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June 18, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Results of
Antidumping Duty New Shipper Reviews: Certain Frozen Fish
Fillets from the Socialist Republic of Vietnam

SUMMARY

The Department of Commerce (“Department”) analyzed the comments submitted by Petitioners,¹ Nam Phuong Seafood Co., Ltd. (“Nam Phuong”) and NTACO Corporation (“NTACO”) in the new shipper reviews (“NSRs”) of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam (“Vietnam”). Based on the analysis of the comments received, we continue to find Nam Phuong’s and NTACO’s single sales to be non-*bona fide*. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

BACKGROUND

On January 20, 2015, the Department published the *Preliminary Rescission* of these NSRs for the period August 1, 2013, through January 31, 2014.² On February 27, 2015, the Department received case briefs from Nam Phuong and NTACO.³ On March 12, 2015, the Department received rebuttal briefs from Petitioners regarding the *bona fide* issues in Nam Phuong’s and

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

² See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Intent To Rescind Antidumping Duty New Shipper Reviews; 2013-2014*, 80 FR 4544 (January 28, 2015) (“*Preliminary Rescission*”).

³ See Letter from Nam Phuong to the Department regarding Nam Phuong Direct Case Brief: New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Review Period – 8/1/13-1/31/14, dated February 27, 2015 (“Nam Phuong Case Brief”), and Letter from NTACO to the Department regarding NTACO Direct Case Brief: New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Review Period – 8/1/13-1/31/14, dated February 27, 2015 (“NTACO Case Brief”).



NTACO's case briefs,⁴ and surrogate country and value issues.⁵

SCOPE OF THE ORDER

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

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

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

The subject merchandise will be hereinafter referred to as frozen "basa" and "tra" fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under tariff article codes 0304.29.6033, 0304.62.0020, 0305.59.0000, 0305.59.4000, 1604.19.2000, 1604.19.2100, 1604.19.3000, 1604.19.3100, 1604.19.4000, 1604.19.4100, 1604.19.5000, 1604.19.5100, 1604.19.6100 and 1604.19.8100 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the Harmonized Tariff Schedule of the United States ("HTSUS").⁶

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.

⁴ See Letter from Petitioners to the Department, regarding Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Rebuttal Brief for Nam Phuong Issues, dated March 12, 2015 ("Petitioners' Nam Phuong Rebuttal Brief"), and Letter from Petitioners to the Department, regarding Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Rebuttal Brief for NTACO Issues, dated March 12, 2015 ("Petitioners' NTACO Rebuttal Brief").

⁵ See Letter from Petitioners to the Department, regarding Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Rebuttal Brief for Surrogate Country and Value Issues, dated March 12, 2015 ("Petitioners' Rebuttal SV Brief").

⁶ Until July 1, 2004 these products were classifiable under HTSUS 0304.20.6030 (Frozen Catfish Fillets), 0304.20.6096 (Frozen Fish Fillets, NESOI), 0304.20.6043 (Frozen Freshwater Fish Fillets) and 0304.20.6057 (Frozen Sole Fillets). Until February 1, 2007 these products were classifiable under HTSUS 0304.20.6033 (Frozen Fish Fillets of the species *Pangasius*, including basa and tra). On March 2, 2011 the Department added two HTSUS numbers at the request of U.S. Customs and Border Protection ("CBP"): 1604.19.2000 and 1604.19.3000. On January 30, 2012 the Department added eight HTSUS numbers at the request of CBP: 0304.62.0020, 0305.59.0000, 1604.19.2100, 1604.19.3100, 1604.19.4100, 1604.19.5100, 1604.19.6100 and 1604.19.8100.

DISCUSSION OF THE ISSUES

Comment 1: Commerce's *Bona Fide* Analysis for Nam Phuong and NTACO

Price

Nam Phuong & NTACO

- The prices at issue reflected costs resulting from these being the first sales by Nam Phuong and NTACO, respectively, to the United States (*i.e.*, ordering new cartons/packaging, setting up logistics, *etc.*).⁷
- Sales to the United States between new shipper respondents and their first unrelated U.S. customer are unique in comparison to the U.S. Customs and Border Protection (“CBP”) data, which primarily consists of transactions between related parties. The Department should adjust CBP prices for affiliated companies by 10 percent for a fair comparison.⁸ In the Thanh Hung NSR,⁹ the Department stated it would not consider related party transactions in its price analysis.
- The Department should compare Nam Phuong’s and NTACO’s single sale prices to those of previous new shipper prices where the sales were considered *bona fide*.¹⁰
- The record contains invoices between a U.S. importer and an unaffiliated fish processor whose prices support the argument that NTACO’s sale was a *bona fide* transaction.¹¹
- The authority relied upon by the Department regarding pricing is inapposite.¹²

