



A-552-801  
NSR: 8/1/2014 - 1/31/2015  
**Public Document**  
E&C OV: KH

January 21, 2016

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

FROM: *fm* Christian Marsh *SM*  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping  
Duty New Shipper Review: Certain Frozen Fish Fillets from the  
Socialist Republic of Vietnam

---

#### SUMMARY

In response to requests from interested parties, the Department of Commerce (“the Department”) is conducting a new shipper review (“NSR”) of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam (“Vietnam”) for the period of review (“POR”) August 1, 2014, through January 31, 2015. The Department has preliminarily determined that Hai Huong Seafood Joint Stock Company (“HHFISH”) did not sell subject merchandise in the United States at prices below normal value (“NV”).

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (“CBP”) to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We will issue final results no later than 90 days from the date of publication of this notice, pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (“the Act”).



## Background

On February 27, 2015, the Department initiated a new shipper review of certain frozen fish fillets from Vietnam for the period August 1, 2014, through January 31, 2012.<sup>1</sup> On September 21, 2015, the Department extended the time period for issuing the preliminary results to November 20, 2015.<sup>2</sup> On November 17, 2015, the Department extended the time period for issuing the preliminary results to December 21, 2015.<sup>3</sup> On December 21, 2015, the Department extended the time period for issuing the preliminary results to January 21, 2015.<sup>4</sup>

The Department sent an antidumping duty questionnaire to HHFISH on April 8, 2015, to which it responded in a timely manner. Between June and November, 2015, the Department issued supplemental questionnaires to the respondent, to which it also responded in a timely manner. Between June and July 2015, the Department received surrogate country/surrogate value comments, and rebuttal comments from interested parties.

## 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,

---

<sup>1</sup> See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Reviews*, 80 FR 17390 (April 1, 2015).

<sup>2</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations from Kenneth Hawkins, International Trade Compliance Analyst, Antidumping and Countervailing Duty Operations, “Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Deadline for Preliminary Results of Antidumping Duty New Shipper Reviews,” dated September 21, 2015.

<sup>3</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations from Kenneth Hawkins, International Trade Compliance Analyst, Antidumping and Countervailing Duty Operations, “Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Deadline for Preliminary Results of Antidumping Duty New Shipper Reviews,” dated November 17, 2015.

<sup>4</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations from Kenneth Hawkins, International Trade Compliance Analyst, Antidumping and Countervailing Duty Operations, “Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Deadline for Preliminary Results of Antidumping Duty New Shipper Reviews,” dated December 21, 2015.

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>5</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

### Bona Fides Analysis

Consistent with the Department’s practice, we examined the *bona fides* of the sale under review in this NSR.<sup>6</sup> In evaluating whether a sale in a NSR is commercially reasonable or typical of normal business practices, and therefore *bona fide*, the Department considers, *inter alia*, such factors as (a) the timing of the sale, (b) the price and quantity, (c) the expenses arising from the transaction, (d) whether the goods were resold at a profit, and (e) whether the transaction was made at an arm’s length basis.<sup>7</sup> Accordingly, 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.”<sup>8</sup> In *TTPC*, the Court of International Trade (“CIT”) also affirmed the Department’s decision that any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant,<sup>9</sup> and found that the weight given to each factor investigated will depend on the circumstances surrounding the sale.<sup>10</sup> Finally, in *New Donghua*, the CIT affirmed the Department’s practice of evaluating the circumstances surrounding an NSR sale, so that a respondent does not unfairly benefit from an atypical sale and obtain a lower dumping margin than the producer’s usual commercial practice would dictate.<sup>11</sup> Where the Department finds that a sale is not *bona fide*, the Department will exclude the sale from its export price calculations.<sup>12</sup>

---

<sup>5</sup> Until June 30, 2004 these products were classifiable under HTSUS 0304.20.6030, 0304.20.6096, 0304.20.6043 and 0304.20.6057. From July 1, 2004 until December 31, 2006 these products were classifiable under HTSUS 0304.20.6033. From January 1, 2007 until December 31, 2011 these products were classifiable under HTSUS 0304.29.6033. On March 2, 2011 the Department added two HTSUS numbers at the request of U.S. Customs and Border Protection (“CBP”) that the subject merchandise may enter under: 1604.19.2000 and 1604.19.3000, which were changed to 1604.19.2100 and 1604.19.3100 on January 1, 2012. On January 1, 2012 the Department added the following HTSUS numbers at the request of CBP: 0304.62.0020, 0305.59.0000, 1604.19.4100, 1604.19.5100, 1604.19.6100 and 1604.19.8100.

