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August 31, 2015

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

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

**SUBJECT:** Certain Frozen Fish Fillets from the Socialist Republic of Vietnam:  
Decision Memorandum for the Preliminary Results of the 2013-  
2014 Antidumping Duty Administrative Review

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## SUMMARY

The Department of Commerce (the “Department”) is conducting the 11<sup>th</sup> administrative review of the antidumping duty (“AD”) order on certain frozen fish fillets (“fish fillets”) from the Socialist Republic of Vietnam (“Vietnam”).<sup>1</sup> The Department preliminarily determines that The Hung Vuong Group<sup>2</sup> and Thuan An Production Trading and Service Co., Ltd. (“Tafishco”) sold merchandise below normal value (“NV”) during the period of review (“POR”), August 1, 2013, through July 31, 2014. The Department also preliminarily determines that 16 companies are entitled to a separate rate and that 16 other companies had no shipments during the POR.

If we adopt these preliminary results in the final results of the review, we will instruct U.S. Customs and Border Protection (“CBP”) to assess ADs on all appropriate entries of subject merchandise during the POR. We invite interested parties to comment on these preliminary results. We expect to issue final results no later than 120 days from the date of publication of this notice pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the “Act”).

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

<sup>2</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) (“*Ninth AR Final*”) and accompanying Issues and Decision Memorandum at 3.



## *Case History*

On September 30, 2014, the Department initiated the 11<sup>th</sup> administrative review of fish fillets from Vietnam with respect to 56 companies.<sup>3</sup> Because of the large number of exporters involved in this administrative review, the Department limited the number of respondents individually examined pursuant to section 777A(c)(2) of the Act and selected HVG and Vinh Hoan Corporation (“Vinh Hoan”) as mandatory respondents.<sup>4</sup> On November 25, 2014, based on the rescission of the review with respect to Vinh Hoan, the Department selected the next largest exporter of subject merchandise during the POR, Tafishco, for individual examination as an additional mandatory respondent in this proceeding.<sup>5</sup>

Between November and December, 2014, the Department sent AD questionnaires to HVG and Tafishco, to which they responded in a timely manner. On March 10, 2015, the Department sent interested parties a letter inviting comments on surrogate country selection and surrogate value (“SV”) data, and specified the deadlines for these respective submissions.<sup>6</sup>

On April 8, 2015, the Department partially extended the deadline for issuing the preliminary results by 106 days.<sup>7</sup> Between April and August, 2015, the Department issued supplemental questionnaires to HVG and Tafishco, to which they responded in a timely manner.

Between May and July, 2015, the Department received surrogate country comments, SV comments, and rebuttal comments from interested parties. On August 11, 2015, the Department further extended the deadline for issuing the preliminary results by 14 days until August 31, 2015.<sup>8</sup>

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<sup>3</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 79 FR 58729 (September 30, 2014) (“*Initiation Notice*”).

<sup>4</sup> See Memorandum to James Doyle, Director, Office V, AD/CVD Operations; through Scot Fullerton, Program Manager, Office V, AD/CVD Operations; from Javier Barrientos, Senior International Trade Analyst, Office V, AD/CVD Operations regarding “Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Selection of Respondents for Individual Review,” dated November 7, 2014.

<sup>5</sup> See Memorandum to James Doyle, Director, Office V, Enforcement and Compliance; through Scot T. Fullerton, Program Manager, Office V, Enforcement and Compliance; from Javier Barrientos, Senior International Trade Compliance Analyst, Office V, Enforcement and Compliance regarding “Second Selection of Respondent for Individual Review,” dated December 1, 2014.

<sup>6</sup> See Letter to All Interested Parties, regarding “Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Request for Surrogate Country and Surrogate Value Comments and Information,” dated March 10, 2015 (“*Surrogate Country Memo*”).

<sup>7</sup> See Memorandum to James P. Maeder, Senior Director, Office I, Antidumping and Countervailing Duty Operations, through James C. Doyle, Director, Office V, Antidumping and Countervailing Duty Operations regarding “Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Deadline for Preliminary Results of 2013-2014 Antidumping Duty Administrative Review,” dated April 8, 2015.

<sup>8</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 regarding “Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Second Extension of Deadline for Preliminary Results of 2013-2014 Antidumping Duty Administrative Review,” dated August 11, 2015.

## ***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 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>9</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.

## **DISCUSSION OF THE METHODOLOGY**

### ***Selection of Respondents***

Section 777A(c)(1) of the Act directs the Department to calculate an individual weighted-average dumping margin for each known exporter or producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters and producers if it is not practicable to make individual weighted average dumping margin determinations because of the large number of exporters and producers involved in the review. When the Department limits the number of exporters examined in a review pursuant to section 777A(c)(2) of the Act, section 782(a) of the Act directs the Department to calculate individual weighted-average dumping margins for companies not

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<sup>9</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.

initially selected for individual examination that voluntarily provide the information requested of the mandatory respondents if: (1) the information is submitted by the due date specified for the mandatory respondents and (2) the number of such companies subject to the review is not so large that any additional individual examination of such exporters or producers would be unduly burdensome to the administering authority and inhibit the timely completion of the review.

As noted above, because of the large number of exporters involved in this administrative review, the Department limited the number of respondents individually examined pursuant to section 777A(c)(2) of the Act and on November 7, 2014, the Department determined that it was not practicable to examine more than two respondents in the instant administrative review. Therefore, in accordance with section 777A(c)(2)(B) of the Act, the Department selected for individual examination the two exporters accounting for the largest volume of frozen fish fillets exported from Vietnam during the POR based on CBP data. As noted above, the Department selected HVG and Vinh Hoan as mandatory respondents.<sup>10</sup> The Department also noted that, if it received voluntary responses in accordance with section 782(a) of the Act and 19 CFR 351.204(d), it would evaluate the circumstances at that time in deciding whether to select an additional respondent for examination.

Also as noted above, on November 25, 2014, based on withdrawal of review requests for Vinh Hoan, the Department rescinded the review with respect to Vinh Hoan and selected the next largest exporter of subject merchandise during the POR, Tafishco, for individual examination as an additional mandatory respondent in this proceeding.<sup>11</sup> In addition, on December 12, 2014, International Development & Investment Corporation (“IDI”), submitted a timely questionnaire response and requested to be treated as a voluntary respondent.