NTACO

- The lower prices paid by NTACO’s customer referenced in the Preliminary *Bona Fides* Memo are a result of these transactions being between affiliated companies.¹³
- NTACO’s sales prices to third countries are another benchmark that indicates that its U.S. sale price was indicative of a *bona fide* transaction.¹⁴

Nam Phuong

- Other arm’s-length import prices between unaffiliated parties submitted on this administrative record present ample evidence of U.S. import prices and quantities that are comparable to – and in many cases higher than – the price of Nam Phuong’s sale to its U.S. customer.¹⁵

⁷ See NTACO Case Brief at 8; Nam Phuong Case Brief at 8.

⁸ See NTACO Case Brief at 8-9; Nam Phuong Case Brief at 9-10.

⁹ See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Rescission of Antidumping Duty New Shipper Review*, 79 FR 71748 (December 3, 2014), and accompanying Issues and Decision Memorandum at 7.

¹⁰ See NTACO Case Brief at 10-13; Nam Phuong Case Brief at 10-13.

¹¹ See NTACO Case Brief at 14; Nam Phuong Case Brief at 14-15.

¹² See NTACO Case Brief at 19-21; Nam Phuong Case Brief at 19-21.

¹³ See NTACO Case Brief at 15-16.

¹⁴ *Id.* at 21-22.

¹⁵ See Nam Phuong Case Brief at 15-18.

Petitioners

- The Department should continue to compare Nam Phuong's and NTACO's U.S. sales prices against CBP data, consistent with its practice.¹⁶
- Nam Phuong and NTACO have not demonstrated how the factors it references (ordering new cartons/packaging, setting up logistics, *etc.*) will affect future U.S. sales prices.¹⁷
- The Department should reject Nam Phuong's and NTACO's proposed 10 percent upward adjustment to correct for non-arm's-length related party transfer prices. Additionally, neither respondent explained how the 10 percent adjustment was derived.¹⁸
- The Department should not use previous NSR prices as benchmarks by which to compare Nam Phuong's and NTACO's U.S. sales prices because they are not contemporaneous with the period of review ("POR").¹⁹

Involvement of a Third Party

Nam Phuong

- Record evidence conclusively demonstrates that Nam Phuong's U.S. customer and another Vietnamese producer/exporter are affiliated companies and together engaged Nam Phuong for a sale to the U.S. as a collaborator, not as a competitor, replacing other suppliers that can no longer export. Both companies mutually benefited from the sale and there were no third parties involved in the transaction.²⁰
- The change in market conditions and commercial realities related to the dramatic increase in the antidumping duty rate for Nam Phuong's customer's affiliated supplier, together with substantial duty liabilities on prior imports and pressures from banks, sureties and other creditors required that new long-term supply relationships be developed, such as that with Nam Phuong.²¹

NTACO

- NTACO's customer began purchasing fillets from unaffiliated suppliers due to restraints by creditor banks and potential exposure to duty assessments from previous reviews.²²
- NTACO properly disclosed the information regarding its customer's affiliate and the Department should not penalize NTACO for updating, correcting and clarifying factual information in the context of a supplemental response.²³
- The information provided by NTACO did not contradict its previous statement regarding potential affiliations, but rather amended and clarified it.²⁴
- The facts do not show involvement in the U.S. sale of the third party's employees or management.²⁵

¹⁶ See Petitioners' Nam Phuong Rebuttal Brief at 5-12; Petitioners' NTACO Rebuttal Brief at 5-11.

¹⁷ See Petitioners' Nam Phuong Rebuttal Brief at 7-8; Petitioners' NTACO Rebuttal Brief at 7.

¹⁸ *Id.* at 10-11.

¹⁹ *Id.* at 12-16.

²⁰ See Nam Phuong Case Brief at 20-24.

²¹ *Id.* at 24-27.

²² See NTACO Case Brief at 18.

²³ *Id.* at 23-25.

²⁴ *Id.* at 25.

²⁵ *Id.* at 26.

