestic prices over import data.<sup>267</sup> Here, the integrated respondent in this case, HVG, consumes domestic instead of imported lime. Therefore, under the *Hebei Metals* rationale, the Department should apply specific domestic price data of lime reported from Bangladesh.
- Support for the choice of price quotes - either as source or corroborative data - is based on the CIT’s guidelines and the Department’s consistent and longstanding policy to prefer specific price quotes.<sup>268</sup>
- Moreover, although the data in the *Bangladeshi Aquaculture Study* is not contemporaneous, it may be inflated to be contemporaneous. The Department’s policy is not to attach equal weight to all of the SV selection criteria, nor weigh all of them simultaneously; it is to begin by comparing the available choices of SV data on the scale of specificity in relation to the FOP being valued. In other words, product specificity must be the primary consideration in determining best available information.<sup>269</sup> Thus, if SV data is clearly inferior in terms of specificity, its higher ranking on any other consideration, such as contemporaneity, does not make it preferable over more specific data.<sup>270</sup>

*Petitioners:*

- Although Afiex, *et al.* assert that domestic price sources are preferable to import statistics, citing to a CIT case that states that domestic prices are preferable to import statistics when circumstances indicate that a producer in a hypothetical market would be unlikely to use an imported factor in its production process<sup>271</sup>, they fail to cite any record evidence demonstrating that such circumstances exist in any of the surrogate countries at issue.
- The *Bangladeshi Aquaculture Study* was published outside the POR and is not from the primary surrogate country, Indonesia. Accordingly, the Department should continue to value lime using import data, which represents a broad market average, is from the primary surrogate country, and is contemporaneous to the POR.

**Department’s Position:** We continue to find that the Indonesian GTA import data under HTS 2522.10, “Quicklime,” represents the best available information to value HVG’s lime input.<sup>272</sup> HVG reported using “lime.”<sup>273</sup> We previously found that GTA data, such as the data in question, is contemporaneous, publicly-available, representative of broad market averages, and free of duties and taxes.<sup>274</sup> Moreover, we find that the GTA data is sufficiently specific to the input in

<sup>267</sup> See *Hebei Metals*, 29 CIT 288, 294-303 (CIT 2005).

<sup>268</sup> See *Yipin*, 31 CIT 1901, 1937,526 F. Supp. 2d 1347, 1378-79 (2007); *PVA* at Comment 5; *Sebacic Acid* at Comment 2.

<sup>269</sup> See *Taian Ziyang Food Co. v. United States*, 783 F. Supp. 2d 1292, 1330 (CIT 2011), citing, *Hebei Metals*, 29 CIT 288, 300, 366 F. Supp. 2d 1264, 1273-74 (2005) (explaining that, where the Department failed to demonstrate Indian import statistics were sufficiently product specific, it was irrelevant whether statistics satisfied other criteria, such as contemporaneity).

<sup>270</sup> See *Meridian*, Slip Op. 12-120.

<sup>271</sup> See *Hebei Metals*, 29 CIT 288, 294-303.

<sup>272</sup> See Prelim SV Memo at Exhibit 1.

<sup>273</sup> See HVG’s February 18, 2014 submission at 19.

<sup>274</sup> See, e.g., *Frontseating Service Valves from the People’s Republic of China; Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 73825 (December 9, 2013) (“*Frontseating Service Valves*”) and accompanying Issues and Decision Memorandum at Comment 7.

question because the description of HTS 2522.10, by its terms, covers “Quicklime” would cover HVG’s lime input.

Regarding the *Bangladeshi Aquaculture Study*, we find this source to be non- contemporaneous. Although published in 2011, the data was gathered in September and October of 2007.<sup>275</sup> Moreover, although the data was gathered from three of the larger *pangasius* producing regions in Bangladesh (Bogra, Mymensingh and Jessor), it only covers two months of data.<sup>276</sup> As a result, we find that it also does not represent as much of a broad market average as the Indonesian GTA data. In support of the *Bangladeshi Aquaculture Study*, Afiex, *et al.* contend that the CIT’s opinions and the Department’s policy requires the Department to select more specific price quotes over broad price data, such as import statistics. As noted above, we disagree. When considering what constitutes the best available information, the Department considers several criteria, including whether the SV data is contemporaneous, publicly available, tax and duty exclusive, representative of a broad market average, and specific to the input.<sup>277</sup> Both sources satisfy the publicly available and free of taxes and duties criteria. However, the Department’s preference is to satisfy the breadth of the aforementioned selection criteria, not one alone.<sup>278</sup> Moreover, on many occasions the CIT sustained the Department’s use of broader basket HTS categories for SVs as supported by substantial evidence.<sup>279</sup> In this case, while the *Bangladeshi Aquaculture Study* is more specific, in that it provides a price for “lime” as opposed to “quicklime,” the GTA data satisfy more of the Department’s SV criteria. Finally, use of the Indonesian GTA quicklime data is consistent with the Department’s strong preference to use SVs from the primary surrogate country.<sup>280</sup> In sum, we find that the *Bangladeshi Aquaculture Study* does not fulfill the SV selection criteria as well as the Indonesian GTA import data, under HTS 2522.10.

## Comment VI: Surrogate Value for Antibiotics

*Afiex, et al.:*

- In the *Preliminary Results*, the Department used Indonesian GTA import data under HTS 2941.90, “Antibiotics, Nesoi,” to value antibiotics.<sup>281</sup>
- The Indonesian GTA import data is aberrational because it contains countries that shipped small quantities at high prices.<sup>282</sup>
- For the final results, antibiotics should be valued using Bangladeshi import data published by the *Foreign Trade Statistics of Bangladesh*.<sup>283</sup> *The Foreign Trade Statistics of Bangladesh*

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<sup>275</sup> See Afiex, *et al.*’s May 12, 2014 submission at Exhibit 28.

<sup>276</sup> *Id.*

<sup>277</sup> See, e.g., *CLPP* at Comment 3.

<sup>278</sup> See, e.g., *China Shrimp* at Comment 2.

<sup>279</sup> See, e.g., *Writing Instruments*, 984 F. Supp. 629, 640 (CIT 1997); *Guangdong Chems*, 462 F. Supp. 2d 1370-71 (CIT 2006); *Peer Bearing*, 752 F. Supp. 2d 1333, 1335 (CIT 2011); *Dorbest*, 462 F. Supp. 2d 1289-90 (CIT 2006).

<sup>280</sup> See 19 CFR 351.408(c)(2); *Clearon Corp. v. United States*, No. 08-00364, 2013 WL 646390 (CIT 2013) (“*Clearon*”) at \*6 (“{T}he court must treat seriously {the Department’s } preference for the use of a single surrogate country.”); *Globe Metallurgical*, 32 CIT 1070, 1076 (2008); see also *Peer Bearing*, 752 F. Supp. 2d 1353, 1373 (CIT 2011).

<sup>281</sup> See Prelim SV Memo at 3 and Exhibit 1.

<sup>282</sup> *Id.*

<sup>283</sup> See Afiex, *et al.*’s May 12, 2014 submission at Exhibit 2.A.

data (July 2009 to June 2010) are more contemporaneous than the 2007 Bangladeshi United Nations Commodity Trade Statistics Database (“UN Comtrade”) data.

*HVG, et al.:*

- Indonesian HTS 2941.90 is not specific to HVG’s inputs as it relates solely to antibiotics/penicillin, and does not include medicines more generally.
- For the final results the Department should value antibiotics using Indonesian GTA import data under HTS 3004.20, “Medicaments consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale, Containing other antibiotics,” because this tariff provision is more specific to the inputs being valued, as it covers medicines (medicaments) and antibiotics (rather than just one - penicillin).<sup>284</sup> This HTS meets the Department’s SV selection criteria and is more specific to the input in question than HTS 2941.90.

*Petitioners:*

- Import statistics regularly include low-volume, higher priced imports, which is precisely why the Department applies a weighted average based on quantities. *Afiex, et al.* have failed to meet the minimum threshold that the Department has established to create a claim to rebut import data, *i.e.*, by providing multiple points of comparison.<sup>285</sup>
- The Department should not use the *Foreign Trade Statistics of Bangladesh* to value any factor of production because it is not contemporaneous and is not from the primary surrogate country Indonesia. *Afiex, et al.*’s argument for using a Bangladeshi source rests on their belief that Bangladesh should be the primary surrogate country; they do not challenge the specificity, accuracy, or reliability of the Indonesian HTS 2941.90.
- According to HVG’s Section D Response, HVG reported that it consumed “antibiotics” to cure fish from diseases.<sup>286</sup> The description provided by HVG does not explicitly include “medicines more generally” as HVG argues. Thus, on its face, the description of HTS 2941.90, “Antibiotics, Nesoi,” is specific to the antibiotics consumed by HVG during the POR, and is the most specific HTS category to value this input.
- In contrast, the HTS heading that HVG proposes the Department to use, HTS 3004.20, is a broad basket category that includes a wide range of “pharmaceutical products” including “medicaments ... consisting of mixed or unmixed products” that contain “other antibiotics.” Thus, this category is less specific because it refers to medicaments that contain antibiotics, rather than just antibiotics, as HVG has reported.

**Department’s Position:** We continue to find that the Indonesian GTA import data under HTS 2522.10, “Antibiotics, Nesoi,” represents the best available information to value HVG’s antibiotics input.<sup>287</sup> We previously found that GTA data, such as the data in question, is contemporaneous, publicly-available, representative of broad market averages, and free of duties

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<sup>284</sup> See HVG, *et al.*’s May 12, 2014 submission Exhibit 4.

<sup>285</sup> See *Multilayered Wood Flooring from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) (“*Wood Flooring*”) and accompanying Issues and Decision Memorandum at Comment 14

<sup>286</sup> See HVG’s February 18, 2014 submission at 18.

<sup>287</sup> See Prelim SV Memo at Exhibit 1.

and taxes.<sup>288</sup> The only description HVG provided for this input was “antibiotics,” thus, the record is devoid of which antibiotics were used by HVG.<sup>289</sup> We note that HTS 2522.10 covers amoxicillin, ampicillin, as well as penicillin.<sup>290</sup> We also find that HTS 2522.10 is more specific to the antibiotics HVG consumed as the description “Antibiotics, Nesoi,” more closely matches the description of HVG’s input than does HTS 3004.20, “Medicaments (excluding goods of heading 30.02, 30.05 or 30.06) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale.”<sup>291</sup>

We disagree with Afiex, *et al.*’s contention that Indonesian HTS 2941.90 is aberrational because it contains countries that shipped small quantities at high prices. In order to demonstrate that a value is aberrational or unreliable because it significantly deviates from the norm, it is necessary to have multiple points of comparison.<sup>292</sup> In *Xanthan Gum*, the Department stated that “having only two values to compare could result in finding either the higher value aberrational in comparison to the lower value or the lower value aberrational in comparison to the higher value.”<sup>293</sup> As a result, the burden is on Afiex, *et al.* to provide specific and objective evidence that the POR data for Indonesian HTS 2941.90 are aberrational.<sup>294</sup> Here, while Afiex, *et al.* have alleged that the data is aberrational, they did not compare the import data for HTS 2941.90 to any other point of comparison. As Afiex, *et al.* have not provided any record evidence or benchmark price comparisons to show the data is unreliable and aberrational, we find their arguments are speculative.

In its case brief Afiex, *et al.* argued that the Department should value all other processing inputs and all packing materials based on the *Foreign Trade Statistics of Bangladesh*, and that the record contains reliable Bangladeshi import data published by *Foreign Trade Statistics of Bangladesh*, for all of the processing and packing FOPs.<sup>295</sup> We find that the *Foreign Trade Statistics of Bangladesh* do not contain data covering all processing and packing FOPs, for example, it does not include data for medicines/antibiotics.<sup>296</sup> Also, the *Foreign Trade Statistics of Bangladesh* are not contemporaneous to the POR as the data covers July 2009 to June 2010. Moreover, it is the Department’s longstanding practice, when valuing FOPs using import statistics, to disregard data from NME countries, unidentified countries, and countries with

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<sup>288</sup> See, e.g., *Frontseating Service Valves* at Comment 7; *Mushrooms 2012* at Comment 3.

<sup>289</sup> See HVG’s February 18, 2014 submission at 18.

<sup>290</sup> See HVG’s September 19, 2014 submission at 8.

<sup>291</sup> *Id.*

<sup>292</sup> See, e.g., *Wood Flooring* at Comment 14.

<sup>293</sup> See *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013) (“*Xanthan Gum*”) and accompanying Issues and Decision Memorandum at Comment 16.A.

<sup>294</sup> See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People’s Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order*, 75 FR 844 (January 6, 2010) (“*TRBs*”) and accompanying Issues and Decision Memorandum at Comment 2.

<sup>295</sup> See Afiex, *et al.*’s September 19, 2014 submission at 51-52.

<sup>296</sup> See Afiex, *et al.*’s May 12, 2014 submission at Exhibit 2.A. Based on Afiex, *et al.*’s summary charts, it appears that data was submitted to value STPP, polyethylene bag, carton, tape, decals and styrene polymers.

generally available export subsidies.<sup>297</sup> While in the summary charts submitted by Afiex, *et al.* appears to have properly excluded the above-noted exceptions, Afiex, *et al.* did not submit the entirety of the *Foreign Trade Statistics of Bangladesh* publication.<sup>298</sup> We note that on some pages the country of origin of the imports has been hand written on the page, and some pages do not indicate which country the import data represents.<sup>299</sup> Consequently, we do not find the portion of the *Foreign Trade Statistics of Bangladesh* on the record of this review reliable as we cannot be sure that the data that should be included in the calculation has been included, nor can we be sure that the data that should be excluded in the calculation has been excluded. As a result, we have not valued HVG's medicines/antibiotics using *Foreign Trade Statistics of Bangladesh*.

### **Comment VII: Surrogate Value for Nutrition Farming**

*Afiex, et al.:*

- In the *Preliminary Results*, the Department used Indonesian GTA import data under HTS 2936.90, "Vitamins, Incl'd Natural Concentrates *Etc.*, Nesoi," to value nutrition.<sup>300</sup>
- The Indonesian GTA import data is aberrational because it contains countries that shipped small quantities at high prices.<sup>301</sup>
- For the final results, nutrition should be valued using Bangladeshi import data published by the *Foreign Trade Statistics of Bangladesh*.<sup>302</sup> The *Foreign Trade Statistics of Bangladesh* data (July 2009 to June 2010) is more contemporaneous than the 2007 Bangladeshi UN Comtrade data.

*HVG, et al.:*

- Indonesian HTS 2936.90 is not specific to HVG's inputs as it relates solely to vitamins, and does not include feed supplements and additives.
- For the final results the Department should value nutrition using Indonesian GTA import data under HTS 2309.90.20, "Preparations of a kind used in animal feeding, other Premixes, feed supplements or feed additives" because this tariff provision is more specific to the inputs being valued, as it covers feed supplements and additives, instead of just vitamins.<sup>303</sup> This HTS meets the Department's SV selection criteria and is more specific to the input in question than HTS 2936.90.

*Petitioners:*

- Import statistics regularly include low-volume, higher priced imports, which is precisely why the Department applies a weighted average based on quantities. Afiex, *et al.* have failed to

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<sup>297</sup> 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, 75301 (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) ("*Chlorinated Isocyanurates*").

<sup>298</sup> See Afiex, *et al.*'s May 12, 2014 submission at Exhibit 2.A.

<sup>299</sup> *Id.*

<sup>300</sup> See Prelim SV Memo at 3 and Exhibit 1.

<sup>301</sup> *Id.*

<sup>302</sup> See Afiex, *et al.*'s May 12, 2014 submission at Exhibit 2.A.

<sup>303</sup> See HVG, *et al.*'s May 12, 2014 submission at Exhibit 5.

meet the minimum threshold that the Department has established to create a claim to rebut import data, *i.e.*, by providing multiple points of comparison.<sup>304</sup>

- The Department should not use the *Foreign Trade Statistics of Bangladesh* to value any factor of production because it is not contemporaneous (July 2009 to June 2010) and is not from the primary surrogate country Indonesia. Afiex, *et al.*'s argument for using a Bangladeshi source rests on their belief that Bangladesh should be the primary surrogate country; they do not challenge the specificity, accuracy, or reliability of the Indonesian data.
- HVG reported that its "nutrition" FOP covers "chemicals" that are "mostly vitamins (E, A, C, B), ascorbic acid and minerals to provide healthy supplements to fish."<sup>305</sup> On its face, the HTS category used by the Department, HTS 2936.90, "Vitamins, Incl Natural Concentrates *Etc.*, Nesoi," is specific to HVG's FOP.
- In contrast, the HTS category proposed by HVG, HTS 2309.90.20, is a broad basket category that includes "premixes, feed supplements, and feed additives for Animals," which includes a variety of items that are not specific to vitamins, ascorbic acid, and minerals. Furthermore, the description for HTS 2309, the main heading for this HTS category, represents "Food Industry Residues & Waste; Prep Animal Feed," indicating that derivatives from food industry residues and waste may also be included in this category, making it less specific to the nutrition items that HVG consumes.

**Department's Position:** We continue to find that the Indonesian GTA import data under HTS 2936.90, "Vitamins, Incl Natural Concentrates, *Etc.*, Nesoi," represents the best available information to value HVG's nutrition input.<sup>306</sup> We previously found that GTA data, such as the data in question, is contemporaneous, publicly available, representative of broad market averages, and free of duties and taxes.<sup>307</sup> HVG describes this input as "chemicals" that are "mostly vitamins (E, A, C, B), ascorbic acid and minerals to provide healthy supplements to fish."<sup>308</sup> We also find that HTS 2936.90 is more specific to the vitamins HVG consumed as the description "Vitamins, Incl Natural Concentrates *Etc.*, Nesoi," more closely matches the description of HVG's input ("mostly vitamins") than does HTS 3004.20, "Preparations of a kind used in animal feeding, other Premixes, feed supplements or feed additives."<sup>309</sup>

We disagree with Afiex, *et al.*'s contention that Indonesian HTS 2936.90 is aberrational because it contains countries that shipped small quantities at high prices. In order to demonstrate that a value is aberrational or unreliable because it significantly deviates from the norm, it is necessary to have multiple points of comparison.<sup>310</sup> In *Xanthan Gum*, the Department stated that "having only two values to compare could result in finding either the higher value aberrational in comparison to the lower value or the lower value aberrational in comparison to the higher value."<sup>311</sup> As a result, the burden is on Afiex, *et al.* to provide specific and objective evidence that the POR data for Indonesian HTS 2936.90 are aberrational.<sup>312</sup> Here, while Afiex, *et al.* have

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<sup>304</sup> See *Wood Flooring* at Comment 14.

<sup>305</sup> See HVG's February 18, 2014 submission at 18.

<sup>306</sup> See Prelim SV Memo at Exhibit 1.

<sup>307</sup> See, e.g., *Frontseating Service Valves* at Comment 7; *Mushrooms 2012* at Comment 3.