While IDI may have timely submitted the information required by section 782(a)(1) of the Act, as explained above, the Department concluded that it would be unduly burdensome and inhibit timely completion of this review to select and review IDI as a voluntary respondent. Because section 782(a)(2) of the Act was not satisfied in this case, we were not statutorily obligated to select IDI as a voluntary respondent. The Department’s interpretation of 782(a) of the Act is supported by the CIT’s decision in *Longkou Haimeng*. In that case, the CIT upheld the Department’s decision to limit the number of respondents selected for examination to mandatory respondents without calculating individual dumping margins for companies that requested voluntary respondent treatment pursuant to 19 CFR 351.204(d). In its decision, the CIT explicitly rejected the argument that section 782(a) of the Act requires the Department to individually examine voluntary respondents that have participated in the proceeding.<sup>12</sup> The

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<sup>10</sup> See Memorandum to James Doyle, Director, Office V, AD/CVD Operations; through Scot Fullerton, Program Manager, Office V, AD/CVD Operations; from Javier Barrientos, Senior International Trade Analyst, Office V, AD/CVD Operations regarding “Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Selection of Respondents for Individual Review,” dated November 7, 2014.

<sup>11</sup> See Memorandum to James Doyle, Director, Office V, Enforcement and Compliance; through Scot T. Fullerton, Program Manager, Office V, Enforcement and Compliance; from Javier Barrientos, Senior International Trade Compliance Analyst, Office V, Enforcement and Compliance regarding “Second Selection of Respondent for Individual Review,” dated December 1, 2014.

<sup>12</sup> See *Longkou Haimeng Machinery Co. v. United States*, 581 F. Supp. 2d 1344, 1351 (CIT 2008) (“*Longkou Haimeng*”) (where the Court found that “It is clear from the language of the SAA and the {Act} itself that Congress has spoken on the matter. The authority to limit the number of respondents for examination rests ‘exclusively’ with

Department's decision not to examine IDI as a voluntary respondent in this review is consistent with Department practice, the Act, and relevant CIT cases.

Moreover, on June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and CVD law, including amendments to section 782(a) of the Act.<sup>13</sup> The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this review.<sup>14</sup>

Under Section 782(a) of the Act as recently amended by the TPEA, in determining whether it would be unduly burdensome to examine a voluntary respondent, the Department may consider 1) the complexity of the issues or information presented in the proceeding, including questionnaires and any responses thereto; 2) any prior experience of the Department in the same or similar proceedings; 3) the total number of investigations or reviews being conducted by the Department; and 4) such other factors relating to the timely completion of these investigations and reviews. Here, the issues and information presented in this review are complex. Analysis of both HVG and Tafishco has been complicated due to each company's multiple production facilities and factors of production. Further, we note that this is the first time that we are reviewing Tafishco as a mandatory respondent, and thus, the Department has had to expend additional time gaining experience with this company's records and practices. We have issued three supplemental questionnaires to both these companies in this review, which include numerous questions concerning the respondents' FOP reporting methodologies. Finally we note that the Department is conducting numerous investigations and reviews, and has recently initiated numerous new investigations.<sup>15</sup> As a result, we are unable to calculate an individual dumping margin for a voluntary respondent, in addition to individual dumping margins for the two companies individually examined in this review. The additional workload of individually examining a voluntary respondent would be unduly burdensome, given the Department's current resource availability, and would inhibit timely completion of this review. Thus, consistent with

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Commerce. Therefore, the Court finds that Commerce's determination to limit its review to three mandatory respondents was within the bounds of its statutory authority.")

<sup>13</sup> See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) ("TPEA"). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) ("Applicability Notice").

<sup>14</sup> *Id.*, 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

<sup>15</sup> See Memorandum to James Doyle, Director, Office V, AD/CVD Operations; through Scot Fullerton, Program Manager, Office V, AD/CVD Operations; from Javier Barrientos, Senior International Trade Analyst, Office V, AD/CVD Operations regarding "Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Selection of Respondents for Individual Review," dated November 7, 2014. See also *Certain Cold-Rolled Steel Flat Products from Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Netherlands, the Russian Federation, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 51198 (August 24, 2015); *Certain Corrosion-Resistant Steel Products from Italy, India, the People's Republic of China, the Republic of Korea, and Taiwan: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 37228 (June 30, 2015).

section 782(a) of the Act, the Department has not considered IDI's unsolicited questionnaire responses.

### ***Preliminary Determination of No Shipments***

The Department received certifications of no shipments from the following 16 companies ("No Shipment Companies"):

1. Asia Commerce Fisheries Joint Stock Company
2. An Giang Agriculture and Food Import-Export Joint Stock Company
3. Anvifish Joint Stock Company
4. Binh An Seafood Joint Stock Co.
5. Dai Thanh Seafoods Co., Ltd.
6. Fatifish Company Limited
7. Golden Quality Seafood Corporation
8. Hiep Thanh Seafood Joint Stock Co.
9. Hoa Phat Seafood Import-Export and Processing JSC
10. Ngoc Ha Co., Ltd. Food Processing and Trading
11. Quang Minh Seafood Co., Ltd.
12. QVD Food Co. Ltd.
13. Saigon Mekong Fishery Co., Ltd.
14. Southern Fisheries Industries Company, Ltd.
15. TG Fishery Holdings Corporation
16. To Chau Joint Stock Company

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

Based on the evidence on the record thus far, we preliminarily determine that the No Shipment Companies did not have any reviewable transactions during the POR. In addition, we find that it is appropriate not to rescind the review in part in this circumstance but, rather, to complete the review with respect to the above named companies and issue appropriate instructions to CBP based on the final results of the review.<sup>16</sup> Should evidence contrary to these companies' no shipments claims arise, we will pursue the issue in accordance with our governing statute and regulations.

### ***NME Country Status***

In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is a non-market economy ("NME") country shall remain in effect until revoked by the Department. The Department considers Vietnam to be an NME country.<sup>17</sup> Therefore, we continue to treat Vietnam as an NME country for purposes of these preliminary results.

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<sup>16</sup> See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694, 65694-65695 (October 24, 2011).