- NTACO’s sale was not arranged by a competitor, but was an independent transaction between NTACO and its customer.²⁶

Petitioners

- Following its own precedent, the Department should continue to find that the involvement of other parties in Nam Phuong’s and NTACO’s U.S. sales transactions is an indication that the sales in question are not *bona fide* in nature.²⁷

Atypical Circumstances Surrounding Production

NTACO

- There is no factual detail underlying Department’s determination of an “atypical ... production timeline.”²⁸
- Circumstances surrounding the sale at issue were not atypical as all material terms were made according to the agreement made at NTACO’s factory.
- Record evidence indicates that substantial terms and conditions of the U.S. sale were negotiated and agreed upon by the two parties during the December 2013 site visit.²⁹
- Although the sales terms were not committed to writing, contract law permits such a meeting to allow the parties to proceed in good faith on negotiated terms.³⁰

Nam Phuong

- The delivery of fish and subsequent production records noted by the Department were for Nam Phuong’s regular daily production, from which its U.S. customer’s merchandise was sourced. When it became known that the raw material delivery would not meet the customer’s specified size band, the sales terms were changed.³¹

Petitioners

- The CIT has previously upheld the Department’s determination when atypical circumstances surrounding production was one of the factors included as indicative of a non-*bona fide* transaction.³²

Late Payment

Nam Phuong & NTACO

- Department and Court precedent support a *bona fide* sale given a relatively short delay in payment.³³

²⁶ *Id.* at 31.

²⁷ See Petitioners’ Nam Phuong Rebuttal Brief at 24-25; Petitioners’ NTACO Rebuttal Brief at 21-23.

²⁸ See NTACO Case Brief at 36.

²⁹ *Id.* at 32-34.

³⁰ *Id.* at 34.

³¹ See Nam Phuong Case Brief at 28-31.

³² See Petitioners’ Nam Phuong Rebuttal Brief at 25-26; Petitioners’ NTACO Rebuttal Brief at 23.

³³ See NTACO Case Brief at 36-39; Nam Phuong Case Brief at 31-34.

- Nam Phuong’s and NTACO’s customers met their payment obligation within a reasonable timeframe of the date of payment.³⁴

Petitioners

- The CIT has previously upheld the Department’s determination when late payment was one of the factors included as indicative of a non-*bona fide* transaction.³⁵

Profit

Nam Phuong & NTACO

- The profit Nam Phuong and NTACO’s customers made from their respective resales of the subject merchandises qualifies them as *bona fide* transactions.³⁶

Petitioners

- The record does not support Nam Phuong’s and NTACO’s claims that their customers earned a profit on the resale of subject merchandise.³⁷

Other Indicia

Nam Phuong & NTACO

- The Department should also weigh other evidence according to the factors addressed in the Department’s long-standing five-part *bona fide* sales analysis.³⁸
- The timing of the sale at issue, expenses arriving from the sale at issue, and whether the sale was made on an arm’s-length sale basis all support the determination that Nam Phuong’s and NTACO’s sales were *bona fide*.³⁹

Petitioners

- The Department took into account all of the circumstances surrounding Nam Phuong’s and NTACO’s single U.S. sales and reasonably determined that the preponderance of the evidence established that the sale was not a *bona fide* transaction.⁴⁰

Department’s Position:

For the reasons detailed below, the Department finds that the sales at issue are not *bona fide*. To determine whether sales in an NSR are *bona fide*, the Department employs a totality of the circumstances test.⁴¹ In examining the totality of the circumstances, the Department looks to whether the transaction is “commercially unreasonable” or “atypical of normal business

³⁴ *Id.* at 37-38.

³⁵ See Petitioners’ Nam Phuong Rebuttal Brief at 25-26; Petitioners’ NTACO Rebuttal Brief at 23.

³⁶ See NTACO Case Brief at 43-44; Nam Phuong Case Brief at 38-39.

³⁷ See Petitioners’ Nam Phuong Rebuttal Brief at 21-23; Petitioners’ NTACO Rebuttal Brief at 18-21.

³⁸ See NTACO Case Brief at 39; Nam Phuong Case Brief at 34.

³⁹ See NTACO Case Brief at 40-48; Nam Phuong Case Brief at 34-42.

⁴⁰ See Petitioners’ Nam Phuong and NTACO Rebuttal Briefs at 1-3.