<sup>6</sup> See, e.g., *Honey from the People’s Republic of China: Rescission and Final Results of Antidumping Duty New Shipper Reviews*, 71 FR 58579 (October 4, 2006) and accompanying Issues and Decision Memorandum at Comment 1b.

<sup>7</sup> See *Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1249-1250 (CIT 2005) (“*TTPC*”).

<sup>8</sup> See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (“*New Donghua*”) (citing *Fresh Garlic from the People’s Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002) and accompanying Issues and Decision Memorandum: New Shipper Review of Clipper Manufacturing Ltd.).

<sup>9</sup> See *TTPC*, 366 F. Supp. 2d at 1250.

<sup>10</sup> *Id.* at 1263.

<sup>11</sup> See *New Donghua*, 374 F. Supp. 2d at 1344.

<sup>12</sup> See *TTPC*, 366 F. Supp. 2d at 1249.

We found that the sale by HHFISH was made on a *bona fide* basis. Based on our analysis into the *bona fide* nature of the sale, the questionnaire responses, and HHFISH's eligibility for a separate rate (*see* the "Separate Rate" section below), we preliminarily determine that HHFISH has met the requirements to qualify as a new shipper during this POR. Because much of the factual information used in our analysis of the *bona fides* of HHFISH's transaction involves business proprietary information, the full discussion of the basis for our preliminary finding that this sale is *bona fide* is set forth in the *bona fides* memo.<sup>13</sup> Therefore, for the purposes of these preliminary results, we are treating HHFISH's sale of subject merchandise to the United States as an appropriate transaction for its NSR.

### Non-Market Economy Country

In every antidumping duty proceeding conducted by the Department involving Vietnam, Vietnam has been treated as a non-market ("NME") country.<sup>14</sup> In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Accordingly, the Department continues to treat Vietnam as a NME in this proceeding.

### Separate Rates

In antidumping duty proceedings involving NME countries, there is a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty rate. 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>15</sup> as amplified by *Silicon Carbide*.<sup>16</sup> However, if the Department determines that a company is wholly foreign-owned or located in a market economy ("ME"), then a separate rate analysis is not necessary to determine whether it is independent from government control.<sup>17</sup>

#### 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

---

<sup>13</sup> See Memorandum to James C. Doyle, Director, Office V, from Kenneth Hawkins, Case Analyst, Office V, "New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: *Bona Fide* Analysis of HHFISH's New Shipper Sale," dated concurrently with this notice.

<sup>14</sup> See, e.g., *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 11349 (March 17, 2009).

<sup>15</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*").

<sup>16</sup> See *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*").

<sup>17</sup> See, e.g., *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.<sup>18</sup>

The evidence provided by HHFISH supports a preliminary finding of *de jure* absence of government control based on the following: (1) an absence of restrictive stipulations associated with HHFISH's business and export license; (2) applicable legislative enactments decentralizing control of the company; and (3) formal measures by the government decentralizing control of the company.<sup>19</sup>

b) *Absence of De Facto Control*

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export prices 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>20</sup>

For HHFISH, we determine that the evidence on the record supports a preliminary finding of *de facto* absence of government control based on record statements and supporting documentation showing the following: (1) HHFISH sets its own export prices independent of the government and without the approval of a government authority; (2) it retains the proceeds from its sales, and makes independent decisions regarding disposition of profits or financing of losses; (3) it has the authority to negotiate and sign contracts and other agreements; and (4) it has autonomy from the government regarding the selection of management.<sup>21</sup> We note that HHFISH, a joint stock company, is individually owned and controlled by five shareholders.<sup>22</sup>

Therefore, the evidence placed on the record of this review by HHFISH demonstrates an absence of *de jure* and *de facto* government control with respect to its exports of subject merchandise under review, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. As a result, we are preliminarily granting HHFISH a separate rate.