<sup>17</sup> See, e.g., *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results of the*

## *Separate Rates*

Pursuant to section 771(18)(C)(i) of the Act, a designation of a country as an NME remains in effect until it is revoked by the Department. Accordingly, there is a rebuttable presumption that all companies within an NME are subject to government control, and thus, should be assessed a single AD rate.<sup>18</sup> In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.<sup>19</sup> It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Sparklers*,<sup>20</sup> as amplified by *Silicon Carbide*.<sup>21</sup> However, if the Department determines that a company is wholly foreign-owned by individuals or companies located in a market economy ("ME"), then a separate rate analysis is not necessary to determine whether it is independent from government control.<sup>22</sup>

The Department received separate rate applications or certifications from the following 15 companies ("Separate-Rate Applicants"):

1. Basa Joint Stock Company
2. Cadovimex II Seafood Import-Export and Processing Joint Stock Company
3. Cafatex Corporation
4. C.P. Vietnam Corporation
5. Cuu Long Fish Joint Stock Company
6. East Sea Seafoods LLC
7. GODACO Seafood Joint Stock Company
8. Green Farms Seafood Joint Stock Company
9. Hoang Long Seafood Processing Company Limited
10. International Development and Investment Corporation
11. Nam Viet Corporation
12. NTSF Seafoods Joint Stock Company

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*Antidumping Duty Administrative Review and New Shipper Review; 2011–2012*, 78 FR 55676 (September 11, 2013), unchanged in *Ninth AR Final*, 79 FR 19053.

<sup>18</sup> See *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006) ("*Lined Paper*"); *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006) ("*Sawblades*").

<sup>19</sup> See *Initiation Notice*, 79 FR at 58730.

<sup>20</sup> See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"), and 19 CFR 351.107(d).

<sup>21</sup> See *Silicon Carbide*, 59 FR at 22585.

<sup>22</sup> See, e.g., *Certain Pneumatic Off-the-Road Tires from the People's Republic of China, Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 9278, 9284 (February 20, 2008), unchanged in final affirmative determination, 73 FR 40485 (July 15, 2013).

13. Seafood Joint Stock Company No. 4 - Branch Dong Tam Fisheries Processing Company
14. Viet Phu Foods and Fish Corporation
15. Vinh Quang Fisheries Joint-Stock Company

A. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.<sup>23</sup> The evidence provided by HVG, Tafishco and the Separate-Rate Applicants supports a preliminary finding of *de jure* absence of government control based on the following: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of companies.<sup>24</sup>

B. Absence of *De Facto* Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices ("EPs") are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.<sup>25</sup> The Department determines that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.<sup>26</sup>

The evidence provided by HVG, Tafishco and the Separate-Rate Applicants, except as stated below, supports a preliminary finding of *de facto* absence of government control based on the following: (1) the companies set their own EPs independent of the government and without the approval of a government authority; (2) the companies have authority to negotiate and sign contracts and other agreements; (3) the companies have autonomy from the government in making decisions regarding the selection of management; and (4) there is no restriction on any of the companies' use of export revenue.<sup>27</sup> Therefore, the Department preliminarily finds that HVG, Tafishco and the Separate-Rate Applicants, except as identified below, established that they qualify for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers*.

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<sup>23</sup> See *Sparklers*, 56 FR at 20589.

<sup>24</sup> See, e.g., HVG's December 5, 2014 submission at 5, and Exhibit 4.

<sup>25</sup> See *Silicon Carbide*, 59 FR at 22586-87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

<sup>26</sup> *Id.*, 60 FR at 22544, 22544.

<sup>27</sup> See, e.g., HVG's December 5, 2014 submission at 12; Tafishco's December 29, 2014 submission at 11; see also the Separate-Rate Applicants' submissions dated from October – November 2014.

C. Can Tho Import-Export Joint Stock Company

On December 1, 2104, Can Tho Import-Export Joint Stock Company (“Caseamex”) submitted a separate rate application.<sup>28</sup> In its separate rate application Caseamex stated that “no material changes in company structure, shareholdings or operations have occurred since” the last POR.<sup>29</sup> We note that in the last POR the Department found that Caseamex was not eligible for a separate rate.<sup>30</sup> Because the facts underlying the analysis in the review are business proprietary, they have been addressed in more detail in a separate memorandum.<sup>31</sup> Moreover, because the facts underlying the analysis in the review are identical to the last review; we continue to find that Caseamex is not eligible for a separate rate.

D. Separate Rate Calculation for Companies Not Individually Examined

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

The statute and the Department’s regulations do not directly address the establishment of a rate to be applied to individual companies not selected for individual examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Section 735(c)(5)(A) of the Act instructs that we do not calculate an all-others rate using any zero or *de minimis* weighted-average dumping margins or any weighted-average dumping margins based entirely on facts available. Accordingly, the Department’s usual practice has been to average the rates for the selected companies excluding rates that are zero, *de minimis*, or based entirely on facts available.<sup>32</sup>

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

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<sup>28</sup> See Caseamex’s December 1, 2014 submission.

<sup>29</sup> *Id.* at 1.

<sup>30</sup> See *Tenth AR Final* at Comment XXI.

<sup>31</sup> See Memo to the File, from Paul Walker, Program Manager, Office V, “Eleventh Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Separate Rate Status of Can Tho Import-Export Joint Stock Company,” dated concurrently with this notice, which contains the following Memorandum, “Proprietary Analysis of Comment XXI: CASEAMEX – Separate Rate Status.”

<sup>32</sup> See *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Review in Part*, 73 FR 52823, 52824 (September 11, 2008) and accompanying Issues and Decision Memorandum at Comment 16.

### ***Vietnam-Wide Entity***

A review was requested, but not rescinded, for Thien Ma Seafood Co., Ltd. (“Thien Ma”).<sup>33</sup> Thien Ma is not eligible for separate rate status because it did not submit a completed separate rate application or certification.<sup>34</sup> Accordingly, Thien Ma is a part of the Vietnam-wide entity.

The Department’s change in policy regarding conditional review of the NME-wide entity applies to this administrative review.<sup>35</sup> Under this policy, the Vietnam-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the Vietnam-wide entity in this review, the entity is not under review and the entity’s rate is not subject to change.

### ***Surrogate Country***

As noted above, on March 10, 2015, the Department sent interested parties a letter inviting comments on surrogate country selection and SV data.<sup>36</sup> Also, as noted above, between May and July, 2015, interested parties submitted comments and rebuttal comments on surrogate country selection and SVs.

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer’s factors of production (“FOP”), valued using the best available information in a surrogate ME country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (a) at a level of economic development comparable to that of the NME country; and (b) significant producers of comparable merchandise.<sup>37</sup> Reading sections 773(c)(1) and (c)(4) of the Act in concert, it is the Department’s practice to select an appropriate surrogate country based on the availability and reliability of data.<sup>38</sup> Accordingly, we examine each factor below.