⁴¹ See, e.g., *Glycine from the People’s Republic of China: Rescission of Antidumping Duty New Shipper Review of Hebei New Donghua Amino Acid Co., Ltd.*, 69 FR 47405, 47406 (August 5, 2004).

practices.”⁴² To conduct this test, the Department considers, *inter alia*, such factors as 1) the timing of the sale; 2) the price and quantity; 3) the expenses from the transaction; 4) whether the goods were resold at a profit; and 5) whether the transaction was made on an arm’s-length basis.⁴³ The Department considers a number of factors in its *bona fides* analysis, “all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise.”⁴⁴

The Department may evaluate the *bona fides* of a sale in an administrative review if it determines that information on the record warrants such an analysis.⁴⁵ Although some *bona fide* issues may share commonalities across various Department cases, the Department examines the *bona fide* nature of a sale on a case-by-case basis and the analysis may vary with the facts surrounding each sale.⁴⁶

Price

The Department continues to find that the CBP data are the best available data on the record for performing a *bona fide* analysis on NTACO’s and Nam Phuong’s single U.S. sales. Unless demonstrated to be inaccurate, it is the Department’s practice when conducting a *bona fide* analysis to base the price comparison on other U.S. entries of subject merchandise during the POR, as reported by CBP, when available.⁴⁷ As discussed below, the Department does not find Nam Phuong’s and NTACO’s reasoning against using CBP data convincing.

With respect to their argument that the Department should take into consideration that the sales price at issue “reflected the higher costs of working with a new importer, ordering new cartons/packaging material and setting up logistics for a new market,” we disagree. It is the responsibility of the new shipper to bear the burden of proof in demonstrating that the CBP data are not accurate representations of commercially reasonable market behavior.⁴⁸ Apart from stating that these factors affected the sales prices, Nam Phuong and NTACO provided no evidence supporting their claim.⁴⁹ Accordingly, there is no information on the record by which

⁴² See *Hebei New Donghua Amino Acid Co. v. United States*, 374 F. Supp. 2d 1333, 1339 (CIT 2005) (“*New Donghua*”) (citing *Windmill Int’l Pte., Ltd. v. United States*, 193 F. Supp. 2d 1303, 1313 (CIT 2002)).

⁴³ See *Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246 (CIT 2005) (“*TTPC*”) at 1250.

⁴⁴ See *New Donghua*, citing *Fresh Garlic from the PRC: Final Results of Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002).

⁴⁵ See, e.g., *Certain Tissue Paper Products from the People’s Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 72 FR 58642 (October 16, 2007) (“*Tissue Paper from the PRC*”) and accompanying Issues and Decision Memorandum at Comment 4a.

⁴⁶ See *New Donghua* citing *Certain Preserved Mushrooms from the People’s Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 68 FR 41304 (July 11, 2003) and accompanying Issues and Decision Memorandum at Comment 2.

⁴⁷ See *Honey from the People’s Republic of China: Final Results and Rescission of Antidumping Duty New Shipper Review*, 76 FR 4289 (January 25, 2011) (“*Honey from the PRC*”) and accompanying Issues and Decision Memorandum at Comment 4.

⁴⁸ See, e.g., *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea*, 66 FR 3540 (January 16, 2001), and accompanying Issues and Decision Memorandum at Comment 6 (explaining that respondents bear the burden of proof when challenging aspects of the Department’s analysis).

⁴⁹ See Nam Phuong Case Brief at 8-9; NTACO Case Brief at 8.

the Department can determine whether such factors actually existed and, if so, whether the single sale price was affected.

With respect to Nam Phuong's and NTACO's assertion that U.S. sales between new shipper respondents and their first unrelated U.S. customer are different from other sales contained in the CBP data due to the CBP data primarily consisting of related party transfer prices, we disagree because their argument is speculative and based on the similarity in names between the exporter and importer on certain entries. According to U.S. customs law, importers of record may be the producers/exporters of the goods, the ultimate consignees, or any party with a financial interest in the merchandise.⁵⁰ Thus, similarities in names mean only that a producer/exporter served as the importer of record⁵¹ or perhaps delegated that duty to a U.S. affiliate, and does not mean that the importers of record were the ultimate purchasers. Additionally, there is a legal presumption that the entry data reported to CBP by U.S. importers reflects the transaction value of the merchandise at issue, rather than a transfer price.⁵² The Department thus finds that the information provided by Nam Phuong and NTACO does not support the conclusion that the CBP data cannot be compared to their single sales prices. Because of the proprietary nature of CBP data, we have included additional analysis on this topic in each company's Final *Bona Fide* Memorandum.⁵³