<sup>308</sup> See HVG's February 18, 2014 submission at 18.

<sup>309</sup> *Id.*

<sup>310</sup> See, e.g., *Wood Flooring* at Comment 14.

<sup>311</sup> See *Xanthan Gum* at Comment 16.A.

<sup>312</sup> See, e.g., *TRBs* at Comment 2.

alleged that the data is aberrational, they did not compare the import data for HTS 2936.90 to any other point of comparison. As Afiex, *et al.* have not provided any record evidence or benchmark price comparisons to show the data is unreliable and aberrational, we find their arguments are speculative.

In its case brief Afiex, *et al.* argued that the Department should value all other processing inputs and all packing materials based on the *Foreign Trade Statistics of Bangladesh*, and that the record contains reliable Bangladeshi import data published by *Foreign Trade Statistics of Bangladesh*, for all of the processing and packing FOPs.<sup>313</sup> We find that the *Foreign Trade Statistics of Bangladesh* do not contain data covering all processing and packing FOPs, for example, it does not include data for nutrition.<sup>314</sup> Also, the *Foreign Trade Statistics of Bangladesh* are not contemporaneous to the POR as the data covers July 2009 to June 2010. Moreover, it is the Department's longstanding practice, when valuing FOPs using import statistics, to disregard data from NME countries, unidentified countries, and countries with generally available export subsidies.<sup>315</sup> While in the summary charts Afiex appears to have properly excluded the above-noted exceptions, Afiex, *et al.* did not submit the entirety of the *Foreign Trade Statistics of Bangladesh* publication.<sup>316</sup> We note that on some pages the country of origin of the imports has been hand written on the page, and some pages do not indicate which country the import data represents.<sup>317</sup> Consequently, we do not find the portion of the *Foreign Trade Statistics of Bangladesh* on the record of this review reliable as we cannot be sure that the data that should be included in the calculation has been included, nor can we be sure that the data that should be excluded in the calculation has been excluded. As a result, we have not valued HVG's nutrition using *Foreign Trade Statistics of Bangladesh*.

### **Comment VIII: Surrogate Value for Salt**

*Afiex, et al.*:

- In the *Preliminary Results*, the Department used Indonesian GTA import data under HTS 2501.00, "Salt Incl Tbl/Dentrd, Pure Sodm Chlor, *Etc.*," to value salt.<sup>318</sup>
- The Indonesian GTA import data is aberrational because it contains countries that shipped small quantities at high prices.<sup>319</sup>
- The Department should value salt based on a 2008 price published in *Financial Express*, a Bangladeshi newspaper.<sup>320</sup> This data for valuing salt comes from the major salt producing region of Bangladesh. In addition, this salt value comports with the established preference for domestic values over import values unless the record establishes a specific reason why the respondent would choose the more expensive imported input material when the cheaper fungible commodity is available domestically.<sup>321</sup> There is no reason why a producer of

<sup>313</sup> See Afiex, *et al.*'s September 19, 2014 submission at 51-52.

<sup>314</sup> See Afiex, *et al.*'s May 12, 2014 submission at Exhibit 2.A. Based on Afiex, *et al.*'s summary charts, it appears that data was submitted to value STPP, polyethylene bag, carton, tape, decals and styrene polymers.

<sup>315</sup> See *Chlorinated Isocyanurates*.

<sup>316</sup> See Afiex, *et al.*'s May 12, 2014 submission at Exhibit 2.A.

<sup>317</sup> *Id.*

<sup>318</sup> See Prelim SV Memo at Exhibit 1.

<sup>319</sup> *Id.*

<sup>320</sup> See Afiex, *et al.*'s May 12, 2014 submission at Exhibit 4.

<sup>321</sup> See, e.g., *Yantai Oriental Juice Co., v. United States*, 26 CIT 605, 617 (2002).

subject merchandise would pay significantly higher price for imported salt, hence the domestic prices represent a more accurate SV.

*Petitioners:*

- Import statistics regularly include low-volume, higher priced imports, which is precisely why the Department applies a weighted average based on quantities. Afiex, *et al.* have failed to meet the minimum threshold that the Department has established to create a claim to rebut import data, *i.e.*, by providing multiple points of comparison.<sup>322</sup>
- The 2008 Bangladeshi newspaper article proposed by Afiex, *et al.* suffers from multiple defects as it concerns the complaint of a single, unnamed salt producer who claims to have sold salt at below cost, and provides estimates as to the prices sold.<sup>323</sup> Moreover, the unit of measure, the “maund,” varies according to time and place and is equivalent to 25 to 80 pounds.<sup>324</sup>
- Indonesian import data for salt constitutes the best information on the record because it is more reliable, contemporaneous and provides a broad market average.

**Department’s Position:** We continue to find that the Indonesian GTA import data under HTS 2501.00 is the best available information to value salt. This GTA data is contemporaneous with the POR and is sufficiently specific to the salt reported by HVG, *i.e.*, “salt.”<sup>325</sup> Moreover, as noted above, the GTA data fulfills the Department’s other SV selection criteria, *i.e.*, it is publicly-available, represents a broad market average, and is free of taxes and duties.<sup>326</sup>

By contrast, the 2008 price data published in the *Financial Express*, a Bangladeshi newspaper. *Financial Express* also reflects a single company’s experience and, thus, is not representative of a broad market average; is not contemporaneous with the POR; and contains no information as to whether it reflects prices inclusive of taxes and duties.<sup>327</sup> Moreover, without accurate information to convert this value to a kilogram basis, it cannot be used in the SV calculation.<sup>328</sup>

We disagree with Afiex, *et al.*’s contention that Indonesian HTS 2501.00 is aberrational because it contains countries that shipped small quantities at high prices. In order to demonstrate that a value is aberrational or unreliable because it significantly deviates from the norm, it is necessary to have multiple points of comparison.<sup>329</sup> In *Xanthan Gum*, the Department stated that “having only two values to compare could result in finding either the higher value aberrational in comparison to the lower value or the lower value aberrational in comparison to the higher value.”<sup>330</sup> As a result, the burden is on Afiex, *et al.* to provide specific and objective evidence that the POR data for Indonesian HTS 2501.00 are aberrational.<sup>331</sup> Here, while Afiex, *et al.* have alleged that the data is aberrational, they did not compare the import data for HTS 2501.00 to

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<sup>322</sup> See *Wood Flooring* at Comment 14.

<sup>323</sup> See Afiex, *et al.*’s May 12, 2014 submission at Exhibit 4.

<sup>324</sup> In addition, Afiex, *et al.* have only provided a conversion factor for the maund in India, not Bangladesh. *Id.*

<sup>325</sup> See HVG’s February 18, 2014 submission at 23.

<sup>326</sup> See, *e.g.*, *Carbon* at Comment I.C.A.

<sup>327</sup> See Afiex, *et al.*’s May 12, 2014 submission at Exhibit 4.

<sup>328</sup> In addition, Afiex, *et al.* have only provided a conversion factor for the maund in India, not Bangladesh. *Id.*

<sup>329</sup> See, *e.g.*, *Wood Flooring* at Comment 14.

<sup>330</sup> See *Xanthan Gum* at Comment 16.A.

<sup>331</sup> See, *e.g.*, *TRBs* at Comment 2.

any other point of comparison. As Afiex, *et al.* have not provided any record evidence or benchmark price comparisons to show the data is unreliable and aberrational, we find their arguments are speculative.

### **Comment IX: Surrogate Value for Preservatives**

*Afiex, et al.:*

- In the *Preliminary Results*, the Department used Indonesian GTA import data under HTS 2835.31, “Sodium Triphosphate (Sodium Tripolyphosphate)” (“STPP”), to value preservatives.<sup>332</sup>
- The Indonesian GTA import data is aberrational because it contains countries that shipped small quantities at high prices.<sup>333</sup>
- For the final results, STPP should be valued using Bangladeshi import data published by the *Foreign Trade Statistics of Bangladesh*.<sup>334</sup> The *Foreign Trade Statistics of Bangladesh* data (July 2009 to June 2010) is more contemporaneous than the 2007 Bangladeshi UNComtrade data.

*Petitioners:*

- Import statistics regularly include low-volume, higher priced imports, which is precisely why the Department applies a weighted average based on quantities. Afiex, *et al.* have failed to meet the minimum threshold that the Department has established to create a claim to rebut import data, *i.e.*, by providing multiple points of comparison.<sup>335</sup>
- The Department should not use the *Foreign Trade Statistics of Bangladesh* to value any factor of production because it is not contemporaneous (July 2009 to June 2010) and is not from the primary surrogate country Indonesia. Afiex, *et al.*’s argument for using a Bangladeshi source rests on their belief that Bangladesh should be the primary surrogate country; they do not challenge the specificity, accuracy, or reliability of the Indonesian data. For the final results, the Department should continue to use the Indonesian import data to value this input.

**Department’s Position:** We continue to find that the Indonesian GTA import data under HTS 2835.31 is the best available information to value preservatives. This GTA data is contemporaneous with the POR and is sufficiently specific to the preservatives reported by HVG.<sup>336</sup> Moreover, as noted above, the GTA data fulfills the Department’s other SV selection criteria, *i.e.*, it is publicly-available, represents a broad market average, and is free of taxes and duties.<sup>337</sup> Finally, we note that no other party has argued for an alternative SV to value HVG’s preservative inputs.

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<sup>332</sup> See Prelim SV Memo at Exhibit 1.

<sup>333</sup> *Id.*

<sup>334</sup> See Afiex, *et al.*’s May 12, 2014 submission at Exhibit 2.A.

<sup>335</sup> See *Wood Flooring* at Comment 14.

<sup>336</sup> See HVG’s February 18, 2014 submission at 22-23. HVG reported consuming 15 different combinations of preservatives. Several of these combinations contain STPP and many contain sodium phosphates. *Id.*

<sup>337</sup> See, *e.g.*, *Carbon* at Comment I.C.A.

We disagree with Afiex, *et al.*'s contention that Indonesian HTS 2835.31 is aberrational because it contains countries that shipped small quantities at high prices. In order to demonstrate that a value is aberrational or unreliable because it significantly deviates from the norm, it is necessary to have multiple points of comparison.<sup>338</sup> In *Xanthan Gum*, the Department stated that "having only two values to compare could result in finding either the higher value aberrational in comparison to the lower value or the lower value aberrational in comparison to the higher value."<sup>339</sup> As a result, the burden is on Afiex, *et al.* to provide specific and objective evidence that the POR data for Indonesian HTS 2835.31 are aberrational.<sup>340</sup> Here, while Afiex, *et al.* have alleged that the data is aberrational, they did not compare the import data for HTS 2835.31 to any other point of comparison. As Afiex, *et al.* have not provided any record evidence or benchmark price comparisons to show the data is unreliable and aberrational, we find their arguments are speculative.

In its case brief, Afiex, *et al.* argued that the Department should value all other processing inputs and all packing materials based on the *Foreign Trade Statistics of Bangladesh*, and that the record contains reliable Bangladeshi import data published by *Foreign Trade Statistics of Bangladesh*, for all of the processing and packing FOPs.<sup>341</sup> We find that the *Foreign Trade Statistics of Bangladesh* contain data for STPP.<sup>342</sup> However, the *Foreign Trade Statistics of Bangladesh* are not contemporaneous to the POR as the data covers July 2009 to June 2010. Moreover, it is the Department's longstanding practice, when valuing FOPs using import statistics, to disregard data from NME countries, unidentified countries, and countries with generally available export subsidies.<sup>343</sup> While in the summary charts Afiex, *et al.* appears to have properly excluded the above-noted exceptions, Afiex, *et al.* did not submit the entirety of the *Foreign Trade Statistics of Bangladesh* publication.<sup>344</sup> We note that on some pages the country of origin of the imports has been hand written on the page, and some pages do not indicate which country the import data represents.<sup>345</sup> Consequently, we do not find the portion of the *Foreign Trade Statistics of Bangladesh* on the record of this review reliable as we cannot be sure that the data that should be included in the calculation has been included, nor can we be sure that the data that should be excluded in the calculation has been excluded. As a result, we have not valued HVG's preservatives using *Foreign Trade Statistics of Bangladesh*.

## Comment X: Surrogate Value for Plastic Bags

*Afiex, et al.*:

- In the *Preliminary Results*, the Department used Indonesian GTA import data under HTS 3923.29, "Sacks & Bags (Including Cones) Of Plastics Nesoi", to value polypropylene bags ("PP bags").<sup>346</sup>

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<sup>338</sup> See, e.g., *Wood Flooring* at Comment 14.

<sup>339</sup> See *Xanthan Gum* at Comment 16.A.

<sup>340</sup> See, e.g., *TRBs* at Comment 2.

<sup>341</sup> See Afiex, *et al.*'s September 19, 2014 submission at 51-52.

<sup>342</sup> See Afiex, *et al.*'s May 12, 2014 submission at Exhibit 2.A.

<sup>343</sup> See *Chlorinated Isocyanurates*.

<sup>344</sup> See Afiex, *et al.*'s May 12, 2014 submission at Exhibit 2.A.

<sup>345</sup> *Id.*

<sup>346</sup> See Prelim SV Memo at Exhibit 1.

- The Indonesian GTA import data is aberrational because it contains countries that shipped small quantities at high prices.<sup>347</sup>
- PP bags should be valued using Bangladeshi import data published by the *Foreign Trade Statistics of Bangladesh*.<sup>348</sup> The *Foreign Trade Statistics of Bangladesh* data (July 2009 to June 2010) is more contemporaneous than the 2007 Bangladeshi UNComtrade data.

*HVG, et al.:*

- Indonesian GTA import data under HTS 3923.29, is not specific to HVG’s inputs as it relates solely to PP bags, and not the polyethylene bags (“PE bags”) consumed by HVG.<sup>349</sup>
- For the final results the Department should value PE bags using Indonesian GTA import data under HTS 3923.21, “Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics, Of polymers of ethylene” because this tariff provision is more specific to the input being valued.<sup>350</sup> This HTS meets the Department’s SV selection criteria and is more specific to the input in question than HTS 3923.29.

*Petitioners:*

- Import statistics regularly include low-volume, higher priced imports, which is precisely why the Department applies a weighted average based on quantities. *Afiex, et al.* have failed to meet the minimum threshold that the Department has established to create a claim to rebut import data, *i.e.*, by providing multiple points of comparison.<sup>351</sup>

**Department’s Position:** We agree with HVG, *et. al.* and find that Indonesian GTA import data under HTS 3923.21, “Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics, of polymers of ethylene,” is the best available information to value HVG’s plastic bags. This GTA data is contemporaneous with the POR and is specific to the type of plastic bags, *i.e.*, PE bags, consumed by HVG.<sup>352</sup> Moreover, as noted above, the GTA data fulfills the Department’s other SV selection criteria, *i.e.*, it is publicly-available, represents a broad market average, and is free of taxes and duties.<sup>353</sup>

We disagree with *Afiex, et al.*’s contention that data under Indonesian HTS 3923.21 is aberrational because it contains imports in small quantities at high prices. In order to demonstrate that a value is aberrational or unreliable because it significantly deviates from the norm, it is necessary to have multiple points of comparison.<sup>354</sup> In *Xanthan Gum*, the Department stated that “having only two values to compare could result in finding either the higher value aberrational in comparison to the lower value or the lower value aberrational in comparison to the higher value.”<sup>355</sup> As a result, the burden is on *Afiex, et al.* to provide specific and objective evidence that the POR data for Indonesian HTS 2835.31 and HTS 3923.21 are aberrational.<sup>356</sup>

<sup>347</sup> *Id.*

<sup>348</sup> See *Afiex, et al.*’s May 12, 2014 submission at Exhibit 2.A.

<sup>349</sup> See HVG’s June 9, 2014 response at 3.

<sup>350</sup> See HVG, *et al.*’s May 12, 2014 submission at Exhibit 33.

<sup>351</sup> See *Wood Flooring* at Comment 14.

<sup>352</sup> See HVG’s June 9, 2014 response at 3.

<sup>353</sup> See, *e.g.*, *Carbon* at Comment I.C.A.

<sup>354</sup> See, *e.g.*, *Wood Flooring* at Comment 14.

<sup>355</sup> See *Xanthan Gum* at Comment 16.A.

<sup>356</sup> See, *e.g.*, *TRBs* at Comment 2.

Here, while Afiex, *et al.* have alleged that the data is aberrational, they did not compare the import data for HTS 2835.31 and HTS 3923.21 to any other point of comparison. As Afiex, *et al.* have not provided any record evidence or benchmark price comparisons to show the data is unreliable and aberrational, we find their arguments are speculative.

In its case brief, Afiex, *et al.* argued that the Department should value all other processing inputs and all packing materials based on the *Foreign Trade Statistics of Bangladesh*, and that the record contains reliable Bangladeshi import data published by *Foreign Trade Statistics of Bangladesh*, for all of the processing and packing FOPs.<sup>357</sup> We find that the *Foreign Trade Statistics of Bangladesh* contains data covering PE bags.<sup>358</sup> However, the *Foreign Trade Statistics of Bangladesh* are not contemporaneous to the POR as the data covers July 2009 to June 2010. Moreover, it is the Department's longstanding practice, when valuing FOPs using import statistics, to disregard data from NME countries, unidentified countries, and countries with generally available export subsidies.<sup>359</sup> While in the summary charts Afiex, *et al.* appears to have properly excluded the above-noted exceptions, Afiex, *et al.* did not submit the entirety of the *Foreign Trade Statistics of Bangladesh* publication.<sup>360</sup> We note that on some pages the country of origin of the imports has been hand written on the page, and some pages do not indicate which country the import data represents.<sup>361</sup> Consequently, we do not find the portion of the *Foreign Trade Statistics of Bangladesh* on the record of this review reliable as we cannot be sure that the data that should be included in the calculation has been included, nor can we be sure that the data that should be excluded in the calculation has been excluded. As a result, we have not valued HVG's PE bags using *Foreign Trade Statistics of Bangladesh*.

#### **Comment XI: Surrogate Value for Tape**

*Afiex, et al.:*

- In the *Preliminary Results*, the Department used Indonesian GTA import data under HTS 3919.10 to value tape, which resulted in an average unit value ("AUV") of 20.59 USD/kg.<sup>362</sup>
- The Indonesian GTA import data is aberrational because it contains countries that shipped small quantities at high prices.<sup>363</sup>
- For the final results, tape should be valued using Bangladeshi import data published by the *Foreign Trade Statistics of Bangladesh*.<sup>364</sup> The *Foreign Trade Statistics of Bangladesh* data (July 2009 to June 2010) is more contemporaneous than the 2007 Bangladeshi UNComtrade data.

*HVG, et al.:*

- HVG, *et al.* do not contest that HTS 3919.10 is not the correct number for imports of packing tape into Indonesia, however, POR import data for HTS 3919.10 indicate that AUV's from

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<sup>357</sup> See Afiex, *et al.*'s September 19, 2014 submission at 51-52.