#### **A. Comparable Level of Economic Development**

Pursuant to section 773(c)(4) of the Act, the Office of Policy memorandum identified Bangladesh, India, Nigeria, Nicaragua, Pakistan, and the Philippines as being at the same level of economic development as Vietnam.<sup>39</sup> Section 773(c)(4)(A) of the Act is silent with respect to how or on what basis the Department may make this determination, but it is the Department’s

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<sup>33</sup> See *Initiation Notice*, 79 FR at 58732.

<sup>34</sup> *Id.*, 79 FR at 58730.

<sup>35</sup> See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013).

<sup>36</sup> See *Surrogate Country Memo*.

<sup>37</sup> See *Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process* (March 1, 2004) (“*Policy Bulletin*”).

<sup>38</sup> *Id.*

<sup>39</sup> See *Surrogate Country Memo*.

long standing practice to use *per capita* gross national income (“GNI”) data reported in the World Bank’s World Development Report.<sup>40</sup>

According to Petitioners,<sup>41</sup> although Indonesia is not on the surrogate country list in the current review, it continues to be at a level of economic development comparable to that of Vietnam because its GNI remained about twice that of Vietnam’s for the past several reviews.<sup>42</sup> In the event that the Department does not select Indonesia as the surrogate country, the Petitioners contend the Philippines is economically comparable to Vietnam, is on the surrogate country list, and should be selected.<sup>43</sup> HVG and Tafishco did not provide comments on the selection of a surrogate country, but submitted surrogate value data for Indonesia.<sup>44</sup>

As a general rule, the Department selects a surrogate country that is at the same level of economic development as the NME unless it is determined that none of the countries are viable options because: (a) they either are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available SV data, or (c) are not suitable for use based on other reasons. Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development.<sup>45</sup>

As explained in the Department’s *Policy Bulletin*, “{t}he surrogate countries on the (non-exhaustive) surrogate country list are not ranked.”<sup>46</sup> This lack of ranking reflects the Department’s long-standing practice that, for the purpose of surrogate country selection, the countries on the list “should be considered equivalent” from the standpoint of their level of economic development, based on *per capita* GNI, as compared to Vietnam’s level of economic development.<sup>47</sup> This also recognizes that the “level” in an economic development context necessarily implies a range of *per capita* GNI, not a specific *per capita* GNI.<sup>48</sup> The Department’s long-standing practice of selecting, if possible, a surrogate country from a non-exhaustive list of countries at the same level of economic development as the NME country, or another country at the same level of economic development, fulfills the statutory requirement to value FOPs using data from “one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country . . . .”<sup>49</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.

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<sup>40</sup> See, e.g., *Ninth AR Final* at Comment I.A.

<sup>41</sup> The Catfish Farmers of America and individual U.S. catfish processors, collectively “Petitioners.”

<sup>42</sup> See Petitioners’ May 12, 2015 submission at 8.

<sup>43</sup> *Id.*

<sup>44</sup> See, e.g., HVG/Tafishco’s May 22, 2015 submission.

<sup>45</sup> See Surrogate Country Memo.

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

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> See section 773(c)(4) of the Act.

Because the non-exhaustive list is only a starting point for the surrogate country selection process, the Department considers other countries at the same level of economic development that interested parties propose, as well as other countries that are not at the same level of economic development as the NME country, but nevertheless still at a level comparable to that of the NME country, such as Indonesia in this review.

As we noted in the *Ninth AR Final*, the *Tenth AR Final* and recent litigation, 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 the data from Indonesia is superior to the other countries on the list, despite the fact that Indonesia is not at the same level of economic development as Vietnam.<sup>50</sup> Few countries in the world produce *pangasius* fish;<sup>51</sup> consequently, whole live *pangasius* fish is a special or unique input.<sup>52</sup> Of this small set of countries, only three were included in the Surrogate Country List: Bangladesh, India, and the Philippines, none of which we found in the *Eighth AR Final*, *Ninth AR Final* or *Tenth AR Final* provided the best available information with which to calculate SVs, such that any of those countries should be selected as the surrogate country.<sup>53</sup> Moreover, Indonesia satisfies the statute’s requirement that the surrogate country be at a comparable level of economic development. Further, the data considerations, explained in greater detail below, weigh in favor of Indonesia’s selection over any of the countries that were initially identified in the Surrogate Country List.

#### B. Significant Producers of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department’s regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as the *Policy Bulletin* for guidance on defining comparable merchandise. The *Policy Bulletin* states that “in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise.”<sup>54</sup> Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.<sup>55</sup> Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the

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<sup>50</sup> See *Ninth AR Final* at Comment I; *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 2394 (January 16, 2015) (“*Tenth AR Final*”) and accompanying Issues and Decision Memorandum at Comment I; Final Results of Redetermination Pursuant to *Vinh Hoan Corporation et al. v. United States*, Consol. Court No. 13-00156, Slip Op. 15-16, dated August 3, 2015.

<sup>51</sup> See *Tenth AR Final* at Comment I.A. Different countries use different names for *pangasius*. For example, in Indonesia *pangasius* is referred to as patin. For ease of reference, rather than using the local name throughout this memo, the Department used *pangasius*.

<sup>52</sup> See *Ninth AR Final* at Comment I.A.

<sup>53</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 Final*”) and accompanying Issues and Decision Memorandum at Comment I.C; *Ninth AR Final* at Comment I.C; *Tenth AR Final* at Comment II.

<sup>54</sup> See *Policy Bulletin* at 2.

<sup>55</sup> The *Policy Bulletin* also states that “if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise.” *Id.* at note 6.

industry.<sup>56</sup> “In cases where the identical merchandise is not produced, the Department must determine if other merchandise that is comparable is produced. How the Department does this depends on the subject merchandise.”<sup>57</sup> In this regard, the Department recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

In other cases, however, where there are major inputs, *i.e.*, inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, *e.g.*, processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.<sup>58</sup>

Further, the statute grants the Department discretion to examine various data sources for determining the best available information.<sup>59</sup> Moreover, while the legislative history provides that the term “significant producer” includes any country that is a significant “net exporter,”<sup>60</sup> it does not preclude reliance on additional or alternative metrics.