With respect to Nam Phuong's and NTACO's argument that the Department should analyze the single sale at issue in the context of other new shipper sales transactions, we disagree. The Department's practice, which has been upheld by the Court of International Trade ("CIT"), is to rely on larger sample sizes "because the larger the sample, the less risk run that the sample chosen is extreme or unusual."⁵⁴ The few new shipper prices on the record⁵⁵ are not adequate for use in a pricing analysis in comparison to the CBP data which encapsulate all of the sales of subject merchandise from Vietnam. Additionally, the new shipper prices on the record are not contemporaneous with the POR. In conducting a *bona fide* analysis, it is the Department's practice to compare the sale at issue to those sales that entered the United States during that same

⁵⁰ See 19 U.S.C. § 1484(a)(1), (a)(2)(B).

⁵¹ See, e.g., Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Administrative Review and Partial Rescission, 73 FR 15479 (March 24, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

⁵² See *Fresh Garlic from the People's Republic of China: Final Rescission of Antidumping Duty New Shipper Reviews; 2010-2011*, 78 FR18316 (March 26, 2013) and accompanying Issues and Decision Memorandum at Comment 6; see also 19 U.S.C. § 1484(a)(1)(B) and 19 U.S.C. § 1401a(a)(1)(A), (b)(1)), (b)(2)(B).

⁵³ See Memorandum to James Doyle, Director, Office V, Antidumping and Countervailing Duty Operations, through Scot T. Fullerton, Program Manager, Office V, Antidumping and Countervailing Duty Operations, from Matthew Renkey, Senior International Trade Analyst "New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Analysis for the *Bona Fide* Nature of Nam Phuong Seafood Co., Ltd.'s Sale," dated June 19, 2015 ("Nam Phuong Final *Bona Fide* Memorandum"); see also Memorandum to James Doyle, Director, Office V, Antidumping and Countervailing Duty Operations, through Scot T. Fullerton, Program Manager, Office V, Antidumping and Countervailing Duty Operations, from Susan Pulongbarit, Senior International Trade Analyst "New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Analysis for the *Bona Fide* Nature of NTACO Corporations's Sale," dated June 19, 2015 ("NTACO Final *Bona Fide* Memorandum").

⁵⁴ See *Tianjin Tiancheng Pharmaceutical Co. v. United States*, 366 F. Supp. 2d 1246, 1256 (CIT 2005).

⁵⁵ See Nam Phuong's December 22, 2014, factual information submission at Exhibits 1-7. These Exhibits contain sales documents from several prior new shipper reviews.

POR.⁵⁶ Furthermore, Nam Phuong and NTACO fail to recognize that although the new shipper prices may be similar to their sales prices, each *bona fide* analysis is dependent on the facts specific to each case.⁵⁷ The fact that Nam Phuong's and NTACO's sales prices are similar to prices of other new shippers previously determined to be *bona fide* in other PORs is, on its own, not a determination of a *bona fide* transaction.

With regard to NTACO's argument that a comparison between its U.S. price and prices for other imports made by its customer and prices charged by NTACO to other export markets are not an indication of a non-*bona fide* transaction, we disagree. We also disagree with Nam Phuong's parallel argument that other U.S. price benchmarks show that the price its U.S. customer paid is in line with other regular, commercial transactions. Because of the proprietary nature of these data, we have included a more detailed analysis on this topic in each company's Final *Bona Fide* Memorandum.

Regarding Nam Phuong's and NTACO's argument that the authority relied upon in the Thanh Hung NSR is inapposite to the price analysis, we disagree. Specifically, in the Thanh Hung NSR, we stated that "{t}he Department compared Thanh Hung's single sale to CBP data for the specific HTSUS category under which the sale entered in order to determine whether Thanh Hung's POR sales price was artificially high."⁵⁸ As noted in the Nam Phuong and NTACO Preliminary *Bona Fide* Memoranda,⁵⁹ we performed the same analysis in this case. With respect to Nam Phuong's and NTACO's argument that the authority relied upon in *Warmwater Shrimp from the PRC* is inapposite, we disagree, in part. While we inadvertently cited Comment 16D, instead of the intended Comment 16A in our preliminary memoranda,⁶⁰ we find that the situation in that case is the same. In *Warmwater Shrimp from the PRC*, we stated that "the Department

⁵⁶ See, e.g., *Honey From the People's Republic of China: Final Results and Rescission of Antidumping Duty New Shipper Review*, 76 FR 4289 (January 25, 2011) and accompanying Issues and Decision Memorandum at Comment 4.