Surrogate Country

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 ("FOPs"), valued 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

---

<sup>18</sup> See *Sparklers*, 56 FR at 20589.

<sup>19</sup> See HHFISH's Section A questionnaire response, dated May 6, 2015, at A4-A6; Exhibit 3, Article 6.

<sup>20</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>21</sup> *Id.* at A7 - A9.

<sup>22</sup> See HHFISH's Section A questionnaire response, at A-2, dated May 6, 2015.

Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.<sup>23</sup>

In this segment, the Department has determined that Bangladesh, India, Nigeria, Nicaragua, Pakistan, and the Philippines are countries whose per capita gross national incomes (“GNI”) are comparable to Vietnam in terms of economic development.<sup>24</sup> As discussed below, the Department also has determined that all of these countries, except Nigeria, are significant producers of comparable merchandise. The sources of the surrogate values (“SVs”) we have used in this NSR are discussed under the “Normal Value” section below.

a) *Economic Comparability*

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>25</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 long standing practice to use *per capita* gross national income (“GNI”) data reported in the World Bank’s World Development Report.<sup>26</sup>

According to Petitioners,<sup>27</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>28</sup> In the event that the Department does not select Indonesia as the surrogate country, Petitioners contend the Philippines is economically comparable to Vietnam, and could be selected.<sup>29</sup> HHFISH also listed Indonesia as an economically comparable country to Vietnam and submitted Indonesian surrogate value data.<sup>30</sup>

In general, 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

---

<sup>23</sup> See Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (“*Policy Bulletin*”).

<sup>24</sup> See Memorandum to Scot Fullerton, Program Manager, Office V, from Carole Showers, Director, Office of Policy, “Request for a List of Surrogate Countries for a New Shipper Review of the Antidumping Duty Order on Certain Frozen Fish Fillets (“FFF”) from the Socialist Republic of Vietnam (“Vietnam”),” dated April 29, 2015 (“Surrogate Country Memo”).

<sup>25</sup> See Surrogate Country Memo.

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

<sup>27</sup> The Catfish Farmers of America and individual U.S. catfish processors.

<sup>28</sup> See Petitioners’ May 12, 2015 submission at 8.

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

<sup>30</sup> See HHFISH’s July 17, 2015 submission (“Surrogate Country and Surrogate Value Comment”).

NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development.<sup>31</sup>

As explained in the Department's *Policy Bulletin*, "{t}he surrogate countries on the (non-exhaustive) surrogate country list are not ranked."<sup>32</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>33</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>34</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>35</sup> In this regard, "countries that are at a level of economic development comparable to that of the NME country" necessarily includes countries that are at the same level of economic development as the NME country.

Because the non-exhaustive list is only a starting point for the surrogate country selection process, the Department 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 far superior to the other countries on the list, despite the fact that Indonesia is not as economically comparable to Vietnam as the other countries on the list.<sup>36</sup> Few countries in the world produce *pangasius* fish;<sup>37</sup> consequently, whole live *pangasius* fish is a special or unique input.<sup>38</sup> Of this small set of countries which produce this input, only three were included in the Surrogate Country List: Bangladesh, India, and the Philippines. We have information on the record for the Philippines and Indonesia, but the data from Indonesia is far superior

---

<sup>31</sup> See Surrogate Country Memo; see also, e.g., *Certain Frozen Fish Fillets: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 2394 (January 16, 2015) and accompanying Issues and Decision Memorandum at Comment II.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> See section 773(c)(4) of the Act.

<sup>36</sup> See *Ninth AR Final* at Comment I; *Tenth AR Final* at Comment I; see also 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>37</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>38</sup> See *Ninth AR Final* at Comment I.A.

regarding this main input.<sup>39</sup> Moreover, Indonesia satisfies the statutory requirement that the surrogate country be at a comparable level of economic development. The data considerations favoring Indonesia are explained in greater detail below.

b) *Significant Producers of Identical or 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 additional guidance 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>40</sup> Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.<sup>41</sup> Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.<sup>42</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>43</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>44</sup>

Further, while the legislative history provides that the term "significant producer" includes any country that is a significant "net exporter,"<sup>45</sup> it does not preclude reliance on additional or alternative metrics.