We examined fish fillet export information from *Fisheries Statistics*, an online data source published by the Food and Agriculture Organization of the United Nations.<sup>61</sup> Consistent with past reviews, after an examination of this information based on the latest *Fisheries Statistics*, we find that all countries on the surrogate country list, except Nigeria, and including Indonesia, are exporters of fish fillets, and thus, significant producers of comparable merchandise.<sup>62</sup>

### C. Data Availability

The *Policy Bulletin* states that, if more than one country is at the same level of economic development as the NME and is a significant producer, “then the country with the best factors data is selected as the primary surrogate country.”<sup>63</sup> Importantly, the *Policy Bulletin* explains further that “data quality is a critical consideration affecting surrogate country selection” and that “a country that perfectly meets the requirements of economic comparability and significant producer is not of much use as a primary surrogate if crucial factor price data from that country are inadequate or unavailable.”<sup>64</sup>

Section 773(c)(1) of the Act instructs the Department to value the FOPs based upon the best available information from an ME country or a countries that the Department considers appropriate. When considering what constitutes the best available information, the Department

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<sup>56</sup> See *Sebacic Acid from the People’s Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 65674, 65675-76 (December 15, 1997) (Where the Department found that to “impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.”).

<sup>57</sup> See *Policy Bulletin* at 2.

<sup>58</sup> *Id.* at 3.

<sup>59</sup> See section 773(c) of the Act; see also *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1990).

<sup>60</sup> See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).

<sup>61</sup> See Petitioners’ May 22, 2015 submission at Exhibit G-3.

<sup>62</sup> See, *e.g.*, *Ninth AR Final* at Comment I.B.

<sup>63</sup> See *Policy Bulletin*.

<sup>64</sup> *Id.*

considers several criteria, including whether the SV data are contemporaneous, publicly available, tax and duty exclusive, represent a broad-market average, and are specific to the input.<sup>65</sup> The Department's preference is to satisfy the breadth of the aforementioned selection criteria.<sup>66</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 the FOPs.<sup>67</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>68</sup>

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

Interested parties have placed SV data on the record for Indonesia, and the Philippines. We examined the available data, with respect to Indonesia and the Philippines, to determine which contained the best available information for valuing FOPs. The greatest contributor to normal value is that of the main input, whole live *pangasius* fish. Interested parties proposed two data sources to value the whole live *pangasius* fish, a publication by the Indonesian government *Indonesian Aquaculture Statistics* ("*Indonesian AS*"), and a publication by the Philippine government *Philippines Fisheries Statistics* ("*Philippines FS*").

With regard to the Philippines data, consistent with the last review, we note that *Philippines FS* are inferior to the *Indonesian AS* because the quantity of *pangasius* data the *Philippines FS* represents is small by comparison (*i.e.*, 86 metric tons ("mt") as compared to 355,000 mt for *Indonesian AS*), the data contain few data points (*i.e.*, 18 data points), and the data may contain further processed fish.<sup>69</sup> As a result, we find that the *Philippines FS* do not represent a broad-market average similar to *Indonesian AS* and because the data include further processed fish,<sup>70</sup> they are not as specific to the input, whole live fish, as *Indonesian AS*.<sup>71</sup> In past reviews, we have declined to use whole live fish data sources where record evidence indicates that dead fish may be included in the data, a practice which has been upheld by the Court.<sup>72</sup> Also, we note that

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<sup>65</sup> See, *e.g.*, *Lined Paper* at Comment 3.

<sup>66</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>67</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) ("*Sixth Mushrooms AR*") and accompanying Issues and Decision Memorandum at Comment 1; see also *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002) and accompanying Issues and Decision Memorandum at Comment 2.

<sup>68</sup> See, *e.g.*, *Sixth Mushrooms AR* at Comment 1.

<sup>69</sup> See Petitioners' May 22, 2015 submission at Exhibits I-3A & P-1A.

<sup>70</sup> See, *e.g.*, *Seventh AR Final* at Comment I.C; *Ninth AR Final* at Comment II (Philippine government officials indicate that indicate *Philippines FS* contains further processed fish).

<sup>71</sup> *Id.* at Exhibit P-1A.

<sup>72</sup> *Id.*; see also *Vinh Hoan Corporation, et al., v. United States*, Slip Op. 15-16, February 19, 2015 at 54.

the data collection techniques employed by *Philippines FS* are not as thorough as those employed by *Indonesian AS*, as it does not encompass whole country data.<sup>73</sup>

In contrast to the *Philippines FS*, we note that the 2012 *Indonesian AS* data contain data points for 28 of 33 districts in Indonesia, which represent a significant quantity of *pangasius*, 355,000 mt.<sup>74</sup> The data are gathered with customized national questionnaires, which requests information on specific species, including *pangasius*, and are meant to capture all-encompassing whole country data.<sup>75</sup> Therefore, we find that the *Indonesian AS* represents a broad-market average. *Indonesian AS* also represents quantities and values of whole live fish because data collectors take specific steps to ensure that the *Indonesian AS* data are specific to whole live fish, which are corroborated by a statement from its director.<sup>76</sup> *Indonesian AS* state that they use statistically valid sampling procedures, and that revisions and corrections are made when errors are found.<sup>77</sup> As a result, we find the *Indonesian AS* to be reliable. As we concluded in past reviews,<sup>78</sup> we similarly find that SV data from Indonesia represent the best available information with which to value respondents' whole live fish input, as well as other FOPs, due to the fact that data from Indonesia satisfies the breadth of the SV criteria.<sup>79</sup>

#### D. Conclusion

In light of the record evidence, the Department finds Indonesia to be a reliable source for SVs, provides far superior data for the whole live fish input, is at a level of economic development comparable to Vietnam based on GNI, and is a significant producer of comparable merchandise. Given the above facts, the Department selects Indonesia as the primary surrogate country for this review. A detailed explanation of the SVs appears below in the "Normal Value" section of this notice.

#### ***Determination of Comparison Method***

Pursuant to 19 CFR 351.414(c)(1), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average EPs or CEPs (the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In AD investigations, the Department examines whether to use the average-to-transaction method as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is,

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<sup>73</sup> See *Seventh AR Final* at Comment I.C. (*Philippines FS* infrequently gather data from only from certain aquaculture companies in certain parts of the Philippines, rather than gathering data from the whole country).

<sup>74</sup> *Id.* at Exhibit I-3A.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at Exhibit I-3E.

<sup>77</sup> *Id.*

<sup>78</sup> See *Ninth AR Final* at Comment II.