⁵⁷ See, e.g., *Glycine* at 47406.

⁵⁸ See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Rescission of Antidumping Duty New Shipper Review*, 79 FR 71748 (December 3, 2014) ("Thanh Hung NSR") and accompanying Issues and Decision Memorandum at 6.

⁵⁹ See Memorandum to James Doyle, Director, Office V, Antidumping and Countervailing Duty Operations, through Scot T. Fullerton, Program Manager, Office V, Antidumping and Countervailing Duty Operations, from Matthew Renkey, Senior Analyst, titled "New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: *Bona Fide* Nature of Nam Phuong Seafood Co., Ltd.'s Sale," dated January 20, 2015 ("Nam Phuong Preliminary *Bona Fide* Memo"); see also Memorandum to James Doyle, Director, Office V, Antidumping and Countervailing Duty Operations, through Scot T. Fullerton, Program Manager, Office V, Antidumping and Countervailing Duty Operations, from Steven Hampton, International Trade Compliance Analyst, titled "New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: *Bona Fide* Nature of NTACO Corporation's Sale," dated January 20, 2015 ("NTACO Preliminary *Bona Fide* Memo").

⁶⁰ See Memorandum to James Doyle, Director, Office V, Antidumping and Countervailing Duty Operations, through Scot T. Fullerton, Program Manager, Office V, Antidumping and Countervailing Duty Operations, from Matthew Renkey, Senior Analyst, titled "New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: *Bona Fide* Nature of Nam Phuong Seafood Co., Ltd.'s Sale," dated January 20, 2015, at 4; see also Memorandum to James Doyle, Director, Office V, Antidumping and Countervailing Duty Operations, through Scot T. Fullerton, Program Manager, Office V, Antidumping and Countervailing Duty Operations, from Steven Hampton, International Trade Compliance Analyst, titled "New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: *Bona Fide* Nature of NTACO Corporations's Sale," dated January 20, 2015, at 5.

has compared Asian Seafoods' single sale to Customs data under the HTS number which the sale entered to provide one of several pieces of data which suggest that Asian Seafoods' POR sales price was artificially high."⁶¹ We note that this is the same analysis and result in the current case.

Involvement of a Third Party

The Department continues to find that the involvement of other entities in Nam Phuong's and NTACO's U.S. sales is not typical of a *bona fide* transaction. The Department examines the involvement of each of the parties in the transaction in order to determine whether the sale was, in fact, completed by the new shipper under review, or was, in fact, made by a previous participant in an antidumping review or investigation, which would otherwise be ineligible to participate in a new shipper review. In previous reviews, the Department has examined such a high level of involvement by third parties in determining whether or not the single sale was a *bona fide* sale between the respondent and the reported customer under normal commercial circumstances.⁶² Since much of our analysis regarding the circumstances surrounding the connection of another entity involves business proprietary information, a full discussion of the basis of our analysis is set forth in each company's Final *Bona Fide* Memorandum.

Atypical Circumstances Surrounding Production

The Department continues to find that the circumstances surrounding production of Nam Phuong's and NTACO's single sales are not typical of a *bona fide* transaction. As discussed in the Preliminary *Bona Fide* Memoranda, in previous *bona fide* analyses, the Department has found that the production of the specific merchandise under review prior to the completion of the sales negotiations is indicative of a non-*bona fide* sale.⁶³ Accordingly, the Department continues to find the atypical circumstances surrounding Nam Phuong's and NTACO's production to be indicative of a non-*bona fide* transaction. Since much of our analysis regarding the atypical circumstances surrounding production of this transaction involves business proprietary information, a full discussion of the basis for our analysis is set forth in each company's Final *Bona Fide* Memorandum.

Late Payment

The Department continues to find that the lateness of the payments made by Nam Phuong's and NTACO's U.S. customers is atypical of normal business practices and commercially

⁶¹ *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 ("Warmwater Shrimp from the PRC") at Comment 16A.

⁶² *See, e.g., 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 5, 2007) and accompanying Issues and Decision Memorandum at Comment 17B.