<sup>358</sup> See Afiex, *et al.*'s May 12, 2014 submission at Exhibit 2.A.

<sup>359</sup> See *Chlorinated Isocyanurates*.

<sup>360</sup> See Afiex, *et al.*'s May 12, 2014 submission at Exhibit 2.A.

<sup>361</sup> *Id.*

<sup>362</sup> See Prelim SV Memo at Exhibit 1.

<sup>363</sup> *Id.*

<sup>364</sup> See Afiex, *et al.*'s May 12, 2014 submission at Exhibit 2.A.

other countries range from 0.56USD/kg (Myanmar) to 1,802.67USD/kg (Switzerland).<sup>365</sup> The Department has seen packing tape used by manufacturers in literally hundreds of antidumping duty cases and clearly products other than packing tape were being imported into Indonesia under this tariff provision during the POR.

- POR data from other countries on the surrogate country list (Bolivia, India, Nicaragua and the Philippines) for HTS 3919.10 have AUVs ranging from 3.66 USD/kg (Nicaragua) to 9.21 USD/kg (India).<sup>366</sup> In addition, the record contains a number of price quotes for tape in Indonesia, which range from 1.80 USD/kg to 7.04 USD/kg.<sup>367</sup> The above indicates that the import data used by the Department in the *Preliminary Results* is clearly aberrational and should not be used. For the final results, the Department should value tape using the average value of the Indonesian price quotes.

*Petitioners:*

- Import statistics regularly include low-volume, higher priced imports, which is precisely why the Department applies a weighted average based on quantities. Afiex, *et al.* and HVG, *et al.* have failed to meet the minimum threshold that the Department has established to create a claim to rebut import data, *i.e.*, by providing multiple points of comparison.<sup>368</sup>
- The Department should not use the *Foreign Trade Statistics of Bangladesh* to value any factor of production because it is not contemporaneous (July 2009 to June 2010) and is not from the primary surrogate country Indonesia. Afiex, *et al.*'s argument for using a Bangladeshi source rests on their belief that Bangladesh should be the primary surrogate country; they do not challenge the specificity, accuracy, or reliability of the Indonesian data.
- The prices suggested by HVG were submitted in its rebuttal SV submission, and may not be used to value FOPs.<sup>369</sup> In addition, the price information that HVG provides for tape are three photos of receipts from a supermarket and a retail store and one entry from an online e-commerce website, and as such, do not represent a broad market average.<sup>370</sup> Furthermore, HVG has not established that these proposed prices are tax- and duty-exclusive, and one of the receipts notes that it includes tax.<sup>371</sup> Finally, the prices provided are not within the POR, as they were issued in May 2014.<sup>372</sup>
- Should the Department consider this pricing information, it would still find that Indonesian import data provides the best available information on the record as the Indonesian HTS data represents a broad market average, is specific to the input at issue, are contemporaneous and are from the primary surrogate country. Lastly, HVG admits that it does not contest that the Indonesian HTS number for this FOP is correct.<sup>373</sup>

**Department's Position:** For the final results, we have valued HVG's tape input using Indonesian GTA import data under HTS 3919.10, "Plates, Sheets, Film, Foil, Tape And Other Flat Shapes Of Plastics, Self-adhesive, In Rolls Not Over 20 cm (8 In.) Wide." Both HVG and

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<sup>365</sup> See HVG, *et al.*'s September 19, 2014 submission at Exhibit 3.

<sup>366</sup> See HVG, *et al.*'s May 12, 2014 submission at Exhibit 34.

<sup>367</sup> See HVG, *et al.*'s May 22, 2014 submission at Exhibit 15.

<sup>368</sup> See *Wood Flooring* at Comment 14.

<sup>369</sup> See HVG's May 22, 2014 submission at Exhibit 15.

<sup>370</sup> *Id.*

<sup>371</sup> *Id.*

<sup>372</sup> *Id.*

<sup>373</sup> See HVG's September 19, 2014 submission at 19.

the Petitioners agree that this HTS is specific to the input in question, and GTA data fulfills the Department's other SV selection criteria, *i.e.*, it is publicly-available, represents a broad market average, and is free of taxes and duties.<sup>374</sup>

At the outset, we disagree with the contention by Afiex, *et al.* and HVG, *et al.* that Indonesian HTS 3919.10 contains aberrational data for the current POR. In order to demonstrate that a value is aberrational or unreliable because it significantly deviates from the norm, it is necessary to have multiple points of comparison.<sup>375</sup> In *Xanthan Gum*, the Department stated that “having only two values to compare could result in finding either the higher value aberrational in comparison to the lower value or the lower value aberrational in comparison to the higher value.”<sup>376</sup> HVG, *et al.* have not met this burden by placing POR data from other countries on the surrogate country list which demonstrate that HTS 3919.10 contains aberrational data.<sup>377</sup> A comparison of the countries' data indicates that the Indonesian AUV for the current POR is twice that of other countries on the surrogate country list. However, the difference between the data from other countries on the surrogate country list and Indonesia for this HTS are not so large as to demonstrate a strong flaw with the current POR's data for HTS 3919.10 consistent with aberrational data. With respect to the data parties have pointed to as aberrational, the Swiss data is significantly higher as compared to other data on the record, and have been removed for these final results.

In its case brief Afiex, *et al.* argued that the Department should value all other processing inputs and all packing materials based on the *Foreign Trade Statistics of Bangladesh*, and that the record contains reliable Bangladeshi import data published by *Foreign Trade Statistics of Bangladesh*, for all of the processing and packing FOPs.<sup>378</sup> We find that the *Foreign Trade Statistics of Bangladesh* contains data covering tape.<sup>379</sup> However, the *Foreign Trade Statistics of Bangladesh* are not contemporaneous to the POR as the data covers July 2009 to June 2010. Moreover, it is the Department's longstanding practice, when valuing FOPs using import statistics, to disregard data from NME countries, unidentified countries, and countries with generally available export subsidies.<sup>380</sup> While in the summary charts Afiex appears to have properly excluded the above-noted exceptions, Afiex, *et al.* did not submit the entirety of the *Foreign Trade Statistics of Bangladesh* publication.<sup>381</sup> We note that on some pages the country of origin of the imports has been hand written on the page, and some pages do not indicate which country the import data represents.<sup>382</sup> Consequently, we do not find the portion of the *Foreign Trade Statistics of Bangladesh* on the record of this review reliable as we cannot be sure that the data that should be included in the calculation has been included, nor can we be sure that the data that should be excluded in the calculation has been excluded. As a result, we have not valued HVG's tape using *Foreign Trade Statistics of Bangladesh*.

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<sup>374</sup> See, e.g., *Carbon* at Comment I.C.A.

<sup>375</sup> See, e.g., *Wood Flooring* at Comment 14.

<sup>376</sup> See *Xanthan Gum* at Comment 16.A.

<sup>377</sup> See *Wood Flooring* at Comment 15.

<sup>378</sup> See Afiex, *et al.*'s September 19, 2014 submission at 51-52.

<sup>379</sup> See Afiex, *et al.*'s May 12, 2014 submission at Exhibit 2.A.

<sup>380</sup> See *Chlorinated Isocyanurates*.

<sup>381</sup> See Afiex, *et al.*'s May 12, 2014 submission at Exhibit 2.A.

<sup>382</sup> *Id.*

While HVG argues that the Indonesian price quotes it provided could be used to value tape, these price quotes reflect the experience of single companies and, thus, are not representative of a broad market average. Moreover, the price quotes are not contemporaneous with the POR and contain no information as to whether they reflect prices inclusive of taxes and duties. More importantly, these price quotes were submitted by HVG in its SV rebuttal submission. The Department's regulations do not allow it to use information from rebuttal submissions as SV. Specifically, 19 CFR 351.301(c)(3)(iv) of the Department's regulations states that information submitted to rebut, clarify, or correct factual information, submitted pursuant to 19 CFR 351.408(c), *i.e.*, information to rebut proposed SVs for non-market economies, will not be used to value factors under 19 CFR 351.408(c). Because the price information that HVG proposes to value this FOP was submitted in a rebuttal SV submission, we have not considered their use for the final results.

Regarding the benchmark data from the other countries on the surrogate country list, the only other potential SV sources for tape on the record, it is the Department's preference to value all FOPs utilizing data from the primary surrogate country and to consider alternative sources only when a suitable value from the primary surrogate country does not exist on the record.<sup>383</sup> In this review, the record contains suitable GTA import data for tape from the primary surrogate country, Indonesia.

#### **Comment XII: Surrogate Value for Strap**

*Afiex, et al.:*

- In the *Preliminary Results*, the Department used Indonesian GTA import data under HTS 3920.30 to value strap, which resulted in an AUV of 13.42 USD/kg.<sup>384</sup>
- The Indonesian GTA import data is aberrational because it contains countries that shipped small quantities at high prices.<sup>385</sup>
- For the final results, tape should be valued using Bangladeshi import data published by the *Foreign Trade Statistics of Bangladesh*.<sup>386</sup> The *Foreign Trade Statistics of Bangladesh* data (July 2009 to June 2010) is more contemporaneous than the 2007 Bangladeshi UNComtrade data.

*HVG, et al.:*

- HVG, *et al.* do not contest that this is the correct HTS number for imports of strap into Indonesia, however, POR import data for HTS 3920.30 indicate that AUVs range from 0.86 USD/kg (Turkey) to 42.61 USD/kg (United States).<sup>387</sup>
- POR data from other countries on the surrogate country list (Bolivia, India, Nicaragua and the Philippines), as well as the United States, for HTS 3920.30 show tape AUVs ranging

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<sup>383</sup> See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Fifth New Shipper Review*, 75 FR 38985 (July 7, 2010) ("*Fifth NSR*") and accompanying Issues and Decision Memorandum at Comment 2.B; see also *Furniture from China* at Comment 3.

<sup>384</sup> See Prelim SV Memo at 4 and Exhibit 1.

<sup>385</sup> *Id.*

<sup>386</sup> See Afiex, *et al.*'s May 12, 2014 submission at Exhibit 2.A.

<sup>387</sup> See HVG, *et al.*'s September 19, 2014 submission at Exhibit 4.

from 2.08 USD/kg (the Philippines) to 4.12 USD/kg (United States).<sup>388</sup> In addition, the record contains a number of price quotes for strap in Indonesia, which range from 0.60 USD/kg to 1.02 USD/kg.<sup>389</sup> The above indicates that the import data used by the Department in the *Preliminary Results* is clearly aberrational and should not be used. For the final results, the Department should value strap using the average value of the Indonesian price quotes.

*Petitioners:*

- Import statistics regularly include low-volume, higher priced imports, which is precisely why the Department applies a weighted average based on quantities. *Afiex, et al.* and *HVG, et al.* have failed to meet the minimum threshold that the Department has established to create a claim to rebut import data, *i.e.*, by providing multiple points of comparison.<sup>390</sup>
- The Department should not use the *Foreign Trade Statistics of Bangladesh* to value any factor of production because it is not contemporaneous (July 2009 to June 2010) and is not from the primary surrogate country Indonesia. *Afiex, et al.*'s argument for using a Bangladeshi source rests on their belief that Bangladesh should be the primary surrogate country; they do not challenge the specificity, accuracy, or reliability of the Indonesian data.
- The prices suggested by HVG were submitted in its rebuttal SV submission, and may not be used to value FOPs.<sup>391</sup> The price information that HVG provides for strap are three prices obtained from internet sellers, and as such, do not represent a broad market average.<sup>392</sup> Furthermore, HVG has not established that these proposed prices are tax- and duty-exclusive, and one of the receipts notes that it includes tax.<sup>393</sup> Finally, the prices provided are not within the POR, as they were issued in May 2014.<sup>394</sup>
- Should the Department consider this pricing information, it would still find that Indonesian import data provides the best available information on the record as the Indonesian HTS data represents a broad market average, is specific to the input at issue, are contemporaneous and are from the primary surrogate country. Lastly, HVG admits that it does not contest that the Indonesian HTS number for this FOP is incorrect.<sup>395</sup>

**Department's Position:** For the final results, we have continued to value HVG's strap input using Indonesian GTA import data under HTS 3920.30, "Other plates, sheets, film, foil and strips of plastic, non-cellular and not reinforced, laminated, supported or combined with other materials or Polymers of Styrene."<sup>396</sup> Both HVG and the Petitioners agree that this HTS is specific to the input in question, and GTA data fulfills the Department's other SV selection

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<sup>388</sup> See HVG, *et al.*'s May 12, 2014 submission at Exhibit 34.

<sup>389</sup> See HVG, *et al.*'s May 22, 2014 submission at Exhibit 15.

<sup>390</sup> See *Wood Flooring* at Comment 14.

<sup>391</sup> See HVG's May 22, 2014 submission at Exhibit 15.

<sup>392</sup> *Id.*

<sup>393</sup> *Id.*

<sup>394</sup> *Id.*

<sup>395</sup> See HVG's Case September 19, 2014 submission at 21.

<sup>396</sup> See Memo 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 9, "Ninth Administrative Review Surrogate Values Memo (public version)."

criteria, *i.e.*, it is publicly-available, represents a broad market average, and is free of taxes and duties.<sup>397</sup>

At the outset, we disagree with the contention by Afiex, *et al.* and HVG, *et al.* that during this POR Indonesian HTS 3920.30 contains aberrational data. In order to demonstrate that a value is aberrational or unreliable because it significantly deviates from the norm, it is necessary to have multiple points of comparison.<sup>398</sup> In *Xanthan Gum*, the Department stated that “having only two values to compare could result in finding either the higher value aberrational in comparison to the lower value or the lower value aberrational in comparison to the higher value.”<sup>399</sup> HVG, *et al.* have not met this burden by placing POR data from other countries on the surrogate country list.<sup>400</sup> A comparison of the countries’ data indicates that the Indonesian AUV is three times that of other countries on the surrogate country list during the POR. However, the difference between the data from other countries on the surrogate country list and Indonesia for this HTS are not so large as to demonstrate a strong flaw with the current POR’s data for HTS 3920.30 consistent with aberrational data.

In its case brief, Afiex, *et al.* argued that the Department should value all other processing inputs and all packing materials based on the *Foreign Trade Statistics of Bangladesh*, and that the record contains reliable Bangladeshi import data published by *Foreign Trade Statistics of Bangladesh*, for all of the processing and packing FOPs.<sup>401</sup> We find that the *Foreign Trade Statistics of Bangladesh* contains data covering strap.<sup>402</sup> However, the *Foreign Trade Statistics of Bangladesh* are not contemporaneous to the POR as the data covers July 2009 to June 2010. Moreover, it is the Department’s longstanding practice, when valuing FOPs using import statistics, to disregard data from NME countries, unidentified countries, and countries with generally available export subsidies.<sup>403</sup> While in the summary charts Afiex appears to have properly excluded the above-noted exceptions, Afiex, *et al.* did not submit the entirety of the *Foreign Trade Statistics of Bangladesh* publication.<sup>404</sup> We note that on some pages the country of origin of the imports has been hand written on the page, and some pages do not indicate which country the import data represents.<sup>405</sup> Consequently, we do not find the portion of the *Foreign Trade Statistics of Bangladesh* on the record of this review reliable as we cannot be sure that the data that should be included in the calculation has been included, nor can we be sure that the data that should be excluded in the calculation has been excluded. As a result, we have not valued HVG’s strap using *Foreign Trade Statistics of Bangladesh*.

While HVG argues that the Indonesian price quotes it provided could be used to value strap, these price quotes reflects the experience of single companies and, thus, are not representative of a broad market average. Moreover, the price quotes are not contemporaneous with the POR and contain no information as to whether they reflects prices inclusive of taxes and duties. More

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<sup>397</sup> See, e.g., *Carbon* at Comment I.C.A.

<sup>398</sup> See, e.g., *Wood Flooring* at Comment 14.

<sup>399</sup> See *Xanthan Gum* at Comment 16.A.

<sup>400</sup> See *Wood Flooring* at Comment 15.

<sup>401</sup> See Afiex, *et al.*’s September 19, 2014 submission at 51-52.

<sup>402</sup> See Afiex, *et al.*’s May 12, 2014 submission at Exhibit 2.A.

<sup>403</sup> See *Chlorinated Isocyanurates*.

<sup>404</sup> See Afiex, *et al.*’s May 12, 2014 submission at Exhibit 2.A.

<sup>405</sup> *Id.*

importantly, these price quotes were submitted by HVG in its SV rebuttal submission. The Department's regulations do not allow it to use information from rebuttal submissions as SV. Specifically, 19 CFR 351.301(c)(3)(iv) of the Department's regulations states that information submitted to rebut, clarify, or correct factual information, submitted pursuant to 19 CFR 351.408(c), *i.e.*, information to rebut proposed SVs for non-market economies, will not be used to value factors under 19 CFR 351.408(c). Because the price information that HVG proposes to value this FOP was submitted in a rebuttal SV submission, we have not considered their use for the final results.

Regarding the benchmark data from the other countries on the surrogate country list, the only other potential SV sources for strap on the record, it is the Department's preference to value all FOPs utilizing data from the primary surrogate country and to consider alternative sources only when a suitable value from the primary surrogate country does not exist on the record.<sup>406</sup> In this review, the record contains suitable GTA import data for strap from the primary surrogate country, Indonesia.

### **Comment XIII: Surrogate Value for Electricity**

*Afiex, et al.:*

- In the *Preliminary Results*, the Department used Indonesian data from PT PLN (Persero) ("*Persero*") to value electricity.<sup>407</sup>
- The Department should value electricity using Bangladeshi data published in the *Bangladeshi Statistics Yearbook*.<sup>408</sup>

*Petitioners:*

- *Afiex, et al.*'s argument for using Bangladeshi sources rests on their belief that Bangladesh should be the primary surrogate country; they do not challenge the specificity, accuracy, or reliability of the Indonesian data. As noted above, substantial record evidence supports the Department's choice of Indonesia as the primary surrogate country. Moreover, the Bangladeshi electricity value proposed by *Afiex, et al.* is ten years outside the POR.
- The Department should continue to value electricity using Indonesian data.

**Department's Position:** We continue to find that the data from Persero is the best available information to value electricity. *Afiex, et al.*'s argument for using the *Bangladeshi Statistics Yearbook* rests on their argument that Bangladesh should be the primary surrogate country; they do not challenge the specificity, accuracy, or reliability of the Persero data. Although the Persero data is from February 2011, the *Bangladeshi Statistics Yearbook* is from 2002; therefore, while neither source is contemporaneous with the POR, the Persero data is significantly closer in time to the POR. We find that both data represent broad market averages, as *Bangladeshi Statistics Yearbook* represents country-wide data, and Persero is the sole electricity distributor in Indonesia. We note the Indonesian data is more specific as it represents data for "industry," which includes "cultivation," whereas the Bangladeshi data is for general electricity.<sup>409</sup> We do

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<sup>406</sup> See *Fifth NSR* at Comment 2.B; see also *Furniture from China* at Comment 3.