---

<sup>39</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; Petitioner's July 17, 2015 Submission at 17 and Exhibit I-3A.

<sup>40</sup> See *Policy Bulletin* at 2.

<sup>41</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.

<sup>42</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) ("{T}o impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.>").

<sup>43</sup> See *Policy Bulletin* at 2.

<sup>44</sup> *Id.* at 3.

<sup>45</sup> See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).

There is no world production data of *pangasius* frozen fish fillets available on the record with which the Department can identify producers of identical merchandise. Therefore, absent world production data, the Department's practice is to compare, wherever possible, data for comparable merchandise and establish whether any economically comparable country was a significant producer.<sup>46</sup> In this case, we have determined to use the broader category of frozen fish fillets as the basis for identifying producers of comparable merchandise. Therefore, consistent with cases that have similar circumstances as are present here, we obtained export data for each country identified in the surrogate country list. Based on 2011 export data from the United Nations Food and Agriculture Organization,<sup>47</sup> Bangladesh, India, Indonesia, Nicaragua, Pakistan, and the Philippines are exporters of frozen fish fillets, and thus, are significant producers.<sup>48</sup> Because many of these potential surrogate countries have not been definitively disqualified through the above analysis, the Department looks to the availability of SV data to determine the most appropriate surrogate country.

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>49</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>50</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 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>51</sup> The Department's preference is to satisfy the breadth of the aforementioned selection criteria.<sup>52</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

---

<sup>46</sup> See *Certain Magnesia Carbon Bricks from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 11847, 11849 (March 12, 2010), unchanged for the final determination, 75 FR 45468 (August 2, 2010).

<sup>47</sup> See Letter to the Honorable Penny Pritzker, Secretary of Commerce, from Petitioners, regarding Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Country Comments and Submission of Proposed Factor Values, dated July 17, 2015.

<sup>48</sup> See Memorandum to the File, from Kenneth Hawkins, Case Analyst, dated concurrently with this notice ("Prelim Surrogate Value Memo").

<sup>49</sup> See *Policy Bulletin*.

<sup>50</sup> *Id.*

<sup>51</sup> See, e.g., *Lined Paper* at Comment 3.

<sup>52</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.

FOPs.<sup>53</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>54</sup>

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

Interested parties have placed SV data on the record for Bangladesh, India, Indonesia, and the Philippines. HHFISH placed limited SV information on the record for certain FOPs from Bangladesh and India, but did not include any information to value whole live *pangasius* fish and other factors of production. As such, we examined the available data, with respect to Indonesia and the Philippines, to determine which contained the best available information for valuing all FOPs. The greatest contributor to normal value is that of the main input, whole live *pangasius* fish. Petitioners and HHFISH proposed valuing the whole live *pangasius* fish using a publication by the Indonesian government, *Indonesian Aquaculture Statistics* (“*Indonesian AS*”), and in the event the Department does not select Indonesia, Petitioners argue a publication by the Philippine government *Philippines Fisheries Statistics* (“*Philippines FS*”), could be used to value whole live fish.<sup>55</sup>

We note that Petitioners proposed Indian SV data for the valuation of containerization based on 2008-2009 loading and unloading expenses. Moreover, HHFISH supplied SV data for unrefined fish oil, and rice husk from India. Lastly, HHFISH provided surrogate financial ratio data from 2013-2014 audited financial statements from Apex Foods Limited, an integrated seafood processor in Bangladesh.<sup>56</sup> Because the SV data proposed by interested parties from India and Bangladesh are of such a limited nature, we have not considered either of these countries for selection as the primary surrogate country.

With regard to the Philippines data, consistent with the last review, we note that *Philippines FS* are significantly inferior to the *Indonesian AS* because the quantity of *pangasius* data the *Philippines FS* represents is small by comparison (*i.e.*, 73.79 metric tons (“mt”) as compared to 355,000 mt for *Indonesian AS*), the Philippine data contain few data points (*i.e.*, 21 data points), and the data may contain further processed fish.<sup>57</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

---

<sup>53</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>54</sup> See, *e.g.*, *Sixth Mushrooms AR* at Comment 1.