<sup>79</sup> See Memorandum to the File, from Paul Walker, Case Analyst, "Eleventh Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results," dated concurrently with and hereby adopted by this memorandum ("Prelim SV Memo").

in fact, analogous to the issue in AD investigations.<sup>80</sup> In investigations, pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act, the Department applied a “differential pricing” analysis for determining whether application of average-to-transaction comparisons is appropriate in a particular situation.<sup>81</sup> The Department finds the differential pricing analysis used in those investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review.<sup>82</sup> The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department’s additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating weighted-average dumping margins.

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

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen’s *d* test is applied when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is calculated to evaluate the extent to which the net prices to a particular purchaser, region or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed

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<sup>80</sup> See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012).

<sup>81</sup> See, e.g., *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350 (June 4, 2013) and the accompanying Issues and Decision Memorandum at Comment 3; *Hardwood and Decorative Plywood from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013) and accompanying Issues and Decision Memorandum at Comment 3.

<sup>82</sup> See, e.g., *Certain Activated Carbon from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011–2012*, 78 FR 70533 (November 26, 2013) and accompanying Issues and Decision Memorandum at Comment 2.

thresholds defined by the Cohen's *d* test: small, medium or large. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant, and the sales are considered to have passed the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of EPs (or CEPs) that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

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

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

### ***Results of the Differential Pricing Analysis***

Based on the results of the differential pricing analysis, for HVG and Tafishco, the Department finds that the value of U.S. sales passing the Cohen's *d* test is substantial (*i.e.*, between 33 percent and 66 percent) such that we should consider as an alternative comparison method

applying the average-to-transaction method to a portion of U.S. sales.<sup>83</sup> However, the Department determines that the A-A method can appropriately account for such differences because there is no meaningful difference between the weighted-average dumping margin calculated using the A-A method and when using the alternative method.<sup>84</sup> Accordingly, the Department determines to use the A-A method in making comparisons of EP (or CEP) and NV for HVG and Tafishco.<sup>85</sup>

### *Comparisons to Normal Value*

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

### *U.S. Price*

#### A. EP

Pursuant to section 772(a) of the Act, the EP is "the price at which subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States," as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, the Department calculated EP for some sales by HVG and Tafishco because the first sale to an unaffiliated party was made before the date of importation and the use of CEP was not otherwise warranted on those sales.<sup>86</sup> The Department calculated EP based on the sales price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, as appropriate, the Department deducted from the sales price certain foreign inland freight, brokerage and handling ("B&H"), and international movement costs using SVs.<sup>87</sup>

#### B. CEP

Pursuant to section 772(b) of the Act, the CEP is "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the

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<sup>83</sup> See Hung Vuong Group Preliminary Analysis Memorandum, dated concurrently with and hereby adopted by this memorandum ("HVG Analysis Memo"). See Tafishco Preliminary Analysis Memorandum, dated concurrently with and hereby adopted by this memorandum ("Tafishco Analysis Memo").

<sup>84</sup> *Id.*

<sup>85</sup> In these preliminary results, the Department applied the weighted-average dumping margin calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) ("*Final Modification for Reviews*"). In particular, the Department compared monthly weighted-average CEPs with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin. *Id.*

producer or exporter, to a purchaser not affiliated with the producer or exporter,” as adjusted under section 772(c) and (d) of the Act. For some of HVG and Tafishco’s sales, the Department based U.S. price on CEP in accordance with section 772(b) of the Act, because sales were made on behalf of the Vietnam-based company by a U.S. affiliate to unaffiliated purchasers in the United States.<sup>88</sup> For these sales, the Department based CEP on prices to the first unaffiliated purchaser in the United States. Where appropriate, the Department made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, U.S. movement expenses, and appropriate selling adjustments, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, the Department also deducted those selling expenses associated with economic activities occurring in the United States. The Department deducted, where appropriate, commissions, inventory carrying costs, interest revenue, credit expenses, warranty expenses, and indirect selling expenses. Where foreign movement expenses, international movement expenses, or U.S. movement expenses were provided by NME service providers or paid for in an NME currency, the Department valued these services using SVs. For those expenses that were provided by an ME provider and paid for in an ME currency, the Department used the reported expense. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for each company, *see* HVG’s analysis memorandum, dated concurrently with and hereby adopted by this memorandum.

### *Use of Facts Available*

Section 776(a)(1) and (2) of the Act provides that, if necessary information is missing from the record, or if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the AD statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

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<sup>86</sup> *See, e.g.*, HVG’s December 23, 2014, response at 9.

<sup>87</sup> *See* Prelim SV Memo for details regarding the SVs for movement expenses.

<sup>88</sup> *See, e.g.*, HVG’s December 23, 2014 response at 9.

We twice requested that HVG and Tafishco provide FOPs on a CONNUM-specific basis.<sup>89</sup> In our supplemental questionnaires, we stated that the Department recognizes that parties have not submitted FOPs on a CONNUM-specific basis in the past, dating back to the original investigation, and that parties have generally explained that they have not done so because they do not track each physical characteristic during the production process.<sup>90</sup> We also stated that the supplemental questionnaires serve as notification that in this review and going forward, FOPs must be reported on a CONNUM-specific basis, or the respondent must then explain in detail why it is unable to do so and provide a reasonable allocation methodology.<sup>91</sup> In response to our supplemental questionnaires on this topic, we note that HVG and Tafishco provided CONNUM-specific FOPs using a production based allocation methodology using the production quantities of different products.<sup>92</sup>

Related to the issue of CONNUM-specific data is the inclusion of certain non-subject merchandise HVG and Tafishco included in their FOP reporting. One of the CONNUM characteristics is product form.<sup>93</sup> As non-subject merchandise, by definition, could not meet any of the product forms listed, it should not be reflected in parties' FOP reporting. HVG and Tafishco have provided certain record information which allows the Department to make adjustments to their FOPs to remove any distortions their inclusion might cause.<sup>94</sup>

In addition to the inclusion of certain non-subject merchandise included in the respondents' FOP reporting, HVG and Tafishco also included fillets which are treated with differing amounts of preservatives, resulting in weight gains due to water absorption.<sup>95</sup> We find that this results in an inconsistent relevant basis of comparison between FOP and U.S. sales of subject merchandise, similar to our findings involving glazing in litigation concerning prior reviews.<sup>96</sup> We note that the discussion of this issue is proprietary, and thus, have included more analysis in the relevant company-specific decision memoranda.<sup>97</sup>

As discussed below, pursuant to sections 776(a)(2)(B), and (C) of the Act, the Department determines that the use of facts otherwise available is warranted with respect to HVG and Tafishco. During the course of this review, the Department discovered that HVG and Tafishco failed to provide information in the manner requested by the Department for calculating accurate dumping margins for these preliminary results. Specifically, HVG and Tafishco failed to provide accurate, reliable FOP databases. HVG and Tafishco included in their FOP denominators merchandise which is not produced on the same basis as merchandise destined for the United States (*i.e.*, its sales of subject merchandise contained weight gains of water from

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<sup>89</sup> See the Department's April 9, 2015 supplemental questionnaire to HVG and the July 31, 2015 supplemental questionnaire to HVG; *see also* the Department's April 9, 2015 supplemental questionnaire to Tafishco and the August 3, 2015 supplemental questionnaire to Tafishco.