<sup>407</sup> See Prelim SV Memo at Exhibit 1.

<sup>408</sup> See *Afiex, et al.*'s May 12, 2014 submission at Exhibit 6.

<sup>409</sup> See *Petitioners'* May 12, 2014 submission at Exhibit 19.

not have any information that indicates that the Indonesian and Bangladeshi data are tax- and duty-free. Having weighed the pros and cons of each data source, in the absence of better data, we consider the more specific electricity data from Indonesia to be better than Bangladeshi government statistics which are less contemporaneous, and not specific. Therefore, consistent with the preference stated in our regulations, we continue to value electricity using the data from Persero.<sup>410</sup>

#### **Comment XIV: Surrogate Value for Diesel**

*Afiex, et al.:*

- In the *Preliminary Results*, the Department used Indonesian GTA data, under HTS 2710.19.7200 “Other Diesel Fuel,” to value diesel.<sup>411</sup>
- The Department should value diesel using Bangladeshi data published by the World Bank.<sup>412</sup> Under the *Hebei Metals* rationale, the Department should apply specific domestic price data for diesel from Bangladesh rather than import statistics.

*Petitioners:*

- *Afiex, et al.*’s argument for using Bangladeshi sources rests on their belief that Bangladesh should be the primary surrogate country; they do not challenge the specificity, accuracy, or reliability of the Indonesian data. As noted above, substantial record evidence supports the Department’s choice of Indonesia as the primary surrogate country.
- The Department should continue to value diesel using Indonesian GTA import data under HTS 2710.19.7200, “Other Diesel Fuel.”<sup>413</sup>

**Department’s Position:** We continue to find that the Indonesian GTA import data is the best available information to value diesel. *Afiex, et al.*’s argument for using the World Bank data rests on their argument that Bangladesh should be the primary surrogate country; they do not challenge the specificity, accuracy, or reliability of the GTA data. Both the World Bank data and GTA fulfill the Department’s SV selection criteria, *i.e.*, they are publicly-available, represent broad market averages, and are free of taxes and duties.<sup>414</sup> Moreover, both sources are contemporaneous with the POR and cover diesel fuel, which is sufficiently specific to the diesel oil HVG reported.<sup>415</sup> Having selected Indonesia as the primary surrogate country based on the consistent availability of data meeting the breadth of our SV criteria, using the GTA data from Indonesia is consistent with the Department’s regulatory preference articulated in 19 CFR 351.408(c)(2). Therefore, we continue to value diesel using the Indonesian GTA import data under HTS 2710.19.7200, “Other Diesel Fuel.”<sup>416</sup>

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<sup>410</sup> See 19 CFR 351.408(c)(2); *Clearon* at \*6 (“{T}he court must treat seriously {the Department’s } preference for the use of a single surrogate country.”); *Globe Metallurgical*, 32 CIT 1070, 1076 (2008); see also *Peer Bearing*, 752 F. Supp. 2d 1353, 1373 (CIT 2011).

<sup>411</sup> See Prelim SV Memo at Exhibit 1.

<sup>412</sup> See *Afiex, et al.*’s May 12, 2014 submission at Exhibit 3.

<sup>413</sup> See Prelim SV Memo at Exhibit 1.

<sup>414</sup> See, *e.g.*, *Carbon* at Comment I.C.A.

<sup>415</sup> See, *e.g.*, HVG’s April 22, 2013 submission at 30.

<sup>416</sup> See 19 CFR 351.408(c)(2); *Clearon*, at \*6 (CIT 2013) (“{T}he court must treat seriously {the Department’s } preference for the use of a single surrogate country.”); *Globe Metallurgical*, 32 CIT 1070, 1076 (2008); see also *Peer Bearing*, 752 F. Supp. 2d 1353, 1373 (CIT 2011).

## Comment XV: Surrogate Value for Water

### *Afiex, et al.:*

- In the *Preliminary Results*, the Department valued water using data from Pam Jaya, an Indonesian water utility company, using a rate for tariff IV-B for food factories.<sup>417</sup>
- Record evidence shows that HVG pumps its water for free from a river, and that the only cost incurred in consuming river water is the electricity used to pump the water, which HVG has already reported.<sup>418</sup>
- The record contains a plethora of documents which explain the farming and processing of *pangasius* fish in Bangladesh, none of which indicate that river water is chargeable in Bangladesh. To the contrary, there are several references to river water in the context of discussion of open water body systems, which are evidently available free of cost.<sup>419</sup> As such, river water in Bangladesh is freely available to everyone, including *pangasius* farmers and processors.
- Similarly, record evidence confirms that in Indonesia, “irrigating farmers in the Brantas currently pay no volumetric tariff for water.”<sup>420</sup> This is confirmed by findings from another report which states that in Indonesia “users of large public systems do not pay for irrigation.”<sup>421</sup> Consequently, in Indonesia, by utilizing river water, *pangasius* farmers and processors would not incur any cost in consuming river water.
- In view of these facts, the Department should not value the consumption of river water in the final results. This is consistent with past Department practice and has been upheld by the CIT.<sup>422</sup>

### *Petitioners:*

- The Department should continue to value water using the 2011 rates charged by Pam Jaya, an Indonesian water utility company.<sup>423</sup>
- The Department’s practice is to value all inputs consumed in the production of the merchandise under consideration.<sup>424</sup> As to the issue of whether to value river water, because this is an NME proceeding, it is irrelevant whether HVG actually paid for river water in Vietnam. The fact that Vietnamese companies may consume river water free-of-charge may be the result of government intervention and market distortions that the NME methodology is intended to redress.<sup>425</sup> Rather, the relevant question is whether river water is freely available in the surrogate country. This fact is confirmed by *Taian Ziyang*, where the CIT held that “as a matter of law, ‘{i}f the record establishes that farmers in India - like the Chinese garlic producers in this case - do not pay for irrigation water drawn from nearby rivers or wells on

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<sup>417</sup> See Prelim SV Memo at 5 and Exhibit 1.

<sup>418</sup> See HVG’s February 18, 2014 submission at 2.

<sup>419</sup> See *Afiex, et al.*’s May 12, 2014 submission at Exhibit 18 (page 43).

<sup>420</sup> *Id.* at Exhibit 42.A (page 16).

<sup>421</sup> *Id.* at Exhibit 42.B (pages 2-3).

<sup>422</sup> See, e.g., *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty New Shipper Reviews; 2011-2012*, 78 FR 39708 (July 2, 2013) (“2011-2012 Fish NSRs”) and accompanying Issues and Decision Memorandum at Comment VIII; *Taian Ziyang*, 783 F. Supp. 2d 1292, 1306-07 (CIT 2011).

<sup>423</sup> See Petitioners’ May 12, 2014 submission at Exhibit 17.

<sup>424</sup> See 19 USC 1677b(c)(1), (3).

<sup>425</sup> *Id.*

their land, it is not clear how Commerce here can assign to water a SV greater than zero.”<sup>426</sup> Thus, the Department will not value river water only if the record establishes that producers in the surrogate country did not pay for such river water.

- Although Afiex, *et al.* claim that river water is freely available to users in Bangladesh, they fail to cite any record evidence to support this claim. Afiex, *et al.* have also not cited any record evidence that water is available to *pangasius* farmers or processors in Indonesia, the primary surrogate country, free of charge. Thus, the Department should continue to value river water using Indonesian data.

**Department’s Position:** We continue to find that the data from Pam Jaya is the best available information to value this input. Afiex, *et al.* has not challenged the specificity, accuracy, or reliability of the Pam Jaya data. The Pam Jaya data meets the Department’s SV selection criteria and selecting that source would align with the Department’s preference in 19 CFR 351.408(c)(2) of valuing FOPs within a single surrogate country. Moreover, category “Group IV B” is specific to food factories and, thus, is specific to HVG’s reported water input – “water.”<sup>427</sup> Therefore, we continue to value water using the data from Pam Jaya.

Contrary to Afiex, *et al.*’s suggestion, the Department has not valued river water used to farm *pangasius* fish. It is not the Department’s practice to value water used in ponds in aquaculture farming because this type of cost would be captured as overhead in the surrogate financial ratios.<sup>428</sup> A careful examination of the *2011-2012 Fish NSRs* indicates that, in those reviews, the Department declined to value river water for farming, and not as Afiex, *et al.* suggests, river water consumed in the processing factory.<sup>429</sup> As a result, we find Afiex, *et al.*’s arguments that river water is free to farmers in Bangladesh and Indonesia to be unpersuasive.

Moreover, it is the Department’s practice to value FOPs, even if a respondent obtains those FOPs at no cost.<sup>430</sup> Importantly, while Afiex contends that HVG pumps its water for free, HVG stated that it “both purchases water and obtains water from the river,” does not have water meters, and did not report the water purchased, as it is included in its total water FOP.<sup>431</sup> This can be distinguished from the farming pond water, which is used to produce inputs to subject merchandise, as opposed to here, where the water is used as a FOP directly in the production of subject merchandise. Consequently, we have continued to value HVG’s water input.

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<sup>426</sup> See *Taian Ziyang*, 783 F. Supp. 2d at 1306.

<sup>427</sup> See HVG’s February 18, 2014 submission at 24.

<sup>428</sup> See *Third Administrative Review of Frozen Warmwater Shrimp from the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 46565 (September 10, 2009) and accompanying Issues and Decision Memorandum at Comment 2.B.

<sup>429</sup> See *2011-2012 Fish NSRs*, 78 FR 39708 at Comment III.

<sup>430</sup> See, e.g., *Certain Preserved Mushrooms from the People’s Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review*, 70 FR 54361 (September 14, 2005) (“*Mushrooms 2005*”) and accompanying Issues and Decision Memorandum at Comment 13; *Certain Non-Frozen Apple Juice Concentrate from the People’s Republic of China: Final Results of New Shipper Review*, 75 FR 81564 (December 28, 2010) and accompanying Issues and Decision Memorandum at Comment 1 (where the Department stated that it was required to value the quantities of all raw materials employed in producing subject merchandise, including inputs obtained free of charge, such as water).

<sup>431</sup> See HVG’s February 18, 2014 submission at 24.

## Comment XVI: Surrogate Value for Labor

### *Afiex, et al.:*

- In the *Preliminary Results*, the Department stated that it valued labor using ILOSTAT data for 2010, reported under Chapter 5B, covering “Fishing, operation of fish hatcheries and fish farms; service activities incidental to fishing” (“aquaculture and fishing labor”).<sup>432</sup>
- The Department values labor costs by applying the data reported under Chapter 6A, which covers the total labor costs inclusive of all of the indirect labor costs and incidental benefits. In cases such as Indonesia, where the Chapter 6A data is not reported, the Department’s practice is to apply the next best alternative data reported under Chapter 5B, which covers manufacturing wages only.
- The ILOSTAT data is not in conformity with the CIT’s ruling in *Allied Pacific Food*<sup>433</sup> because it does not reflect the labor input used in “producing the {subject} merchandise.”
- The ILOSTAT data is overly broad because it includes many different industries, and thus, it is not correct to state that the ILO Chapter 5B data is specific to the subject merchandise.
- For the final results, the Department should value labor using a Bangladeshi labor rate. The record contains several sources of reliable, publicly available information, specific to the agricultural or seafood industry, including *pangasius* farming, for valuing labor from Bangladesh: (1) data regarding labor rates for *pangasius* production included in a thesis on *pangasius* production, “An Economic Analysis of Small Scale Commercial Pangus Farming in Some Selected Areas of Mymensingh District” (“Mymensingh *Pangasius* Labor Rate”);<sup>434</sup> (2) references within the FAO Fisheries Technical Paper, “Economics of Technical Aquaculture Practices in Selected Asian Countries” (“FAO *Pangasius* Labor Rate”), regarding the average wage rate for *pangasius* farming;<sup>435</sup> and, (3) an agricultural labor rate from the *Monthly Statistical Bulletin*, Bangladesh Bureau of Statistics (“*Monthly Statistical Bulletin* Labor Rate”).<sup>436</sup> The first two sources provide wage rates that are specific to *pangasius* farming, and thus, satisfy the statutory scheme and the Court’s guidelines discussed above with respect to the selection of SVs.

### *Petitioners:*

- *Afiex, et al.*’s reliance on *Allied Pacific Food* is misplaced because the CIT’s concerns regarded the Department’s regression-based labor methodology, which is not the methodology used to calculate labor in this case.
- While *Afiex, et al.* contend that the ILOSTAT data covers an overly-broad cross section of the fish industry in Indonesia, it nonetheless covers the specific industry being examined, and is thus sufficiently specific. Finally, if the Department is concerned about the specificity of the ILOSTAT data, it could average this data with other ILOSTAT data for 2010, specifically wage data for “Production, processing and preservation of meat, fish, fruit, vegetables, oils and fats” (“food processing labor”).<sup>437</sup> As the description shows, this data is specific to fish processing.

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<sup>432</sup> See Petitioner’s May 12, 2014 submission at Exhibit 20.

<sup>433</sup> See *Allied Pacific Food Co., Ltd. v. United States*, 587 F. Supp 2d 1330, 1357 (CIT 2008) (“*Allied Pacific*”).

<sup>434</sup> See *Afiex, et al.*’s May 12, 2014 submission at Exhibit 15.C (table 6.2).

<sup>435</sup> *Id.* at Exhibit 18 (page 50).

<sup>436</sup> *Id.* at Exhibit 5.B.

<sup>437</sup> See Petitioner’s May 12, 2014 submission at Exhibit 20.

- The proposed Bangladeshi values are far outside the POR, dating from 2005 to 2009.<sup>438</sup>

**Department’s Position:** For the final results, the Department has valued HVG’s labor rate using an average of the 2010 Indonesian ILOSTAT data for aquaculture and fishing labor and 2010 Indonesian ILOSTAT data for food processing labor.<sup>439</sup> We find that averaging these two values represents the best available information for valuing labor, as an integrated producer like HVG engages in both aquaculture and food processing activities.

The Department prefers to value labor solely based on data from the primary surrogate country.<sup>440</sup> In *New Labor Methodology*, the Department explained that industry-specific wage data from the primary surrogate country was the best available information because it is consistent with how the Department values all other FOPs, and it results in the use of a uniform basis for FOP valuation – the use of data from a primary surrogate country.<sup>441</sup>

The Department disagrees with Afiex, *et al.*’s reliance on *Allied Pacific Food* because that CIT decision concerned the Department’s regression-based wage rate methodology, which was conducted under 19 CFR 351.408(c)(3), that the Court of Appeals for the Federal Circuit (“CAFC”) invalidated in *Dorbest IV*.<sup>442</sup> As explained in *Allied Pacific Food*, the CIT found that “the legislative history of the provision confirms the importance Congress attached to use of data on prices or costs from countries satisfying both criteria,” under section 773(c)(4) of the Act, which the regression-based methodology did not fulfill.<sup>443</sup> The CIT, in *Allied Pacific Food*, also found that 19 CFR 351.408(c)(3) paid “no heed to the second criterion of {section 773(c)(4) of the Act} which is investigation-specific, and does not permit the Secretary to determine the best available labor cost information with respect to the particular investigation being investigated.”<sup>444</sup> In *Dorbest IV*, the CAFC supported the reasoning in *Allied Pacific Food* that there should be a “relationship between the valuation of each factor of production, including labor, and the production of the subject merchandise itself,” which the regression-based methodology did not provide.<sup>445</sup> Based on the CAFC’s decision, the Department no longer values labor under the invalidated regression-based methodology, which was the subject of *Allied Pacific Food*, and instead values labor using industry-specific data from the primary surrogate country as articulated in *New Labor Methodology*.<sup>446</sup> The Department notes that the CIT found the current methodology for valuing labor using industry-specific data from the primary surrogate country reasonable because it is consistent with how the Department values all other FOPs.<sup>447</sup>

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<sup>438</sup> See Afiex, *et al.*’s May 12, 2014 submission at Exhibits 5.B, 15.C and 18.

<sup>439</sup> See Petitioner’s May 12, 2014 submission at Exhibit 20.

<sup>440</sup> See *Dorbest*, 604 F.3d 1363 (CAFC 2010); *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing The Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (“*New Labor Methodology*”).

<sup>441</sup> *Id.*

<sup>442</sup> See *Dorbest IV*, 604 F.3d 1363; *Allied Pacific Food*, 587 F. Supp 2d 1330.

<sup>443</sup> See *Allied Pacific Food*, 587 F. Supp. 2d at 1355.

<sup>444</sup> *Id.* at 1358.

<sup>445</sup> See *Dorbest IV*, 604 F.3d at 1372.

<sup>446</sup> See *New Labor Methodology* at 36092.

<sup>447</sup> See *Taian Ziyang Food Company, Ltd. vs. United States*, 918 F. Supp 2d 1345, 1357 (CIT 2013).

Under the current labor methodology, it is the Department's practice to value labor using industry-specific data reported by the ILO under Chapter 6A ("ILO Chapter 6A"), which reflects all costs related to labor (*i.e.*, wages, benefits, housing, training, *etc.*). It is the Department's preference to value labor using ILO Chapter 6A data under the rebuttable presumption that ILO Chapter 6A data better accounts for all direct and indirect labor costs.<sup>448</sup> However, in this review, there is no ILO Chapter 6A data on the record from any of the possible surrogate countries and, thus, the Department must look outside its preferred data source for the best available information for valuing labor.<sup>449</sup>

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

Regarding the *Monthly Statistical Bulletin* Labor Rate from Bangladesh, the Department notes that no parties submitted information contesting that this labor rate is a broad-market average, tax- and duty-exclusive, and publicly available. However, the Department finds that this labor rate is not as specific because it covers agriculture labor. In contrast, the Indonesian ILOSTAT data is specific to aquaculture and food processing activities.<sup>450</sup> Moreover, the *Monthly Statistical Bulletin* Labor Rate is from 2008, and therefore, is not as contemporaneous with the POR as the Indonesian ILOSTAT data, which is from 2010.<sup>451</sup>

Regarding the FAO *Pangasius* Labor Rate from Bangladesh, the Department notes that no parties submitted information contesting that this labor rate is a broad-market average, or tax- and duty-exclusive. However, the Department finds that this labor rate is not as specific as the Indonesian ILOSTAT data in that it does not provide full coverage of the industry because it only reports data for males, and does not report data for female workers in the industry.<sup>452</sup> It has been the Department's practice to calculate a labor rate that covers the total population of the industry, and basing a labor rate only on a sub-part of the industry would undercount the labor rate for the total population of the industry.<sup>453</sup> Additionally, the Department finds that the data represents less of a broad market average because it contains only one months of data, versus ILOSTAT data which is annual data.<sup>454</sup> The Department also finds that the FAO *Pangasius* Labor Rate is not contemporaneous with the POR because the data was collected in 2009.<sup>455</sup> Regarding the Mymensingh *Pangasius* Labor Rate from Bangladesh, the Department finds that this is specific to the subject merchandise, as it covers the subject *pangasius* species.<sup>456</sup> However, the Department finds that there is no information on the record demonstrating that the

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<sup>448</sup> See *New Labor Methodology*, 76 FR at 36093.