⁶³ *See* NTACO Preliminary *Bona Fide* Memo at 7-8; Nam Phuong Preliminary *Bona Fide* Memo at 5-6.

unreasonable.⁶⁴ In examining the totality of the circumstances, the atypical nature and commercial unreasonableness of Nam Phuong's and NTACO's U.S. customer's late payments are further evidence that their single POR U.S. sales were non-*bona fide*. Since much of our analysis regarding the payment of this transaction involves business proprietary information, a full discussion of the bases for our analysis is set forth in each company's Final *Bona Fide* Memorandum.

Profit

With respect to Nam Phuong's and NTACO's claim that their customers resold the subject merchandise at a profit, we disagree. As noted in each company's Final *Bona Fide* Memorandum, the Department considers profit as a factor when determining whether a transaction is "commercially reasonable."⁶⁵ For these final results, in examining the totality of the circumstances, the fact that Nam Phuong's and NTACO's merchandise was not resold at a profit is further evidence that their single POR U.S. sales were non-*bona fide*. Since much of our analysis regarding profit of this transaction involves business proprietary information, a full discussion of the bases for our analysis is set forth in each company's Final *Bona Fide* Memorandum.

Other Indicia

The other indicia noted above by Nam Phuong and NTACO have been subsumed within the discussion of the five factors listed above that lead us to the conclusion that both companies' single U.S. sales were not *bona fide* transactions. For instance: 1) issues about the timing of the sale are discussed with respect to the circumstances surrounding the production timing as they related to sales negotiations; 2) expenses arising from the transactions are discussed with respect to whether the merchandise was resold at a profit; and 3) the involvement of third parties in both transactions touches upon whether the sales were made at arm's-length.

Conclusion

After examining the totality of the circumstances described above, the Department continues to find that numerous factors demonstrate that Nam Phuong's and NTACO's sole POR U.S. sale were not conducted on a *bona fide* basis. As explained above, multiple aspects of each company's single POR U.S. sale demonstrate, in their totality, that the sales under review were not reflective of normal business practices and are not indicative of future selling practices, including: (1) the sale price for Nam Phuong's and NTACO's POR U.S. sales are extremely high in comparison to most other imports of subject merchandise; (2) the atypical involvement of third parties; (3) atypical circumstances surrounding production; (4) the late payment; and (5) the fact that neither Nam Phuong's nor NTACO's U.S. customer earned a profit on the resale of the subject merchandise.

⁶⁴ Late payments have been cited as one of several factors in our overall non-*bona fide* analysis. See, e.g., *Notice of Rescission of Antidumping Duty New Shipper Reviews: Freshwater Crawfish Tail Meat from the People's Republic of China*, 71 FR 37902 (July 3, 2006).

⁶⁵ See, e.g., NTACO Final *Bona Fide* Memorandum at 2.

Comment 2: Surrogate Country Selection

Nam Phuong & NTACO

- The Department should select Bangladesh to value factors of production because it is economically comparable to Vietnam and Bangladesh is a significant producer of comparable merchandise.⁶⁶
- Bangladesh provides the best quality surrogate value data.⁶⁷
- The Department should undertake a relative economic comparability analysis.⁶⁸

Petitioners

- If the Department does not rescind these reviews, it should select Indonesia as the primary surrogate country.⁶⁹ As an alternative to Indonesia, the Department should choose the Philippines as the surrogate country.⁷⁰
- Bangladesh does not provide the best available information for valuation respondents' factors of production.⁷¹

Department's Position:

Due to the rescission of both the current new shipper reviews, the question of surrogate country selection is moot.

RECOMMENDATION

Based on our analysis of the comments received and factors described above, we recommend continuing to find the sales under review not *bona fide* and rescinding these two NSRs. If accepted, we will publish the final results of these reviews in the *Federal Register*.

AGREE DISAGREE



 Paul Piquado
 Assistant Secretary
 for Enforcement and Compliance

18 JUNE 2015

 Date

⁶⁶ See NTACO Case Brief at 48-65; Nam Phuong Case Brief at 42-54.
⁶⁷ See NTACO Case Brief at 65-80; Nam Phuong Case Brief at 58-74.
⁶⁸ See Nam Phuong Case Brief at 54.
⁶⁹ See Petitioner SV Rebuttal Brief at 1-28.
⁷⁰ *Id.* at 63 – 70.
⁷¹ *Id.* at 29 – 53.