<sup>55</sup> See Petitioners’ July 17, 2015 submission at Exhibit I-3A and P1-A. See also, HHFISH’s July 17, 2015 submission at Exhibit B-5.

<sup>56</sup> See HHFISH’s Surrogate Country and Surrogate Value Submission at 1-5, dated July 17, 2015.

<sup>57</sup> See Petitioners’ May 22, 2015 submission at Exhibits I-3A and P-1B.

further processed fish,<sup>58</sup> they are not as specific to the input, whole live fish, as *Indonesian AS*.<sup>59</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 conclusion which has previously been found reasonable by the Court of International Trade.<sup>60</sup> Also, we note that 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>61</sup>

In contrast to the *Philippines FS*, we note that the 2013 *Indonesian AS* data contain data points for 28 of 33 districts in Indonesia, which represent a significant quantity of *pangasius*, 355,000 mt.<sup>62</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>63</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>64</sup> *Indonesian AS* state that they use statistically valid sampling procedures, and that revisions and corrections are made when errors are found.<sup>65</sup> As a result, we find the *Indonesian AS* to be reliable. As we concluded in past reviews,<sup>66</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.

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 export prices ("EP") or constructed export prices ("CEP") (the average-to-average method) unless the Secretary determines that another method is

---

<sup>58</sup> See, e.g., *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results and Partial Rescission of the Seventh Antidumping Duty Administrative Review*, 77 FR 15039 (March 14, 2012) ("*Seventh AR Final*") and accompanying Issues and Decision Memorandum at Comment I.C; *Ninth AR Final* at Comment II (Philippine government officials indicate that *Philippines FS* contains further processed fish).

<sup>59</sup> See Petitioners' May 22, 2015 submission at Exhibit P-1A.

<sup>60</sup> *Id.*; see also *Vinh Hoan Corporation, et al., v. United States*, Slip Op. 15-16, February 19, 2015 at 54.

<sup>61</sup> See *Seventh AR Final* at Comment I.C. (*Philippines FS* infrequently gather data only from certain aquaculture companies in certain parts of the Philippines, rather than gathering data from the whole country).

<sup>62</sup> See Petitioners' July 17, 2015 submission at I-3A.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*, at Exhibit I-3E.

<sup>65</sup> *Id.*

<sup>66</sup> See *Ninth AR Final* at Comment II.

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, in fact, analogous to the issue in AD investigations.<sup>67</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>68</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 new shipper review.<sup>69</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 this preliminary determination 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

---

<sup>67</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>68</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>69</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.

have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is calculated to evaluate the extent to which the net prices to a particular purchaser, region or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant, 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.

In this review, which only has one U.S. sale, we do not have enough sales data to establish usable comparison and test groups. The Department finds that these circumstances do not support consideration of an alternative to the average-to-average method.

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.

### Fair Value Comparisons

To determine whether the sale of subject merchandise to the United States by HHFISH was made at less than NV, the Department compared the EP to NV, as described in the “U.S. Price” and “Normal Value” sections below. In these preliminary results, the Department applied the average-to-average comparison methodology adopted in the *Final Modification for Reviews*.<sup>70</sup>

#### *U.S. Price*

For HHFISH’s sale, we used the EP methodology, pursuant to section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation.<sup>71</sup> We made deductions from the starting price (gross unit price) for foreign movement expenses, foreign brokerage and handling, in accordance with section 772(c) of the Act.

#### *Normal Value*

Section 773(c)(1)(B) of the Act provides that the Department shall determine the NV using a FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department’s normal methodologies.