<sup>449</sup> See *2011-2012 Fish NSRs* at Comment III.

<sup>450</sup> See Afiex, *et al.*'s May 12, 2014 submission at Exhibit 5.B.

<sup>451</sup> *Id.*

<sup>452</sup> See Afiex, *et al.*'s May 12, 2014 submission at Exhibit 18 (page 50).

<sup>453</sup> See *Antidumping Methodologies; Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; Request for Comments*, 71 FR 61716, 61721 (October 19, 2006).

<sup>454</sup> See Afiex, *et al.*'s May 12, 2014 submission at Exhibit 18 (page 50).

<sup>455</sup> *Id.*

<sup>456</sup> See Afiex, *et al.*'s May 12, 2014 submission at Exhibit 15.C (table 6.2).

data source is publicly available. Specifically, while the data source appears to be a published thesis, there is no information on the record regarding how Afiex, *et al.* obtained this thesis or whether it is available to the public.<sup>457</sup> Based on this lack of information, the Department cannot determine conclusively that the Mymensingh *Pangasius* Labor Rate is publicly available. Further, the Department finds that the data is from only one district, Mymensingh, in Bangladesh, a country that contains numerous districts.<sup>458</sup> Although Mymensingh is an important *pangasius* producing region in Bangladesh, the Department does not have a preference for regional data.<sup>459</sup> Therefore, the Department finds the Mymensingh *Pangasius* Labor Rate is less of a broad market average, unlike the country-wide ILOSTAT data. The Department also finds that the Mymensingh *Pangasius* Labor Rate does not provide enough information to determine whether the data is tax- and duty-exclusive.<sup>460</sup> The Department also finds that the Mymensingh *Pangasius* Labor Rate is from 2008, which is further away in time from the POR than the ILOSTAT data.

## Comment XVII: Movement Expenses

### A. Surrogate Value for Truck Freight

*Afiex, et al.*:

- In the *Preliminary Results*, the Department based the SV for HVG's inland trucking expense on the World Bank's *Doing Business 2014: Indonesia* ("*Doing Business Indonesia*").<sup>461</sup>
- The Department should value truck freight using Bangladeshi data published in the *Bangladeshi Statistics Yearbook*.<sup>462</sup>

*HVG, et al.*:

- *Doing Business Indonesia* is not specific to the particular expense at issue. Specifically, the *Doing Business Indonesia* study states that it assumes that the traded goods covered are "one of the economy's leading export or import products."<sup>463</sup> This assumption not warranted with respect to HVG's key inputs such as *pangasius* fish and *pangasius* feed. For example, Indonesia is simply not a major import or export country of *pangasius* fish, as evident from the fact that import statistics were not considered in the *Preliminary Results* to determine which countries were significant producers of comparable merchandise. In addition, as the Department knows, *pangasius* feed is not imported into Indonesia, and it is inconceivable to be a major export product of Indonesia.

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<sup>457</sup> *Id.*

<sup>458</sup> See, e.g., *Ninth AR* at Comment 1.C.

<sup>459</sup> See *Wuhan Bee Healthy Co., Ltd. v. United States*, 29 CIT 1275, 1277-78 (CIT 2005).

<sup>460</sup> See Afiex, *et al.*'s May 12, 2014 submission at Exhibit 15.C.

<sup>461</sup> See Prelim SV Memo at 7.

<sup>462</sup> See Afiex, *et al.*'s May 12, 2014 submission at Exhibit 8.

<sup>463</sup> See HVG's May 12, 2014 submission at Exhibit 38.B (*Doing Business* at 75).

- Therefore, for the final results the Department should instead use the *pangasius* specific price quote issued by an Indonesian transport company, PT Jayantara Setia Sejahtera (“Jayantara”), which satisfies all of the Department’s SV requirements.<sup>464</sup>
- The Department uses price quotes as surrogate source only when it is the most appropriate on the record. This practice is best illustrated by cases where no other value is available that is specific to the type of input or expense being valued.<sup>465</sup>

*Petitioners:*

- The Department should continue to value truck freight using *Doing Business Indonesia* because it is from the surrogate country and is contemporaneous, unlike the *Bangladeshi Statistics Yearbook*.
- The Department prefers to use *Doing Business Indonesia* as opposed to price quotes to value truck freight, even if multiple individual price quotes are available<sup>466</sup>, because it provides a broad market average, and is reliable.
- Information pertaining to the cost of moving leading, or common, products provides a broad average, because many transactions take place, and will not pertain to the movement of unrepresentative products, which may include premiums. As to the inclusion of *pangasius* or *pangasius*-related transactions, the record reflects that frozen fish fillets accounted for over \$214 million of Indonesia’s exports during the POR.<sup>467</sup> Furthermore, the Department has recognized that Indonesia is a significant producer and exporter of subject merchandise (*i.e.*, frozen fish fillets).<sup>468</sup> Thus, even using HVG’s approach, *Doing Business Indonesia* is an appropriate source to value transportation costs.
- The Jayantara price quote is not a suitable value. Although a *pangasius* farmer/processor obtained the price quote, his request for a price quote did not reference live *pangasius*, *pangasius* fillets, or *pangasius* feed.<sup>469</sup> Likewise, nothing in the invoice indicates that the transportation services are priced specifically for live *pangasius*, *pangasius* fillets, or *pangasius* feed.<sup>470</sup> The invoice’s terms simply call for the transportation of a 20-foot

<sup>464</sup> As explained in the accompanying affidavit, the Jayantara price quote was issued in response to a request from CV. Karunia Mitra Makmur (“Karunia”), an Indonesian farmer and processor of *pangasius* fish. The Jayantara price quote is specific to the main inputs at issue at the species level –*pangasius* fish; the circumstances surrounding its issuance have been fully explained in an affidavit signed by the owner of Karunia; the affidavit is under Karunia’s official letterhead and bears the company’s stamp; the correspondence between Karunia and the transport company shows the price quote was issued in the normal course of business; and it was issued less than three months after, and is therefore very close, to the POR. See HVG’s May 12, 2014 submission at Exhibit 38.A.

<sup>465</sup> See, *e.g.*, *Saccharin from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 68 FR 27530 (May 20, 2003) (“*Saccharin*”) and accompanying Issues and Decision Memorandum at Comment 1 (where the Department used price quotes to value activated carbon because the other source on the record did not reflect prices for the type of activated carbon used by the respondents, stating that price quotes will be used only when no other appropriate source is available).

<sup>466</sup> See *Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People’s Republic of China*, 76 FR 15297 (March 21, 2011) (“*Ironing Tables*”) and accompanying Issues and Decision Memorandum at 19 (“Based on the foregoing, we determine that the World Bank study constitutes a more broad based survey of costs in the Indian market and thus a more credible and representative source than the data provided by Foshan Shunde that are limited to select Indian companies and ports. Also, as noted in *Stable Fiber*, the cost data set forth in the World Bank is official in nature, and represents a statistical analysis from an international organization”).

<sup>467</sup> See Petitioners’ May 12, 2014 submission at Exhibit 7.

<sup>468</sup> See Preliminary Results Decision Memo at 16.

<sup>469</sup> See HVG’s May 12, 2014 submission at Exhibit 38.A.

<sup>470</sup> *Id.*

container containing 10 metric tons, the same terms that *Doing Business Indonesia* uses. Given the choice between *Doing Business Indonesia*, which provides a contemporaneous broad market average, and a single invoice, which is not a broad market average and no more specific, the Department must choose the former to value truck freight.

**Department’s Position:** Regarding valuing truck freight, we continue to find that *Doing Business Indonesia* is the best available information.<sup>471</sup> During the review, HVG reported using both truck and boat freight to transport its inputs.<sup>472</sup> Next, as noted above, *Doing Business Indonesia* is contemporaneous with the POR, whereas the *Bangladeshi Statistics Yearbook* is from 2005 and, thus, is not contemporaneous with the POR. Moreover, the *Bangladeshi Statistics Yearbook* is a general freight rate, and is no more specific to HVG’s reported freight than *Doing Business Indonesia*, which covers inland freight.

Regarding the Jayantara price quote, we note that this quote is from a secondary source, not the company itself.<sup>473</sup> The Department prefers data from primary sources, if available.<sup>474</sup> Moreover, the Department does not prefer data representative of a single company’s experience when a more broad market average is available on the record, as it is in this case.<sup>475</sup> In contrast, *Doing Business Indonesia* is a broad-based survey of costs in the Indonesian market, and thus, constitutes a more representative source than the data that are limited to the experiences of individual companies.<sup>476</sup> We note that the cost data have an official nature, in that they represent statistical analysis by the World Bank, an international organization.<sup>477</sup> In past cases, we found international organization publications to be reliable and credible sources of information.<sup>478</sup> While HVG has argued that *Doing Business Indonesia* is not specific to the freight it incurred in purchasing its FOPs and the freight it incurred when exporting its *pangasius* fillets, we note that the price quote proposed by HVG would only be specific to its exportation of *pangasius* fillets and not the inland freight incurred by HVG when it consumed various FOPs. Thus, we find the Indonesian price quote to be no more specific than *Doing Business Indonesia*. When the Department is left with a choice between two imperfect data sources, the Department has the discretion to determine which data constitutes the best available information.<sup>479</sup>

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<sup>471</sup> See Memo 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 2.

<sup>472</sup> See HVG’s February 18, 2014 submission at 18.

<sup>473</sup> See HVG’s May 12, 2014 submission at Exhibit 38.A.

<sup>474</sup> See *Honey from the People’s Republic of China: Final Results and Rescission of Antidumping Duty New Shipper Reviews*, 76 FR 4289 (January 25, 2011) (“Honey”) and accompanying Issues and Decision Memorandum at Comment 3.

<sup>475</sup> See, e.g., *Brake Rotors* at Comment 3.

<sup>476</sup> See, e.g., *Certain Polyester Staple Fiber from the People’s Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review*, 76 FR 2886 (January 18, 2011) (“PSF”) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>477</sup> *Id.*

<sup>478</sup> *Id.*

<sup>479</sup> *Lifestyle Enterprise, Inc. v. United States*, 751 F.3d 1371, 1378 (CAFC 2014).

## B. Surrogate Value for Brokerage and Handling

*Afiex, et al.:*

- In the *Preliminary Results*, the Department based the SV for HVG's brokerage and handling ("B&H") expense on *Doing Business Indonesia*.<sup>480</sup>
- The Department should value B&H using *Doing Business 2014: Bangladesh* ("*Doing Business Bangladesh*"), and the container weight published by Maersk.<sup>481</sup>

*HVG, et al.:*

- The *Doing Business* studies are not specific to the particular expense at issue because they assume that the traded goods covered are "one of the economy's leading export or import products."<sup>482</sup> This assumption is not warranted as HVG is an exporter of frozen *pangasius* fillets, which is not one of the main exports of Indonesia. It is undisputable that *pangasius* fillets are not among the key exports of Indonesia. This may be best proven by the fact that the Department always has to broaden the scope of comparable merchandise to frozen fish fillets, inclusive of all species, in order to find Indonesia as a significant producer.
- For the final results the Department should instead use the *pangasius* specific price quote issued by an Indonesian transport company, Jayantara, which satisfies all of the Department's SV requirements.<sup>483</sup>
- The Department uses price quotes as surrogate source only when it is the most appropriate on the record. This practice is best illustrated by cases where no other value is available that is specific to the type of input or expense being valued.<sup>484</sup>

*Petitioners:*

- The Department should continue to value brokerage and handling using *Doing Business Indonesia* because it is from the surrogate country, unlike *Doing Business Bangladesh*.
- The Department prefers to use *Doing Business* as opposed to price quotes to value B&H, even if multiple individual price quotes are available<sup>485</sup>, because it provides broad market averages and is reliable.

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<sup>480</sup> See Prelim SV Memo at 7.

<sup>481</sup> See *Afiex, et al.*'s May 12, 2014 submission at Exhibits 9.A & B.

<sup>482</sup> See HVG's May 12, 2014 submission at Exhibit 38.B (*Doing Business* at 75).

<sup>483</sup> As explained in the accompanying affidavit, the Jayantara price quote was issued in response to a request from Karunia, an Indonesian farmer and processor of *pangasius* fish. The Jayantara price quote is specific to the main inputs at issue at the species level –*pangasius* fish; the circumstances surrounding its issuance have been fully explained in an affidavit signed by the owner of Karunia; the affidavit is under Karunia's official letterhead and bears the company's stamp; the correspondence between Karunia and the transport company shows the price quote was issued in the normal course of business; and it was issued less than three months after, and is therefore very close, to the POR. See HVG's May 12, 2014 submission at Exhibit 38.A.

<sup>484</sup> See *Saccharin* at Comment 1 (where the Department used price quotes to value activated carbon because the other source on the record did not reflect prices for the type of activated carbon used by the respondents, stating that price quotes will be used only when no other appropriate source is available).

<sup>485</sup> See *Ironing Tables*, 76 FR 15297 (March 21, 2011) and accompanying Issues and Decision Memorandum at 19 ("Based on the foregoing, we determine that the World Bank study constitutes a more broad based survey of costs in the Indian market and thus a more credible and representative source than the data provided by Foshan Shunde that are limited to select Indian companies and ports. Also, as noted in *Stable Fiber*, the cost data set forth in the World Bank is official in nature, and represents a statistical analysis from an international organization.").

- Information pertaining to the cost of moving products provides a broad average, because many transactions take place, and will not pertain to the movement of unrepresentative products, which may include premiums. As to the inclusion of *pangasius* or *pangasius*-related transactions, the record reflects that frozen fish fillets in fact accounted for over 214 million USD of Indonesia’s exports during the POR.<sup>486</sup> Furthermore, the Department has recognized that Indonesia is a significant producer and exporter of subject merchandise (*i.e.*, frozen fish fillets).<sup>487</sup> Thus, even using HVG’s approach, *Doing Business Indonesia* is an appropriate source to value B&H.
- The Jayantara price quote provided by HVG to B&H is not a suitable value. Although a *pangasius* farmer/processor obtained the price quote, his request for a price quote did not reference live *pangasius*, *pangasius* fillets, or *pangasius* feed.<sup>488</sup> Likewise, nothing in the invoice indicates that the brokerage and handling services are priced specifically for live *pangasius*, *pangasius* fillets, or *pangasius* feed.<sup>489</sup> The invoice’s terms simply call for the transportation of a 20-foot container containing 10mt, the same terms that all *Doing Business* studies use. Given the choice between *Doing Business Indonesia*, which provides a contemporaneous broad market average, and a single invoice, which is not a broad market average and no more specific, the Department must choose the former to value B&H expenses.

**Department’s Position:** We continue to find that *Doing Business Indonesia* is the best available information to value this movement expense. During the review, HVG reported incurring “brokering {sic} and handling charges” for sales of fish fillets to the United States during the POR.<sup>490</sup> *Doing Business Indonesia* is a publicly available, broad-based survey of costs in the Indonesian market and, thus, constitutes a source more representative of a broad market average than does the data from individual companies.<sup>491</sup> We note that the cost data have an official nature, in that they represent statistical analysis by the World Bank, an international organization.<sup>492</sup> In past cases, we found international organization publications to be reliable and credible sources of information.<sup>493</sup> Moreover, similar to our findings on *Doing Business* in other proceedings, we find that *Doing Business Indonesia* satisfies the remaining SV criteria in that it is contemporaneous with the POR and free of taxes and duties.<sup>494</sup> We note that *Doing Business Indonesia* lists all charges associated with exporting a product overseas – document preparation, customs clearance, and port and terminal handling – charges that would be included in brokerage and handling.<sup>495</sup> As a result we find *Doing Business Indonesia* to be specific to HVG’s brokerage and handling expenses.

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<sup>486</sup> See Petitioners May 12, 2014 submission at Exhibit 7.

<sup>487</sup> See Preliminary Results Decision Memo at 16.

<sup>488</sup> See HVG’s May 12, 2014 submission at Exhibit 38.A.

<sup>489</sup> *Id.*

<sup>490</sup> See HVG’s February 13, 2014 submission at 20.

<sup>491</sup> See, *e.g.*, *PSF* at Comment 1.

<sup>492</sup> *Id.*

<sup>493</sup> *Id.*

<sup>494</sup> See *Frontseating Service Valves* at Comment 11.

<sup>495</sup> See HVG’s May 12, 2014 submission at Exhibit 38.B (*Doing Business*).

Regarding *Doing Business Bangladesh*, it is the Department's practice, consistent with 19 CFR 351.408(c)(2), to value the FOPs in a single surrogate country, when possible.<sup>496</sup> There are important economic reasons for this regulatory preference. It is most accurate to rely on factor costs from a single surrogate country because sourcing data from a single country better reflects the trade-off between labor costs and other factors' costs, including capital, based on their relative prices. The primary surrogate methodology enables the Department to capture the complete interrelationship of factor costs that a producer in the primary surrogate country faces. The Department only resorts to other surrogate country information if the record does not contain a value for a factor from the primary surrogate, or if a primary surrogate country value on the record is determined, based on record evidence, to be aberrational or unreliable.<sup>497</sup> The CIT has upheld the Department's preference for deriving surrogate data from a single country.<sup>498</sup> As the court pointed out in *Peer Bearing*, "the preference for use of data from a single country could support a choice of data as the best available information where the other available data upon a fair comparison, are otherwise seen to be fairly equal."<sup>499</sup> As a consequence, because the record contains *Doing Business Indonesia* and the *Doing Business* data sets from Indonesia and Bangladesh otherwise seem to be equal, we have no need to depart the surrogate country and value brokerage and handling using *Doing Business Bangladesh*.<sup>500</sup>

Regarding the Jayantara price quote, we note that this quote is from a secondary source, and not the company itself. Although this price quote is arguably more specific than either *Doing Business* study, it does not meet any of the Department's other SV criteria. The Department prefers data from primary sources, if available.<sup>501</sup> Moreover, the Department does not prefer data representative of single company's experience, when a more broad market average is available on the record, as it is in this case.<sup>502</sup>

Regarding Afiex *et al.*'s proposed adjustment to the container weight, we disagree. We note that we faced this issue in *Frontseating Service Valves*, where a respondent argued that the Department should divide the *Doing Business* truck freight rate by the weight of a larger container than the 20 foot container used in the *Doing Business* study.<sup>503</sup> In that case we stated that it is distortive to increase the per-unit value of B&H based the relative size of the cargo containers, because in that case, and as in this case, there is no record evidence to suggest that the per-unit B&H charges increase proportionally to the size of the container.<sup>504</sup> In order to standardize costs across countries, *Doing Business* states that charges listed in the study are based on a 10,000 kg, weight which is the weight the Department used in the *Preliminary*

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<sup>496</sup> See, e.g., *China Shrimp* at Comment 10.