<sup>90</sup> See, *e.g.*, the Department's April 9, 2015 supplemental questionnaire to HVG at 5.

<sup>91</sup> *Id.*

<sup>92</sup> See HVG's August 11, 2015 submission at 5; Tafishco's August 14, 2015 submission at 5.

<sup>93</sup> See the original antidumping duty questionnaire at Section C.

<sup>94</sup> Much of the discussion of this issue is business proprietary and is included in the companies' respective analysis memos. See HVG Prelim Analysis Memo; Tafishco Analysis Memo.

<sup>95</sup> See, *e.g.*, HVG's August 7, 2015 submission at 23.

<sup>96</sup> See Final Results of Redetermination Pursuant to *Vinh Hoan Corporation et al. v. United States*, Consol. Court No. 13-00156, Slip Op. 15-16, dated August 3, 2015, at 42-43.

<sup>97</sup> See HVG Prelim Analysis Memo; Tafishco Prelim Analysis Memo.

soaking in preservatives), as well as including non-subject merchandise in their FOP denominators. The inclusion of these products in HVG's and Tafishco's FOP usage rates distorts respondents' FOP usage ratios.

Where the request for information was clear and relates to some of the central issues in an antidumping duty case, such as accurate sales and FOP databases, the Court of International Trade ("CIT") has found that the respondent has "a statutory obligation to prepare an accurate and complete record in response to questions plainly asked by Commerce."<sup>98</sup> Further, the CIT has stated that the terms of sections 782(d) and (e) do not give rise to an obligation for the Department to permit a remedial response from the respondent where the respondent has not met all of the criteria of 782(e).<sup>99</sup> This is not a case where the requests for information were not clear and the respondent can claim that it was unaware of its obligation to submit the information, and thus, required further notification by the Department. Record evidence clearly shows that HVG and Tafishco were aware of their obligation to report accurate FOP data.<sup>100</sup> Therefore, the Department finds that HVG and Tafishco had ample notification of the centrality of this issue.<sup>101</sup> Despite submitting flawed information, we note that the record contains FOP usage factors that are specific to the subject *pangasius* products sold to the United States in HVG's and Tafishco's responses. As facts available, we intend to use this information to correct the deficiencies noted above in these preliminary results.<sup>102</sup>

### ***Normal Value***

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

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<sup>98</sup> See *Tung Mung Dev. Co. v. United States*, 25 CIT 752, 758 (CIT 2001) ("*Tung Mung*"); *Reiner Brach GmbH & Co. KG v. United States*, 206 F. Supp. 2d 1323, 1332-3 (CIT 2002) (stating that, where the initial questionnaire was clear as to the information requested, where Commerce questioned the respondent regarding the information, and where Commerce was unaware of the deficiency, Commerce is in compliance with 782(d), and it is the respondent's obligation to create an accurate record and provide Commerce with the information requested).

<sup>99</sup> See *Tung Mung*, 25 CIT at 789 (stating that the remedial provisions of 782(d) are not triggered unless the respondent meets all of the five enumerated criteria of 782(e)).

<sup>100</sup> In the Department's April 9, 2015 supplemental questionnaire to HVG we requested that HVG ensure that the numerator of the FOP calculation should only include FOPs consumed for the production of that particular subject merchandise during the POR, and the denominator should only include the weight of that particular subject merchandise produced during the POR. See the Department's April 9, 2015 supplemental questionnaire to HVG at 5. In addition, we requested that HVG provide information on weight gains due to soaking the subject merchandise in preservatives and test results by market for these weight gains. *Id.* at 9. We asked these same questions of Tafishco. See the Department's April 9, 2015 supplemental questionnaire to Tafishco at 8 and 10.

<sup>101</sup> We do note, however, that HVG and Tafishco have provided varied FOP usage rates in response to the Department's supplemental questionnaires. See HVG's August 14, 2015 submission; Tafishco's August 19, 2015 submission. Moreover, as noted above, HVG and Tafishco provided CONNUM specific usage rates, based on a production allocation methodology. *Id.*

<sup>102</sup> Due to the business propriety nature of the information, see HVG and Tafishco's Analysis Memos.

companies' plants and suppliers that produce the merchandise under consideration, not just the FOPs from a single plant or supplier.<sup>103</sup> This methodology ensures that the Department's calculations are as accurate as possible.<sup>104</sup>

The Department calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). Under section 773(c)(3) of the Act, FOPs used by HVG and Tafishco in the production of frozen fish fillets include, but are not limited to, (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs.<sup>105</sup> The Department based NV on HVG's and Tafishco's reported FOPs for materials, energy, and labor.

### ***Factor Valuations***

In accordance with section 773(c) of the Act, for subject merchandise produced by HVG and Tafishco, the Department calculated NV based on the FOPs reported by HVG and Tafishco for the POR. The Department used Indonesian import data and other publicly available Indonesian sources in order to calculate SVs. To calculate NV, the Department multiplied the reported per-unit FOP quantities by publicly available SVs. The Department's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.<sup>106</sup>

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

Furthermore, with regard to the Indonesian import-based SVs, we disregarded import prices that we have reason to believe or suspect may be subsidized.<sup>107</sup> We have reason to believe or suspect that prices of inputs from India, South Korea, and Thailand may have been subsidized because we have found in other proceedings that these countries maintain broadly available, non-

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<sup>103</sup> See the Department's original antidumping duty questionnaire, dated November 7, 2014 at Section D.

<sup>104</sup> See, e.g., *Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings from the People's Republic of China*, 68 FR 61395 (October 28, 2003) and accompanying Issues and Decision Memorandum at Comment 19.

<sup>105</sup> See, e.g., HVG's January 7, 2015 submission at Exhibit 1.