#### *Factor Valuations*

In accordance with section 773(c) of the Act, for subject merchandise produced by HHFISH, the Department calculated NV based on the FOPs reported by HHFISH for the POR. The Department used import data and other publicly available sources from Indonesia in order to calculate SVs.<sup>72</sup> Pursuant to 19 CFR 351.408(c)(2), except for labor, the Department normally will value all factors in a single surrogate country.<sup>73</sup> In selecting SVs, we considered the quality, specificity, and contemporaneity of the available values. Each of the values ultimately selected are publicly-available and specific to the input at issue. Where we could not obtain publicly available information contemporaneous to the POR, we adjusted the surrogate values using the

---

<sup>70</sup> See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012) (“*Final Modification for Reviews*”).

<sup>71</sup> See HHFISH’s May 22, 2015 submission, Re: Frozen Fish Fillets from Vietnam- Response to the Importer Questionnaire at Appendix IX-3.

<sup>72</sup> See Prelim Surrogate Value Memo at Exhibit X.

<sup>73</sup> See *Globe Metallurgical, Inc. v. United States*, 32 CIT 1070, 1076 (2008) (“*Globe Metallurgical*”); see also *Peer Bearing*, 752 F. Supp. 2d 1353, 1373 (CIT 2011); *Clearon Corp. v. United States*, No. 08-00364, 2013 WL 646390, at \*6 (Ct. Int’l Trade Feb. 20, 2013) (“deriving the surrogate data from one surrogate country limits the amount of distortion introduced into {Commerce’s} calculations”).

appropriate Consumer Price Index as published in the International Financial Statistics of the International Monetary Fund, in order to derive surrogate values contemporaneous with the POR.<sup>74</sup> As noted above, Indonesia is the surrogate country source from which we obtained data to value inputs.<sup>75</sup> To calculate NV, the Department multiplied the reported per-unit FOP quantities by publicly available SVs.

As appropriate, the Department adjusted input prices by including freight costs to render them delivered prices. Specifically, we added to Indonesian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory of production, or the distance from the nearest seaport to the factory of production, where appropriate. This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997). Where we did not use import statistics, we calculated freight based on the reported distance from the supplier to the factory. Additionally, where necessary, the Department adjusted SVs for inflation, exchange rates, and taxes and converted all applicable FOPs to a per-kilogram basis.

Furthermore, with regard to the import-based SVs, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from India, South Korea, and Thailand may have been subsidized because we have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies.<sup>76</sup> Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, it is reasonable to infer that all exports to all markets from these countries may be subsidized.<sup>77</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>78</sup>

---

<sup>74</sup> See Prelim Surrogate Value Memo.

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

<sup>76</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; 70 FR 45692 (August 8, 2005) and accompanying Issues and Decision Memorandum at 4; see also *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>77</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>78</sup> See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 56158 (September 12, 2011) (“*Fifth Vietnam Shrimp AR*”) unchanged at *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Amended Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 64307 (October 18, 2011) (“*Fifth Vietnam Shrimp Amended Final*”).

In NME AD proceedings, the Department prefers to value labor solely based on data from the primary surrogate country.<sup>79</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>80</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>81</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>82</sup>

The Department’s criteria for choosing surrogate financial ratios are the availability of contemporaneous financial statements, comparability to the respondent’s experience, and publicly available information.<sup>83</sup> Moreover, for valuing factory overhead (“OH”), selling, general & administrative expenses (“SG&A”), and profit, the Department normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.<sup>84</sup> As a result, to value the surrogate financial ratios for OH, SG&A, and profit in these reviews, the Department has relied upon the financial statements of Dharma Samudera Fishing Industries (“DSFI”) from 2014.<sup>85</sup> DSFI is a producer of comparable merchandise, *i.e.*, frozen fish fillets and its financial statement is contemporaneous to the POR, is complete, and is publicly available.<sup>86</sup> Accordingly, we have relied upon the financial data of DSFI to derive surrogate financial ratios.

### *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.

---

<sup>79</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>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</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>83</sup> See, e.g., *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) and accompanying Issues and Decision Memorandum at Comment 3.

<sup>84</sup> See 19 CFR 351.408(c)(4).

<sup>85</sup> See Petitioner’s July 17, 2015 Submission at 24 and Exhibit I-17A.

<sup>86</sup> *Id.*

CONCLUSION

We recommend applying the above methodology for these preliminary results.

                      
Agree

                      
Disagree

                      
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

21 JANUARY 2016  
(Date)