<sup>497</sup> See, e.g., *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 74 FR 6838 (April 13, 2009) and accompanying Issues and Decision Memorandum at Comment 5.D.

<sup>498</sup> See, e.g., *Clearon Corporation and Occidental Chemical Corp. v. United States*, Slip Op. 13-22 (CIT 2013) at 13.

<sup>499</sup> See *Peer Bearing Co-Chongshan v. United States*, 804 F.Supp 2d 1338, 1353 (CIT 2011) ("*Peer Bearing*").

<sup>500</sup> See 19 CFR 351.408(c)(2); *Clearon*, at \*6 ("[T]he court must treat seriously {the Department's } preference for the use of a single surrogate country."); *Globe Metallurgical*, 32 CIT 1070, 1076 (2008); see also *Peer Bearing*, 752 F. Supp. 2d 1353, 1373 (CIT 2011).

<sup>501</sup> See *Honey* at Comment 3.

<sup>502</sup> See, e.g., *Brake Rotors* at Comment 3.

<sup>503</sup> See *Frontseating Service Valves* at Comment 11.

<sup>504</sup> *Id.*

*Results*, and in other cases.<sup>505</sup> We note that it is the Department's practice to use the standard weight employed by *Doing Business*.<sup>506</sup> Moreover, in the past we stated that we do not adjust the per-unit B&H charges to account for the size of the container.<sup>507</sup> While Afiex proposes changing the denominator in the B&H calculation, merely changing the denominator would be inaccurate because such an adjustment does not consider the potential effects such an adjustment would have on the numerator of the ratio. As we have no information on the record to justify Afiex *et al.*'s proposed adjustment, we made no changes to this part of the B&H freight calculation.

### C. Surrogate Value for International Freight

*HVG, et al.*:

- In the *Preliminary Results*, the Department based the SV for international freight on data obtained from the *Descartes Carrier Rate Retrieval Database* ("*Descartes*").<sup>508</sup>
- The Department erroneously included certain rates from *Descartes* that contained certain expenses, *i.e.*, destination delivery charges and chassis charges, which are accounted for in the B&H calculation, *i.e.*, terminal charges. To avoid double counting these expenses, for the final results, the Department should not include any international freight rates which contain destination delivery charges or chassis charges.

*Petitioners*:

- HVG's argument is based on information not in the record. Specifically, HVG points to seven quotes that include DDC charges, four of which also include a chassis charge, to be excluded from the international freight calculation, however, to make an argument for exclusion, HVG point to two sources that are not on the record: (1) the U.S. Department of Transportation Glossary of Shipping Terms and (2) the website [pngl.com](http://pngl.com) to obtain definitions for DDC ("Destination Delivery Charge") and chassis charge.<sup>509</sup> The Department cannot rely on this new information as the Petitioners have not had the opportunity to rebut it.
- Even if this new information is used by the Department, *Doing Business Indonesia* does not indicate that either the DDC charge or chassis charge is included in the "documents preparation," "customs clearance and technical control," or "ports and terminal handling" charges. Therefore, the Department should continue to include quotes containing these charges in its international freight calculation.

**Department's Position:** We agree with HVG. In the *Preliminary Results*, the Department stated that it "excluded from any individual rate calculation charges that are covered by the brokerage and handling expenses that HVG incurred, which are valued by a SV."<sup>510</sup> There is no record evidence which indicates that destination delivery charges and chassis charges are a part

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<sup>505</sup> See *Vietnam Shrimp 11-12* at Comment 5; see also Memo 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 2.

<sup>506</sup> *Id.*

<sup>507</sup> See *Frontseating Service Valves* at Comment 11.

<sup>508</sup> See Prelim SV Memo at Exhibit 6.A.

<sup>509</sup> See Preliminary SV Memo Exhibit 6; see also HVG's September 19, 2014 submission at 43, notes 55 and 56.

<sup>510</sup> See Prelim SV Memo at 8.

of terminal charges, *per se*; however, *Doing Business Indonesia* states that port-related charges are included in the costs. As these charges are included in one of the costs listed in *Doing Business Indonesia*, and in an effort to avoid double counting, we have excluded international freight rates which contain destination delivery charges or chassis charges for the final results.

#### D. Surrogate Value for Boat Freight

*Afiex, et al.*:

- The Department should value boat freight using Bangladeshi data published in the *Bangladeshi Statistics Yearbook*.<sup>511</sup>

*Petitioners*:

- The Department should continue to boat freight using rates published by the Indonesian freight forwarder PT. Mantap Abiah Abadi (“PT Mantap”) as this data is from the primary surrogate country.

**Department’s Position:** Regarding domestic boat freight, we continue to find the PT Mantap prices to be the best available information to value boat freight.<sup>512</sup> During the review, HVG reported boat freight to transport its inputs.<sup>513</sup> Although a price quote, the PT Mantap prices are published by the company on the internet, making it publicly available, and is the only boat freight SV on the record for Indonesia.<sup>514</sup> The PT Mantap prices are domestic Indonesian boat freight prices, and therefore are specific to the boat freight incurred by HVG.<sup>515</sup> Moreover, it is contemporaneous with the POR, whereas the *Bangladeshi Statistics Yearbook* is from 2005.<sup>516</sup> The record is silent as to whether the PT Mantap prices are tax and duty free. Nevertheless, selecting this source to value HVG’s boat freight ensures that the Department follows its regulatory preference articulated in 19 CFR 351.408(c)(2).

The *Bangladeshi Statistics Yearbook*, although a government publication, represents the experience of one company, as does the Indonesian data. Although the *Bangladeshi Statistics Yearbook* data is free of taxes and duties, the record does not indicate that the Bangladeshi data, which is a price quote for boat freight from the Bangladesh Inland Water Transport Corporation, is more specific to HVG’s reported boat freight than the Indonesian source.

Having weighed the pros and cons of each data source, in the absence of better data, we consider a price quote for boat freight from the primary surrogate country to be better than the price quote for boat freight from Bangladesh, which is not the primary surrogate country, not contemporaneous, and not more specific than the Indonesian price quote. Therefore, consistent

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<sup>511</sup> See *Afiex, et al.*’s May 12, 2014 submission at Exhibit 8.

<sup>512</sup> See *Petitioners*’ May 12, 2014 submission at Exhibit 22.B.

<sup>513</sup> See HVG’s February 18, 2014 submission at 18.

<sup>514</sup> *Id.*

<sup>515</sup> *Id.*

<sup>516</sup> See *Afiex, et al.*’s May 12, 2014 submission at Exhibit 8.

with the preference stated in our regulations, we continue to value boat freight using the data from PT. Mantap Abiah Abadi.<sup>517</sup>

### **Comment XVIII: Surrogate Financial Ratios**

*Afiex, et al.:*

- For the final results, surrogate financial ratios should be based on the financial data of the Bangladeshi company Apex Foods Ltd. (“Apex”), an integrated producer of processed fish products, whose financial statements have been used to calculate surrogate ratios in many prior segments of this case.<sup>518</sup>

*Petitioners:*

- Record evidence indicates that Apex only produces shrimp products.<sup>519</sup> The production of shrimp entails a fundamentally different production process than the production process of fish.<sup>520</sup> In the surrogate country selection process the Department did not designate frozen shrimp, or other frozen seafood, as comparable merchandise. Instead the Department, correctly, defined the comparable merchandise as frozen fish fillets.
- For the final results, the Department should continue to rely on the financial statements of Dharma Samumera Fishing Industries (“DSFI”), which represents the overhead costs, SG&A expenses, and profit of an Indonesian finfish producer in Indonesia.<sup>521</sup> Alternatively, should the Department wish to rely on multiple financial statements, the record contains contemporaneous and highly reliable financial statements of several Philippine finfish producers.<sup>522</sup>

**Department’s Position:** When selecting financial statements for purposes of calculating financial ratios, the Department’s policy is to use data from ME surrogate companies based on the “specificity, contemporaneity, and quality of the data.”<sup>523</sup> In accordance with 19 CFR 351.408(c)(4), the Department normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country to value manufacturing overhead, general expenses, and profit.<sup>524</sup> Although the regulations do not define what constitutes “comparable merchandise,” it is the Department’s practice to, where appropriate, apply a three-prong test that considers: (a) physical characteristics; (b) end uses; and

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<sup>517</sup> See 19 CFR 351.408(c)(2); see also *Clearon*, at \*6 (“{T}he court must treat seriously {the Department’s } preference for the use of a single surrogate country.”); *Globe Metallurgical*, 32 CIT 1070, 1076 (2008); see also *Peer Bearing*, 752 F. Supp. 2d 1353, 1373 (CIT 2011).

<sup>518</sup> See *Afiex et al.*’s May 12, 2014 submission at Exhibit 10.

<sup>519</sup> *Id.*

<sup>520</sup> The Petitioners have provided proprietary analysis which indicates that the production of frozen shrimp and frozen fish fillets consume very different amounts of labor. See Petitioners’ October 2, 2014 submission at 79.

<sup>521</sup> See Petitioners’ May 12, 2014 submission at Exhibit 23

<sup>522</sup> *Id.* at Exhibits 40.A-E.

<sup>523</sup> See *CLPP* at Comment 1.

<sup>524</sup> See *Certain Frozen Warmwater Shrimp from the People’s Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 52049 (September 12, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

(c) production process.<sup>525</sup> Additionally, for purposes of selecting surrogate producers, the Department examines how similar a proposed surrogate producer's production experience is to the NME producer's production experience.<sup>526</sup> However, the Department is not required to "duplicate the exact production experience of an NME producer", nor must it undertake "an item-by-item analysis in calculating factory overhead."<sup>527</sup>

For these final results, the Department finds that the publicly available financial statements of DSFI, which the Department used to value financial ratios in recent past reviews, continues to represent the best available information with which to value surrogate financial ratios.<sup>528</sup> Specifically, DSFI's 2012 financial statements cover fiscal year 2012, thus it is contemporaneous with the POR.<sup>529</sup> Moreover, DSFI's statements are publicly available and certified by independent auditors to conform to Indonesian accounting standards.<sup>530</sup> DSFI also is based in Indonesia and is a producer of comparable merchandise, *i.e.*, frozen fish fillets, which is the same merchandise that the Department used to determine whether certain ME countries are significant producers of comparable merchandise in Comment I.B.<sup>531</sup>

Regarding the Apex financial statement, we find that this company is not primarily a producer of frozen fish fillets, the comparable merchandise. In fact, Apex produces only frozen shrimp products.<sup>532</sup> We acknowledge that in past reviews of this order we used the surrogate financial information of shrimp producers, as they represented the best available information on those records. However, in this review, we have a much closer match in a frozen fish fillet producer, DSFI, from the primary surrogate country. Consequently, because Apex's core business does not appear to be based on the production of frozen fish fillets, the Department finds that these financial statements are not the best available data on the record from which to calculate surrogate financial ratios.<sup>533</sup>

### **Comment XIX: Surrogate Value for *Pangasius* By-Products**

*Afiex, et al.:*

- In the *Preliminary Results*, the Department valued fish waste, fish stomach, fish head, fish fat, fish skin and fish belly/meat with 2010 and 2013 price quotes from a Philippine

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<sup>525</sup> See, *e.g.*, *Certain Woven Electric Blankets from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 38459 (July 2, 2010) and accompanying Issues and Decision Memorandum at Comment 2.

<sup>526</sup> See *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010) and accompanying Issues and Decision Memorandum at Comment 13.

<sup>527</sup> See *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (CAFC 1999); see also *Magnesium Corp. of Am. v. United States*, 166 F.3d 1364, 1372 (CAFC 1999).

<sup>528</sup> See, *e.g.*, *Ninth AR* at Comment VII.

<sup>529</sup> See Petitioners' May 24, 2013 submission at Exhibit 23.A.

<sup>530</sup> *Id.*

<sup>531</sup> *Id.*

<sup>532</sup> See Afiex, *et al.*'s May 12, 2014 submission at Exhibit 10 (Apex financial statement at 14).

<sup>533</sup> See *Vietnam Shrimp 11-12* at Comment 2 (where the Department found that, because a proposed surrogate company's core business was not based on the production of comparable merchandise, its financial statements were not the best available data on the record from which to calculate surrogate financial ratios).

*pangasius* producer, Vitarich Corporation (“Vitarich”), and a 2013 price quote from a Philippine *pangasius* producer, Blue Bay Aquaculture Inc. (“Blue Bay”).<sup>534</sup>

- The Vitarich rice quotes are unreliable and may not be authentic because it is not signed and does not bear the name of the individual who issued the quote.<sup>535</sup> Further, although the quotes are supported by an affidavit from Petitioners’ local counsel, the defects in a primary evidentiary document cannot be cured by a third party declaration in a situation where, as here, the secondary document in support, *i.e.*, a sworn statement from the Petitioners’ attorney is an affidavit by an interested party who is not insulated from conflict of interests.<sup>536</sup> The Department cannot focus solely on the specificity of the Asian Seafood price quotes since they have failed the critical test of reliability.
- The Vitarich price quotes were issued by Philippine companies, however, the Philippines do not even satisfy the statutory prerequisite of significant production of comparable merchandise.
- The Department rejected the Vitarich price quote in prior reviews because it was unreliable.<sup>537</sup> However, in the *Eighth AR*, despite the identical documents being submitted in the prior two reviews, the Department used the Vitarich price quote to value various by-products.<sup>538</sup>
- For the final results the Department should value by-products using a price quote from Asian Seafood Ltd. (“Asian Seafood”).<sup>539</sup> Unlike the Vitarich quotes, the Asian Seafood quote is signed by the Managing Director of the company.<sup>540</sup> Also, the price quote is specific to *pangasius* fish waste, belly/meat and skin on an ex-factory basis, and as such the price quote is reliable and specific to HVG’s by-products - fish waste, fish skin and fish belly.<sup>541</sup>
- An affidavit from Petitioners, containing a letter from the Managing Director of Asian Seafood, explains that *pangasius* “waste material is generated at Asian Seafood’s Khulna plant” and that the “bulk waste is normally collected by a local contractor.”<sup>542</sup> This statement confirms the authenticity of the price quote in question as there is no doubt that Asian Seafood is engaged in the processing of *pangasius* fish, and that it generates *pangasius* fish waste, belly/meat and skin in the normal course of business. It also shows that the price quote was issued by the company in the course of a potential commercial transaction, and pursuant to teleconferences as well as multiple emails over several days, making the quote an authentic and accurate market sale.
- While Petitioners point to the same letter which indicates that the price quote made to “Orion International for the sale of fish waste, fish belly/meat and fish skin was outside the company’s normal business scope, and we have never actually made a sale of individual

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<sup>534</sup> See Prelim SV Memo at Attachment I.

<sup>535</sup> See Petitioners’ May 12, 2014 submission at Exhibit 32.

<sup>536</sup> See *Writing Instrument Mfrs. v. United States*, 21 CIT 1185, 1202, 984 F. Supp. 629, 644 (1997), affirmed in, 178 F.3d 1311 (CAFC 1998). (holding that a private study did not represent a reliable source insulated from conflicts of interest.) *Id.*, 21 CIT at 1202, 984 F. Supp. at 644. Indeed, the vast majority of the record evidence submitted by Petitioner in these proceedings, if not all, comes from paid third party consultants approaching company personnel or government officials and requesting information and data in precisely the same manner.

<sup>537</sup> See *Seventh AR* at Comment IV.1.

<sup>538</sup> See *Eighth AR* at Comment X.

<sup>539</sup> See Afiex, *et al.*’s May 12, 2014 submission at Exhibit 7.

<sup>540</sup> *Id.*

<sup>541</sup> *Id.*

<sup>542</sup> See Petitioners’ May 22, 2014 submission at Exhibit 54.

waste products in that manner or at those prices;” the letter also states that the “waste material includes skins, fish waste, fish bellies and oils, which are not separated out for sale individually.”<sup>543</sup> That Asian Seafood may have never previously made a sale of fish waste to any party, or that Asian Seafood did not earlier segregate fish waste, belly/meat and skin from fish oil, because it never had to do so absent a buyer for these specific products, has no bearing on the authenticity of its sale and price offer for fish waste, belly and skin.

- While the Asian Seafood website states that the company is predominantly a producer of shrimp products rather than *pangasius* products, the website also contains statements affirming the fact that Asian Seafood is engaged in processing of *pangasius* fish. For example, its product catalogue contains copious information regarding the various forms in which whole and processed forms of *pangasius* fish are being sold by the company.<sup>544</sup>

*HVG, et al.:*

- The record contains multiple affidavits from parties, four of which are international seafood traders, which attempted to obtain *pangasius* by-product price quotes from Vitarich and Blue Bay, but were unable to.<sup>545</sup> The fact that Petitioners’ lawyers were able to obtain price quotes, while actual fish product trading companies were not, raises questions about the reliability of these price quotes. As such, the Vitarich and Blue Bay price quotes are not publicly available to the extent that anyone from the public could duplicate them.
- Moreover, these price quotes suffer from multiple deficiencies. These price quotes come from Philippine companies, therefore, they are not from the primary surrogate country used in the *Preliminary Results*, Indonesia.<sup>546</sup> Because they are price quotes, by definition they are not broad market averages. It is not clear that these price quotes are tax and duty exclusive.<sup>547</sup> In addition, it unclear as to whether the 2013 Vitarich price quote contains transportation expenses.<sup>548</sup>
- For purposes of the final results, the Department should value by-products using Indonesian GTA import statistics. For fish waste, fish head and fish belly/meat the Department should use HTS 0511.91.0090, “Animal products not elsewhere specified or included; dead animals of Chapter 1 or 3, unfit for human Consumption; Products of fish or crustaceans, molluscs or other aquatic invertebrates; dead animals of Chapter 3; other.”<sup>549</sup> In past reviews the

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<sup>543</sup> See Petitioners’ May 22, 2014 submission at Exhibit 54. Although Orion International’s website indicates that the company is not engaged in processing or trading of fish, this is an extraneous fact which has impact on the reliability and validity of the price quote issued by Asian Seafood, which is an independent third party. *Id.*

<sup>544</sup> See Afiex, *et al.*’s May 12, 2014 submission at Exhibit 7.

<sup>545</sup> See HVG, *et al.*’s May 22, 2014 submission at Exhibits 1-10.

<sup>546</sup> See *Ninth AR* at Comment 3; see also 19 CFR 351.408(c)(2) (“the Secretary normally will value all factors in a single surrogate country.”).

<sup>547</sup> In the *Ninth AR* the Department found these prices quotes to be tax and duty exclusive because the lawyer’s affidavits state that the price quotes were requested on a tax-exclusive basis, however, an examination of the price quotes themselves reveals nothing about whether or not they are on a tax-exclusive basis. See *Ninth AR* at Comment X. As such, at best, the record is ambiguous on the issue of whether the price quotes are tax-exclusive.