<sup>106</sup> See, e.g., *Electrolytic Manganese Dioxide from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008) and accompanying Issues and Decision Memorandum at Comment 2.

<sup>107</sup> See Section 505 of the Trade Preferences Extension Act of 2015, Pub. Law 114-27 (June 29, 2015); see also, *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793, 46795 (August 6, 2015).

industry-specific export subsidies.<sup>108</sup> Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.<sup>109</sup> Additionally, consistent with our practice, we disregarded prices from NME countries and excluded imports labeled as originating from an “unspecified” country from the average value because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.<sup>110</sup> Therefore, we have not used prices from these countries either in calculating the Indonesian import-based SVs or in calculating ME input values.

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (*i.e.*, not insignificant quantities) and pays in an ME currency, the Department uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping and/or subsidization.<sup>111</sup> Where the Department finds ME purchases to be of significant quantities (*i.e.*, 85 percent or more), in accordance with our statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs*,<sup>112</sup> the Department uses the actual purchase prices to value the inputs. Information reported by HVG demonstrate that certain inputs were sourced from ME countries and paid for in ME currencies.<sup>113</sup>

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

We valued electricity and water using values from Indonesian utilities. Specifically, we valued electricity using an average value from an Indonesian electricity company, PT PLN (Persero). We valued water using a value from an Indonesian water utility, Pam Jaya, specifically tariff IV-B for food factories.<sup>114</sup>

We valued brokerage and handling (“B&H”) using a price list of export procedures necessary to export a standardized cargo of goods in Indonesia. The price list is compiled based on a survey

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<sup>108</sup> See, e.g., *Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010) and accompanying Issues and Decision Memorandum at 4-5; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009) and accompanying Issues and Decision Memorandum at 17, 19-20; *Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013).

<sup>109</sup> See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People’s Republic of China*, 69 FR 20594 (April 16, 2004) and accompanying Issues and Decision Memorandum at Comment 7.

<sup>110</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, 75300 (December 16, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People’s Republic of China*, 70 FR 24502 (May 10, 2005) (“*Isos*”).

<sup>111</sup> See, e.g., *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997).

<sup>112</sup> See *Use of Market Economy Input Prices in Nonmarket Economy Proceedings*, 78 FR 46799 (August 2, 2013) (“*Market Economy Inputs*”).

<sup>113</sup> See, e.g., HVG’s January 7, 2015 submission at 11.

<sup>114</sup> For more information on the electricity and water SV calculations, see the Prelim SV Memo.

case study of the procedural requirements for trading a standard shipment of goods by ocean transport in Indonesia that is published in *Doing Business 2014: Indonesia* by the World Bank.<sup>115</sup>

We used Indonesian transport information in order to value the freight-in cost of the raw materials. The Department determined the best available information for valuing truck freight to be from *Doing Business 2014: Indonesia*. This World Bank report gathers information concerning the distance and cost to transport products in a 20-foot container, weighing 10 metric tons, from the largest city in Indonesia to the nearest seaport. We calculated the per-unit inland freight costs using the distance from Jakarta to the nearest seaport. We calculated a per-kg, per-kilometer surrogate inland freight rate based on the methodology used by the World Bank. The Department determined the best available information for valuing boat freight to be a rate published by the Indonesian freight forwarder, PT. Mantap Abiah Abadi. Rates were given on a per cubic meter basis, by city. We calculated a per-kg, per-kilometer surrogate boat freight rate using this data.<sup>116</sup>

In NME AD proceedings, the Department prefers to value labor solely based on data from the primary surrogate country.<sup>117</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>118</sup> It is the Department’s practice to value labor using industry-specific data reported by the International Labor Organization’s (“ILO”) in Chapter 6A of the *Yearbook of Labor Statistics* (“ILO Chapter 6A”), which reflects all costs related to labor (*i.e.*, wages, benefits, housing, training, etc.). It is the Department’s preference to value labor using ILO Chapter 6A data under the rebuttable presumption that ILO Chapter 6A data better accounts for all direct and indirect labor costs.<sup>119</sup> However, in this review, there is no ILO Chapter 6A data on the record from Indonesia. As a consequence, for the preliminary results, the Department finds that the best available information for valuing labor is “Fishing, operation of fish hatcheries and fish farms; Service activities incidental to fishing” – the Indonesian ILOSTAT data from 2010 – because it is specific to the industry being examined, a broad-market average, closely contemporaneous with the POR, and covers the entire industry.<sup>120</sup>

The Department’s criteria for choosing surrogate financial statements from which we derive the financial ratios are the availability of contemporaneous financial statements, comparability to the respondent’s experience, and publicly available information.<sup>121</sup> Moreover, for valuing factory overhead, selling, general and administrative expenses (“SG&A”), and profit, the Department normally will use non-proprietary information gathered from producers of identical or

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<sup>115</sup> For more information on the B&H SV calculation, *see* the Prelim SV Memo.

<sup>116</sup> For more information on the truck and boat freight SV calculations, *see* the Prelim SV Memo.

<sup>117</sup> *See Dorbest Ltd. v. United States*, 604 F.3d 1363 (Fed. Cir. 2010) (“*Dorbest IV*”); *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing The Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (“*New Labor Methodology*”).

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> For more information on the labor SV calculations, *see* the Prelim SV Memo. We note that we used this data in the ninth administrative review. *See Ninth AR Final* at Comment VI.

<sup>121</sup> *See, e.g., Isos* at Comment 3.

comparable merchandise in the surrogate country.<sup>122</sup> In addition, the CIT held that in the selection of surrogate producers, the Department may consider how closely the surrogate producers approximate the NME producer's experience.<sup>123</sup> To value factory overhead, selling, general, and administrative expenses ("SG&A"), and profit, the Department used the 2013 financial statements from an Indonesian fish fillet processor, PT Dharma Samudera Fishing Industries ("DSFI").<sup>124</sup>

### **Currency Conversion**

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

### **RECOMMENDATION**

We recommend applying the above methodology for these preliminary results.

✓                      \_\_\_\_\_  
Agree                      Disagree

Paul Piquado  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

21 August 2015  
(Date)

<sup>122</sup> See, e.g., *Sawblades* at Comment 2.

<sup>123</sup> See *Rhodia, Inc. v. United States*, 240 F. Supp. 2d 1247, 1253-1254 (CIT 2002); see also *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>124</sup> For more information on the surrogate financial ratios calculations, see the Prelim SV Memo.