<sup>548</sup> Initially the price quote was silent on delivery terms, and later an affidavit provided by Petitioners’ local counsel indicated that “delivered” and “pick-up” prices were identical. A revised price quote states the prices were delivered prices. See Petitioners’ May 12, 2014 submission at Exhibit 32. It strains credulity to suggest that this company was willing to sell these items for the same price, regardless if the buyer wanted to pick them up at the factory, or have them delivered to their own location - especially at such low prices.

<sup>549</sup> See HVG’s May 12, 2014 submission at Exhibit 28.E.

Department has found this HTS to be specific.<sup>550</sup> Also, Indonesian GTA meets all of the Department's SV criteria (especially when compared to the fatally flawed Vitarich and Blue Bay price quotes) as it is specific to the input, publicly available, contemporaneous, a broad market average, from the primary surrogate country, tax and duty exclusive, and nothing on the record suggests the data is aberrational. However, should the Department have concerns with using HTS 0511.91.0090, we note that the Asian Seafood price quote could be used to value these by-products. Although not from the primary surrogate country or a broad market average, like the Vitarich and Blue Bay quotes, it is publicly available, contemporaneous, specific to the input, explicitly stated as being on an ex-factory basis, and accompanied by an affidavit explaining how the price quote was obtained.<sup>551</sup>

- For fish skin the Department should use HTS 0511.91.00.40, "Animal products not elsewhere specified or included; dead animals of Chapter 1 or 3, unfit for human Consumption; Fish skin."<sup>552</sup> As noted above, Indonesian HTS data perfectly meets all of the Department's SV requirements. In the alternative, the Asian Seafood price quote also provides a price for "fish skin."
- For fish belly/meat the Department should use HTS 0304.32, "Fish fillets and other fish meat (whether or not minced), fresh, chilled or frozen; Catfish (*Pangasius spp.*, *Silurus spp.*, *Clarias spp.*, *Ictalurus spp.*)."<sup>553</sup> As noted above, Indonesian HTS data perfectly meets all of the Department's SV requirements.

#### *Petitioners:*

- Regarding the Asian Seafood price quotes, Asian Seafood primarily sells shrimp, and it has only recently begun processing *pangasius* on a very limited scale.<sup>554</sup> Therefore, Asian Seafood does not routinely participate in commercial transactions involving fish by-products. In addition, Asian Seafood confirmed that it does not regularly sell *pangasius* byproducts in the ordinary course of business. This confirmation is in the form of an official letter, on company letterhead, which states that the price quote "made to ...Orion International for the sale of fish waste, fish belly and fish skin was outside the company's normal business scope, and we have never actually made a sale of individual waste products in that manner or at those prices."<sup>555</sup>
- While Afiex, *et al.* assert that the letter's statement that Asian Seafood generates *pangasius* waste at its Khulna plant and that the "bulk waste is normally collected by a local contractor"

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<sup>550</sup> See *Seventh AR* at Comment V.

<sup>551</sup> See HVG's May 12, 2014 submission at Exhibit 27.A.

<sup>552</sup> See HVG's May 12, 2014 submission at Exhibit 28.E.

<sup>553</sup> See HVG's May 12, 2014 submission at Exhibit 31.

<sup>554</sup> Under the list of "Species Processed in the Plant" on Asian Seafood's website, there are no references to *pangasius* products, just shrimp products. See *Petitioners' May 22, 2014 submission* at Exhibit 53. Similarly, on a section of Asian Seafood's website titled "Product Inquiry Form," *pangasius* is not listed as a product category. *Id.* Furthermore, in a brochure published by Asian Seafoods listing all of its products, the company only lists different types of shrimp, and does not mention fish. *Id.* The only mention of *pangasius* in Asian Seafood's promotional material on the record is a product catalogue obtained by Respondents. See *Afiex, et al.'s May 12, 2012 submission* at Exhibit 7.

<sup>555</sup> See *Petitioners' May 22nd Surrogate Value Submission* at Exhibit 54, attachment 2A. In fact, Asian Seafood provided a price quote to Orion International only after Orion affirmatively misrepresented itself as being an importer of fish waste materials. *Id.* The record unequivocally shows that Orion does not engage in the sale of fish waste materials in the ordinary course of trade. *Id.* at Exhibit 55 (Orion identifying itself as a company "dealing in various types of Herbal products").

somehow confirms that Asian Seafood regularly sells the by-products, this does not suggest that it normally sells the by-products, just that it generates waste that needs to be collected.<sup>556</sup>

- The Asian Seafood price quote is not as specific as Vitarich and Blue Bay as it relates solely to the sale of fish waste materials in bulk and not to individual sales of different types of fish waste materials.
- It is unclear what Asian Seafood's individual sales prices would be for fish waste, fish belly/meat, and fish skins, given that Asian Seafood quoted the same price for these by-products inclusive of fish oil, which is typically more valuable than the other by-products.<sup>557</sup> Asian Seafood's failure to adjust the price after removing fish oil indicates that the price quote is neither commercially reasonable, specific, nor provided by a company that ordinarily sells *pangasius* fish by-products.
- It is clear that the consultant collecting Asian Seafood's pricing information had multiple conversations with Asian Seafood that are not on the record.<sup>558</sup> The substance of those conversations is not known, so the Department cannot assess the reliability of the quotes.
- Finally, it is unknown whether the Asia Seafood quote is tax and duty exclusive. For the above reasons, the Department should continue to reject the Asia Seafood price quote because it is neither reliable nor specific, and no record evidence shows that it is tax and duty exclusive.
- Regarding the Indonesian HTS numbers proposed by HVG, as the Department has recognized, specificity is the "most important factor" in valuing fish waste.<sup>559</sup> Accordingly, the Department has repeatedly selected price quotes to value waste products because they are more specific to the input in question than broad basket import categories.<sup>560</sup> The CIT has also affirmed this determination, holding in the first review that the Department "reasonably found that such {import} data was not comparable to the unprocessed fish waste at issue" and that the Department's "selection of the Indian price quotes for unprocessed fish waste as the best available information for valuing {respondent's} unprocessed fish waste factor is supported by substantial evidence on the record."<sup>561</sup>
- It is impossible to determine, based on the description of HTS 0511.91.0090, "Animal products not elsewhere specified or included; dead animals of Chapter 1 or 3, unfit for human Consumption; Products of fish or crustaceans, molluscs or other aquatic invertebrates; dead animals of Chapter 3; other," whether fish waste is ever included in this subheading, a problem that the Department identified in the last two reviews with similar HTS categories.<sup>562</sup> Even if various fish wastes were included in this category, the description shows that a variety of other items that are not fish waste products, such as molluscs

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<sup>556</sup> See Petitioners' May 22, 2014 submission at Exhibit 54.

<sup>557</sup> See Petitioners' May 12, 2014 Surrogate Country/Surrogate Value Comments at Exhibit 58, Attachment 2.

<sup>558</sup> *Id.*, at Exhibit 54, Attachment 1.

<sup>559</sup> See *Eighth AR* at Comment I.C; *Ninth AR* at Comment X (highlighting the "superior specificity" of the Vitarich and Blue Bay quotes).

<sup>560</sup> See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results and Partial Rescission of New Shipper Reviews*, 73 FR 36840 (June 30, 2008) and accompanying Issues and Decision Memorandum at Comment 3 ("the Department has used price quotes in other proceedings of this Order to value an FOP when the price quote was more reliable and specific to the input in question than import statistics"); see also *Fifth AR* at Comment 2.C (the Department valued fish waste based on three price quotes because they were the best publicly available data on the record).

<sup>561</sup> See *Vinh Quang Fisheries Corp. v. United States*, 637 F. Supp. 2d 1352, 1359 (CIT 2009).

<sup>562</sup> See *Ninth AR* at Comment X; *Eighth AR* at Comment VII.A.

(“snails”), crustaceans, “dead animals,” and “other aquatic invertebrates” are also included in this subheading, demonstrating that it is not specific to *pangasius* fish waste, as the Department noted in the previous review.<sup>563</sup>

- Most importantly, the Department has recognized that fish waste is not an “internationally traded commodity” that would be reflected in import data.<sup>564</sup> As a result, the import data at issue is higher (1.78 USD/kg) than the value of whole fish (1.39 USD/kg), the main input - a major reason why the Department has previously rejected this import data.<sup>565</sup>
- The Department should not value fish belly/meat using HTS 0304.32, because this HTS includes items that are not specific to broken fish fillets. Furthermore, HVG states that “the HTS Provisions specifically includes fillets of *pangasius* and there is no differentiation between broken and non-broken fillets (or frozen, fresh or chilled).”<sup>566</sup> Thus, as HVG admits, this basket category includes regular complete fish fillets which are logically more expensive than a by-product, broken pieces of fish meat.
- The Department should not value fish skin using HTS 0511.91.40 to value fish skin because, despite advocating for this HTS, HVG has not pointed to any record evidence providing values for import data under this HTS category.
- Regarding the Vitarich and Blue Bay price quotes, HVG provided affidavits by U.S. importers alleging that they did not obtain price quotes from Vitarich and Blue Bay, despite requesting such quotes.<sup>567</sup> None of these affidavits, however, mention whether the affiants called Vitarich and Blue Bay to verify whether appropriate persons received the request or to check on the status of the price quotes.<sup>568</sup> Assuming that Vitarich and Blue Bay received requests for price quotes from the U.S. importers and did not respond, private commercial entities have commercially reasonable grounds to not provide a price quote in response to every request, as fish waste is not an internationally traded commodity.<sup>569</sup> It is therefore reasonable for Vitarich and Blue Bay not to provide price quotes for fish waste when the purported prospective buyer is a large importer from the United States. Furthermore, that HVG’s representatives allegedly did not receive price quotes after requesting one does nothing to impeach the reliability and accuracy of the price quotes on the record, which has been corroborated by other record evidence. Given these considerations, HVG’s arguments against using the Vitarich and Blue Bay price quotes are unavailing.
- While HVG argues that because a Philippine lawyer obtained the price quotes, somehow they are not reliable because they do not represent commercial transactions, as the Department recognized in the *Ninth AR*, “The fact that it {the price quote} was obtained by a lawyer indicating the basis for inquiry and request does not render the price quote unreliable.”<sup>570</sup> The alternative that HVG suggests-having a commercial entity not intending to actually buy request a price quote-is more problematic because the issuer may, for example, set the price artificially high, assuming that the company requesting the price quote will eventually negotiate the price down. Also, the price quote may be based on commercial representations

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<sup>563</sup> See *Ninth AR* at Comment X.

<sup>564</sup> *Id.*; see also *Eighth AR* at Comment VII.A.

<sup>565</sup> See *Eighth AR* at Comment VII.A (“Valuing fish waste using import statistics illogically results in a fish waste SV which is higher than that of the whole fish.”).

<sup>566</sup> See HVG’s September 19, 2014 submission at 35.

<sup>567</sup> *Id.* at 25-27; see also HVG’s May 22, 2014 submission at Exhibits 1 – 10.

<sup>568</sup> *Id.*

<sup>569</sup> See *Ninth AR* at Comment X.

<sup>570</sup> *Id.*

designed to obtain a high or low quote, depending on the input. However, these negotiations never actually occur because the companies seeking the price quotes do not intend to buy the products, leaving an artificially high (or low) price for the Department to use.

- Regarding HVG’s arguments related to the tax and duty exclusivity of the Vitarich and Blue Bay quotes, the accompanying sworn affidavits of Philippine co-counsel indicates these quotes are tax and duty exclusive.<sup>571</sup> The Blue Bay price quote explicitly states that the price is “not taxable.”<sup>572</sup>
- Regarding the inclusion of transportation costs in the price quotes, the sworn affidavit accompanying the price quote explicitly states that the price excludes delivery costs because delivery and pick-up prices are the same.<sup>573</sup> Although HVG asserts that “it strains credulity” that the pick-up and delivery price may be the same, HVG does not point to any record evidence to support this assertion.
- Although Afiex, *et al.* and HVG, *et al.* argue that the Vitarich 2010 price quote is somehow unreliable because it does not include a signature and the identity of the person issuing the price quote, all of the necessary information is provided in the accompanying sworn affidavit of Philippine co-counsel.<sup>574</sup> The Department rejected this argument in the *Eighth AR* and the *Ninth AR* precisely because this information is readily available in the affidavit.<sup>575</sup>
- Furthermore, both the 2013 Vitarich and Blue Bay price quotes were issued during the POR, and are therefore contemporaneous. The Vitarich and Blue Bay price quotes are specific to the by-products sold by HVG, are publicly available, and tax- and duty-exclusive, and the Department should continue to use them in the final results.

**Department’s Position:** During the review, HVG reported selling the following fish waste by-products: fish waste, fish stomach, fish head, fish fat, fish skin and fish belly/meat.<sup>576</sup> We agree with Petitioners in part, and determine that the price quotes from Vitarich and Bluebay are the best available information to value the following *pangasius* by-products produced by HVG: fish waste, fish stomach, fish head, fish fat, and fish skin. The price quotes from Vitarich, a Philippine processor of *pangasius*, contains prices for numerous types of fish waste (head and belly waste, bone and tails waste, skin, and trimmings) sold by HVG, thus rendering the source specific.<sup>577</sup> Moreover, the price quote and accompanying affidavit from Blue Bay covers fish trimmings, head and tail bones, and *pangasius* skin, and, thus, also is specific to the by-products sold by HVG.<sup>578</sup>

The fact that the Vitarich and Blue Bay price quotes do not satisfy the breadth of the SV criteria does not undermine the Department’s finding that these sources are the best available

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<sup>571</sup> *Id.*

<sup>572</sup> See Petitioners’ May 12, 2014 Surrogate Country/Surrogate Value Comments at Exhibit 38.

<sup>573</sup> *Id.*

<sup>574</sup> *Id.* at Exhibit 38-B.

<sup>575</sup> See *Ninth AR* at Comment X (“The affidavit submitted with the Vitarich price quote contains all the necessary information to demonstrate that the price quote is ex-factory and tax exclusive and how the recipient obtained the price quote.”); see also *Eighth AR* at Comment I.C; see also *Catfish Farmers of Am. v. United States*, Slip Op. 13-63 at \*4-5 (remanding to the Department its decision rejecting the use of Vitarich price quotes during the sixth administrative review).

<sup>576</sup> See HVG’s February 19, 2014 submission at 31-34.

<sup>577</sup> See Petitioners’ May 12, 2014 Surrogate Country/Surrogate Value Comments at Exhibit 38.

<sup>578</sup> *Id.*

information to value HVG's by-products. Although these price quotes reflect only the experience of two companies and the Vitarich quote is not contemporaneous, the sources are publicly available and free of taxes and duties. Moreover, when considered in light of the defects in the other available sources, the Department finds that the superior specificity of the Vitarich and Blue Bay price quotes render them the best available information for these by-products. Indeed, when all the data sources are flawed in some respect, as in this case, the Department has discretion in determining the best available information.<sup>579</sup> Consistent with its practice,<sup>580</sup> the Department will average the values on a waste-specific basis (*i.e.*, average waste prices, skin prices, *etc.*).

We disagree with Afiex, *et al.* and HVG, *et al.* that the Vitarich price quote is aberrational and not a reliable market price generated in the normal course of business. Since fish waste products are generally not internationally traded commodities that would be reflected in import statistics, the import data that respondents are using as benchmarks cannot reliably measure *pangasius*-specific fish waste, a domestically traded commodity.

In addition, we disagree with Afiex, *et al.* and HVG, *et al.* that the Vitarich quote is not a reliable market price generated in the normal course of business and is not on a tax exclusive basis. The affidavit submitted with the Vitarich price quote contains all the necessary information to demonstrate that the price quote is ex-factory and tax exclusive and how the recipient obtained the price quote. The fact that it was obtained by a lawyer indicating the basis for inquiry and request does not render the price quote unreliable. Finally, although HVG's purported inability to obtain the same Vitarich price quote weighs against the Vitarich information, we accord this little weight. We cannot know why Vitarich did not respond to these companies requests, just as we cannot know why DAM officials did not respond to the Department's requests for information.<sup>581</sup> While interested parties, including Petitioners, have provided possible reasons for Vitarich to not respond to offers to purchase *pangasius* by-products, these are mere speculations.

Regarding the contentions made by parties regarding the integrity of "self-serving" affidavits submitted in support of differing by-product price quotes, as we noted above in Comment II, the CIT rejected such claims by parties in past segments of this case, explaining that "if an affidavit is made from personal knowledge and sets forth specific facts, then whether it is 'self-serving' is beside the point."<sup>582</sup> As we also noted in Comment II, the Department agrees, and we considered the merits of such affidavits submitted by parties.

We also find the import data under Indonesian HTS 0511.91.0090 to not be the best available information to value fish waste, fish stomach, fish head and fish fat. Specifically, while this source satisfies most of the SV criteria, the HTS category by its terms (Animal products not elsewhere specified or included; dead animals of Chapter 1 or 3, unfit for human Consumption; Products of fish or crustaceans, molluscs or other aquatic invertebrates; dead animals of Chapter

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<sup>579</sup> See *Lifestyle Enterprise, Inc. v. United States*, 751 F.3d 1371, 1378 (CAFC 2014).

<sup>580</sup> See, *e.g.*, *Fifth AR*, and accompanying Issues and Decision Memorandum at Comment 2.C.

<sup>581</sup> See *Eighth AR* at Comment I.C; see also *Ninth AR* at Comment I.C.

<sup>582</sup> See *Catfish Farmers of Am. v. United States*, Slip Op. 13-63 (CIT 2013) at \*13 (*citing Caterpillar Inc. v. Sturman Industries, Inc.*, 387 F.3d 1358, 1374-75 (CAFC 2004); *Payne v. Pauley*, 337 F.3d 767 (7th Cir. 2003)).

3; other) appears overly-broad in that it contains the fish waste by-products sold by HVG, as well as dead animals, molluscs and potentially other unspecified sea creatures. Thus, the source is not specific to the by-products reported by HVG.

Similarly, the Asian Seafood price quote from Bangladesh is not the best available information to value fish waste, fish stomach, fish head and fish fat. The Asian Seafood price quote from Bangladesh lists three *pangasius* fish waste products that include waste, belly, and skin.<sup>583</sup> However, the Asian Seafood quote does not contain individualized prices for these kinds of fish waste products, as do the Vitarich and Blue Bay quotes, and thus, is not as specific to HVG's by-products. Moreover, the record is silent as to whether the Asian Seafood quote contains prices on a tax-exclusive basis.

Further, we find the import data under Indonesian HTS 0511.91.40 to not be the best available information to value fish skin. As noted above, Indonesian GTA data satisfies most of the SV criteria. Moreover, the description of the HTS category, "fish skin," matches that of the by-product produced by HVG, "fish skin."<sup>584</sup> However, it appears that data for this HTS number is not on the record of this review. While HVG purported to place information on the record to value fish skin, data for HTS 0511.91.40 is absent.<sup>585</sup>

We also find the import data under Indonesian HTS 0304.32 to not be the best available information to value fish belly/meat. Specifically, while this source satisfies most of the SV criteria, the HTS category by its terms (Fish fillets and other fish meat (whether or not minced), fresh, chilled or frozen; Catfish (*Pangasius spp.*, *Silurus spp.*, *Clarias spp.*, *Ictalurus spp.*)) includes whole, unbroken frozen and fresh fish fillets, including the subject merchandise, frozen *pangasius* fillets. HVG reported producing and selling fish belly/meat, which is waste by-product derived from the trimmings stage; however, this HTS category includes whole fish fillets and not the belly/meat by-product. Thus, the source is not specific to the by-product reported by HVG.

### **Company Specific Issues**

#### **Comment XX: Proper Reporting Period for HVG's Factors of Production**

##### *Petitioners:*

- In its February 18, 2014 Section D response, and consistent with its reporting in the last review, HVG reported its farming FOPs based on POR consumption.<sup>586</sup> In support, as required by the original antidumping duty questionnaire, HVG provided a number of worksheets and supporting accounting records which detailed the manner in which it calculated each of its farming FOPs.<sup>587</sup> Over the course of the next several months, the Department analyzed HVG's FOP data and issued supplemental questionnaires requesting

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<sup>583</sup> See Petitioners' June 14, 2013 submission at Exhibit 57.

<sup>584</sup> See HVG's February 19, 2014 submission at 31-34.

<sup>585</sup> See HVG's May 12, 2014 submission at Exhibit 30. Nor has HVG provided a citation for this data in its case brief. See HVG's September 19, 2014 submission at 34.

<sup>586</sup> See HVG's February 18, 2014 submission at 18.

<sup>587</sup> *Id.*

further clarifications.<sup>588</sup> HVG responded to the Department's questions and provided additional materials, explanations, and worksheets supporting its reporting methodology.<sup>589</sup> Although HVG revised certain aspects of its FOP reporting pursuant to the Department's supplemental questionnaire (e.g., revising the quantities of purchased versus farmed fish), HVG continued to report its farming inputs based on the FOPs it consumed during the POR.<sup>590</sup>

- In response to a short supplemental questionnaire, HVG's June 16, 2014 submission contained entirely new data for its farming inputs, which reflected FOPs consumed both prior to, and during, the POR.<sup>591</sup> While HVG claimed that its initial FOP reporting was "aberrational" and in need of "corrections," it in fact was a wholesale revision to HVG's entire methodology used to report farming factors.<sup>592</sup> While respondents are permitted to revise reported data, undertaking a substantial and unsolicited wholesale revision to reporting methodologies shortly before the *Preliminary Results* prevented the Department from being able to adequately evaluate data prior to calculating HVG's preliminary margin.
- It is the Department's practice, with limited exceptions,<sup>593</sup> to use POR-based FOP reporting.<sup>594</sup>
- There are significant discrepancies between the FOPs reported in HVG's June 16, 2014 submission<sup>595</sup> and its Section D database, which HVG has not addressed on the record of this review.
- HVG's revised farming FOP data has not been adequately substantiated or supported through production records, or reconciled to its financial statements, as is required by the Department's questionnaire.<sup>596</sup> Specifically, HVG only provided a set of worksheets that listed its monthly farming FOP consumption quantities and per-unit calculations for the FOPs.<sup>597</sup> HVG did not provide any of the source documents requested in the original questionnaire or supplemental questionnaires, such as farming, harvesting, processing, or accounting records, to substantiate the quantities underlying the calculations in its worksheets. The purpose of the Department's reconciliation requirements are to ensure that the data used to calculate a respondent's margin is taken from and ties to the respondent's normal books and accounting records.
- Accordingly, for the final results, the Department should not use HVG's June 16, 2014 revised data in its margin calculations, and should instead use the data HVG submitted on May 2, 2014, as this data has been substantiated using source materials and is based on HVG's POR consumption of farming FOPs.

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<sup>588</sup> See, e.g., the Department's letter to HVG, dated April 14, 2014.

<sup>589</sup> See HVG's May 2, 2014 submission at Exhibit 1.

<sup>590</sup> *Id.*

<sup>591</sup> HVG did not revise any processing FOPs. See HVG's June 16, 2014 submission (we note that this was originally submitted on May 22, 2014, but was rejected by the Department because it contained new factual information and was re-submitted on June 16, 2014).

<sup>592</sup> *Id.* at 2-3.

<sup>593</sup> While Petitioners recognize that the Department has allowed FOP reporting that does not align perfectly with the POR in cases involving certain seasonally-produced merchandise. See, e.g., *Mushrooms 2005* at Comment 5.

<sup>594</sup> See *Frontseating Service Valves* at Comment 6.

<sup>595</sup> See HVG's June 16, 2014 submission at Exhibit 10.

<sup>596</sup> See the Department's letter to HVG, dated December 13, 2013 at D.2.

<sup>597</sup> See HVG's June 16, 2014 submission at Exhibits 7-9.

HVG, et al.:

- HVG's farming FOP reporting methodology is consistent with the Department's practice related to agricultural products, and yields an accurate margin reflective of HVG's real production experience of subject merchandise during the POR.
- Petitioners' argument that the current review does not involve seasonally-produced merchandise, and thus, the Department's practice related to non-agricultural products should control, fails for lack of factual basis. The Department has found in past cases that agricultural fish products use seasonally-produced merchandise, *i.e.*, farmed fish, as a raw material.<sup>598</sup>
- It is the Department's longstanding practice that when an agricultural product is at issue, consumption of farming-related FOPs, during a whole farming or growing season, that are tied to the production of subject merchandise during the period examined, should be reported and used in the dumping margin calculation.<sup>599</sup> Through numerous prior cases, the Department has fully explained the rationale behind this practice, *i.e.*, due to the cyclical nature of crop growing and livestock farming, this practice creates the least amount of distortion and yield the most accurate results in margin calculations.<sup>600</sup> Moreover, HVG explained to the Department the need for a reporting methodology change to ensure an accurate margin calculation.<sup>601</sup>
- Petitioners' reliance on *Frontseating Service Valves* is misplaced. In that case, the Department rejected the reporting of some factor usage from a pre-POR period, even though certain individual production steps occurred in that pre-POR period.<sup>602</sup> Frontseating service valves are a non-agricultural product with finite production periods and steps. Unlike agricultural products, industrial products typically have streamlined, interdependent production steps, as opposed to distinct production phrases, such as farming, harvesting and processing, commonly associated with agricultural products. Therefore, to apply the same practice to industrial products would raise concerns over discretionary and arbitrary division of a continuous production process, in a manner not commonly recognized by the industry.
- In *Mushrooms 2005* the Department held that it was reasonable for the respondent to report inputs that were consumed prior to the POR, but were associated with POR production.<sup>603</sup> That is exactly what HVG is doing with its farming FOP.<sup>604</sup> As such, Petitioner's claims that the company's reporting methodology is not in accordance with Department practice is simply wrong.

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<sup>598</sup> In *Crawfish* the Department examined a report on Spanish fish production that directly referenced the seasonal nature of fish farming, and requested data based on the crawfish growing seasons, not monthly data. See *Crawfish* at Comment 2.

<sup>599</sup> This often results in the reporting of FOP consumptions from a complete farming/growing season prior to the POI/POR.

<sup>600</sup> In *Mushrooms 2005*, for example, an agricultural product is grown/farmed, harvested and processed into subject merchandise, just as fish are grown/farmed, harvested and processed into subject merchandise. See *Mushrooms 2005* at Comment 5.

<sup>601</sup> See HVG's June 16, 2014 submission at 2-3.

<sup>602</sup> See *Frontseating Service Values* at Comment 6.

<sup>603</sup> See *Mushrooms 2005* at Comment 5.

<sup>604</sup> It would be distortive to report raw material consumption amounts for items that were consumed during a particular period of review, but did not result in subject merchandise produced in the period or review - which is the situation HVG found itself in during the 10th POR. As such, it results in a more accurate margin calculation for HVG to report the farming FOP consumed to produce the subject merchandise actually produced in the period.

- Although Petitioners argue that HVG’s farming FOP reporting was unsubstantiated because it was not accompanied with production records, or a reconciliation to financial statements, the Department does not require respondents to submit new reconciliation packages every time there is an amendment/change to a reported FOP. The Department enjoys broad discretion in determining whether a respondent has complied with its request for information, making it suitable for use in dumping margin calculation.<sup>605</sup>
- Here, HVG’s farming FOPs were supported by worksheets demonstrating how the farming FOPs were calculated, and the data was accompanied by a company certification, attesting to its accuracy.<sup>606</sup> As such, HVG’s farming FOP data was substantiated on the record and there is no record evidence that it is unreliable.
- There are not errors in HVG’s farming FOP data, as Petitioners contend, because the spreadsheet referenced was not fully updated at the time, has been since that time. An examination of the correct spreadsheets, and the Section D database, indicates no discrepancies.

**Department’s Position:** We agree with the Petitioners and have used HVG’s May 2, 2014 Section D database in our margin calculation for the final results. The Department’s practice in this matter is clear. The Department permits respondents to report the FOPs for certain models based on information from a prior POR only when those models were completed in the prior POR.<sup>607</sup> Indeed this methodology is clearly stated in the Department’s original antidumping duty questionnaire, which states: “Normally, you should calculate the per-unit factor amounts based on the actual inputs used by your company during the POR as recorded under your normal accounting system.”<sup>608</sup>

We note that there are exceptions to this rule, such as when the subject merchandise is a seasonal product, and the Department grants permission to report the FOPs for the growing season which corresponds most closely to the POR/POI.<sup>609</sup> No party has provided evidence that the production of *pangasius* fillets is seasonal. While the *Indonesian AS* is annual data and does not provide monthly data<sup>610</sup>, the *DAM Data* provides weekly data.<sup>611</sup> A careful review of the *DAM Data* indicates that there are sales of *pangasius* in Bangladesh every week of the POR, *i.e.*, there are

<sup>605</sup> See *Allegheny Ludlum Corp. v. United States*, 215 F. Supp. 2d 1322, 1338, 24 CIT 1424 (CIT 2000) (“*Allegheny Ludlum*”) (citing *Daido Corp. v. United States*, 19 C.I.T. 853,893 F. Supp. 43, 49-50 (CIT 1995) (“*Daido*”) (the Department’s determination as to whether a respondent has complied with its request for information is discretionary).

<sup>606</sup> See, *e.g.*, HVG’s June 16, 2014 submission at Exhibits 7-11, and company certification.

<sup>607</sup> See *Fronseating Service Values* at Comment 6.

<sup>608</sup> See the Department’s letter to HVG, dated December 13, 2013 at D.2.

<sup>609</sup> See, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil*, 71 FR 2183 (January 20, 2006) and accompanying Issues and Decision Memorandum at Comment 20 (We have faced similar difficulties in our attempt to determine the cost of other agricultural products having a defined growing season and have established the practice of using the costs and harvest quantity for one entire growing season. In doing so, we normally use the growing season that most closely corresponds to the POI or period of review in order to calculate accurate average per-unit costs.); see also *Garlic* at Comment 5. We note that the original antidumping duty questionnaire notifies respondents that if their product is a seasonally produced product, they must contact the Department before submitting their response. See the Department’s letter to HVG, dated December 13, 2013 at D.2-3.

<sup>610</sup> See Petitioners’ May 12, 2014 submission at Exhibit 9.A.

<sup>611</sup> See *Afiex, et al.*’s May 12, 2014 submission at Exhibit 14.A.

no seasonal gaps.<sup>612</sup> According to the Vietnam Association of Seafood Exporters and Producers (“VASEP”), the growing of *pangasius* was seasonal until about 1999, but is no longer seasonal.<sup>613</sup> Thus, we find HVG’s reliance on such cases as *Garlic* and *Crawfish* to be unpersuasive, as the records of those cases indicated that the subject merchandise was a seasonal product, which justified a different reporting period for growing/farming FOPs.

HVG explained the significant change to its reporting methodology as follows:

In its previous submissions of the Section D database (submitted on February 18, 2014, and May 2, 2014), {HVG} reported farming inputs consumption during the POR regardless of whether or not the farming inputs resulted in live fish harvested during the POR. However, after review of the database and reported farming FOP, {HVG} noticed that its POR farming consumption amounts are abnormally high. This is because during the POR {HVG’s} farming operations increased substantially. This means that during the POR, {HVG’s} consumed considerable quantities of farming inputs but a major part of those inputs were used to raise the fish to be harvested outside of the POR. This results in a per-unit FOP that is aberrationally high and which is not representative of what a per-unit FOP is supposed to reflect.<sup>614</sup>

However, the original antidumping duty questionnaire clearly states that: “If you believe that using POR factors is inappropriate (for example, because of the seasonal nature of production), if you sold some models/products during the POR but did not produce them during the POR, or if you have any questions regarding the appropriate calculation period, please contact the official in charge before preparing your response to this section of the questionnaire.”<sup>615</sup> We note that HVG did not contact the Department prior to revising its Section D database. Moreover, in this case, HVG initially provided a correctly reported FOP database, only to change the underlying reporting methodology during the supplemental questionnaire phase of this review, which seeks to clarify and supplement information already on the record. The Department’s inadvertent use of HVG’s revised data in the *Preliminary Results* should not be construed as an acceptance of HVG’s alternate reporting methodology.

While we agree with HVG that the Department enjoys broad discretion in determining whether a respondent has complied with its request for information, making it suitable for use in dumping margin calculation<sup>616</sup>, we do not agree with their contention that source documents or reconciliations are not required when making whole-sale changes to the FOP reporting methodology. In this review HVG provided consumption worksheets and FOP usage rate calculation worksheets, but did not provide any source documents to support its new reporting

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<sup>612</sup> *Id.*

<sup>613</sup> See Afiex, *et al.*’s May 22, 2014 submission at Exhibit 20 (article by VASEP).

<sup>614</sup> See HVG’s June 16, 2014 submission at 2-3.

<sup>615</sup> See the Department’s letter to HVG, dated December 13, 2013 at D.2-3. Similarly, the questionnaire also states: “If you have any questions regarding how to compute the factors of the merchandise under consideration, please contact the official in charge before preparing your response to this section of the questionnaire (emphasis not added).” *Id.* at D.1.

<sup>616</sup> See *Allegheny Ludlum Corp*, 215 F. Supp. 2d 1322, 1338, 24 CIT 1424 (CIT 2000) (citing *Daido*, 19 CIT 853,893 F. Supp. 43, 49-50 (CIT 1995) (the Department’s determination as to whether a respondent has complied with its request for information is discretionary)).

methodology.<sup>617</sup> HVG submitted consumption worksheets, FOP usage rate calculation worksheets, and source documents for its farming factors consumed during the POR in its prior submissions.<sup>618</sup> The antidumping duty questionnaire makes clear that supporting documentation is a necessary part of submitting FOP information. For example, it asks that for significant material inputs worksheets concerning the consumption of FOPs should reconcile to production ledgers.<sup>619</sup> It asks that respondents include with the response copies of source documents necessary to understand the submitted information, including its reconciliation to audited financial statements and, including all worksheets, financial reports, and other requested documents as appendices to the response.<sup>620</sup> It also asks respondents to identify any source documents maintained in the normal course of business they have relied on in preparing the response, and specify the location of the documents.<sup>621</sup> HVG did not submit any of these types of documents for the farming factors consumed before the POR in its June 16, 2014 submission. Without regular accounting records, such as material inputs ledgers detailing consumption and expenses for FOPs, and a reconciliation of reported FOPs to financial records, the Department would be unable to verify and examine the accuracy of the FOP database.<sup>622</sup>

### **Comment XXI: CASEAMEX – Separate Rate Status**

#### *Petitioners:*

- CASEAMEX does not qualify for a separate rate as it does not meet the *de facto* criteria for the Department’s separate rate test. The Department should find that CASEAMEX is not eligible for a separate rate.

#### *CASEAMEX:*

- CASEAMEX satisfied all of the required *de jure* and *de facto* criteria. The Department should continue to find that CASEAMEX is eligible for a separate rate.

**Department’s Position:** In the final results, the Department finds that CASEAMEX is not eligible for a separate rate. Because the arguments and the facts underlying this analysis are business proprietary, the Department has addressed these arguments in more detail in a separate memorandum entitled “Proprietary Analysis of Comment XXI: CASEAMEX – Separate Rate Status,” dated concurrently with this memorandum, and herein incorporated by reference.

### **Comment XXII: Clerical Error – Draft CBP Instructions**

#### *Petitioners:*

- The Department’s draft instructions to the U.S. Customs and Border Protection (“CBP”) contain a clerical error for the Vietnam-wide rate assigned to Vietnamese exporters of subject merchandise which have not been assigned to a separate rate. The draft cash deposit instructions

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<sup>617</sup> See HVG’s June 16, 2014 submission at 2-3.

<sup>618</sup> See HVG’s February 18, 2014 submission at Exhibits 3-11; and HVG’s May 2, 2014 submission at Exhibit 4.

<sup>619</sup> See the Department’s letter to HVG, dated December 13, 2013 at D.2.

<sup>620</sup> *Id.* at G.4.

<sup>621</sup> *Id.*

<sup>622</sup> See *Drill Pipe from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances*, 76 FR 1966 (January 11, 2011) and accompanying Issues and Decision Memorandum at Comment 16.A.

to CBP state on page 17 that, “{f}or all Vietnamese exporters of subject merchandise which have not been assigned to a separate rate, the cash deposit rate will be the Vietnam-wide rate of 2.11 dollars per kilogram.”<sup>623</sup> However, the Vietnam-wide rate calculated and assigned in this review is 2.39 USD per kilogram, as listed in the *Preliminary Results*.<sup>624</sup>

**Department’s Position:** We agree with Petitioner’s comments and have corrected this inadvertent error in the final results.

**Comment XXIII: Clerical Error – Customer Code**

*H&N Foods, et al.*

- In the *Preliminary Results* the Department should correct language in HVG’s SAS program which conflates the customer with the importer. This change allows the Department to calculate customer specific assessment rates and *de minimis* test results, rather than importer specific rates.
- In addition, the Department should add language to the SAS program to account for instances where an importer is unknown.

**Department’s Position:** We agree with H&N, *et al.* and have corrected these mistakes for the final results.

**RECOMMENDATION**

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting the margin calculation program accordingly. If accepted, we will publish the final results of review and the final dumping margins in the *Federal Register*.

AGREE\_\_\_\_\_ DISAGREE\_\_\_\_\_

\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Enforcement & Compliance

\_\_\_\_\_  
Date

<sup>623</sup> See Memorandum to File from Steven Hampton International Trade Analyst, Office V, Enforcement and Compliance, regarding 2012-2013 Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Draft CBP Instructions, dated July 2, 2014, at 17.

<sup>624</sup> See *Preliminary Results*, 79 FR 40061.