

March 14, 2011

MEMORANDUM TO: Kim Glas
Acting Deputy Assistant Secretary
for Import Administration

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

SUBJECT: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam
("Vietnam"): Issues and Decision Memorandum for the Final
Results of the Sixth Antidumping Duty Administrative Review and
New Shipper Review

SUMMARY

We have analyzed the case and rebuttal briefs received from Petitioners,¹ Mandatory/Voluntary Respondents,² Separate Rate Respondents,³ and other interested parties⁴ for the sixth antidumping duty administrative review and sixth new shipper review ("NSR") of the antidumping duty order on certain frozen fish fillets ("fish fillets") from Vietnam. As a result of our analysis, we have made changes to the Preliminary Results.⁵ The period of review ("POR") is August 1, 2008, through July 31, 2009.

The Department of Commerce ("Department") conducted a farming factors of production ("FOP") verification of Vinh Hoan from November 25, 2010, through November 30, 2010. Following the Preliminary Results, the verification of Vinh Hoan, and an analysis of the

¹ Catfish Farmers of America and the following individual U.S. catfish processors: America's Catch, Consolidated Catfish Companies, LLC dba Country Select Catfish, Delta Pride Catfish, Inc., Harvest Select Catfish, Inc., Heartland Catfish Company, Pride of the Pond, and Simmons Farm Raised Catfish, Inc. (collectively, "Petitioners").

² These companies include: Vinh Hoan Corporation ("Vinh Hoan"); Vinh Quang Fisheries Corporation ("Vinh Quang") as a voluntary respondent; and CUU Long Fish Joint Stock Company ("CL-Fish") ("collectively, "Respondents").

³ These companies include: 1) An Giang Fisheries Import and Export Joint Stock Company (aka Agifish or AnGiang Fisheries Import and Export); 2) Anvifish Co., Ltd.; 3) Anvifish Joint Stock Company ("Anvifish JSC"), 4) East Sea Seafoods Limited Liability Company (formerly known as East Sea Seafoods Joint Venture Co., Ltd.) ("ESS LLC"); and 5) East Sea Seafoods Joint Venture Co., Ltd..

⁴ These include: 1) Richwell Group, Inc. ("Richwell") and 2) Vietnam Association of Seafood Exports and Producers ("VASEP").

⁵ See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Preliminary Results and Partial Rescission of the Sixth Antidumping Duty Administrative Review and Sixth New Shipper Review, 75 FR 56062 (September 15, 2010) ("Preliminary Results").

comments received, we made changes to the margin calculations. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues for which we received comments from interested parties.

General Issues

- COMMENT I: SELECTION OF SURROGATE COUNTRY**
- A. Economic Comparability**
 - B. Significant Producer of the Comparable Merchandise**
 - C. Data Considerations**
- COMMENT II: ZEROING**
- COMMENT III: LABOR RATE METHODOLOGY**
- COMMENT IV: SURROGATE VALUES**
- A. Financial Ratios**
 - B. Salt**
 - C. Water**
 - D. STPP, CO Gas, PE bags, Carton, Tape, Label, Plastic Sheet, Banding, and Diesel**
 - E. Electricity**
 - F. Truck Freight**
 - G. Brokerage and Handling**
 - H. Containerization**
 - I. By-Products**
 - i. Fish Waste**
 - ii. Broken Meat**
 - iii. Fish Skins**
 - J. Adjustment for Finished Goods Inventory**

Company-Specific Issues

- COMMENT V: RATE FOR SOUTH VINA**
- COMMENT VI: RATE FOR VINH QUANG**
- A. Indirect Selling Expenses**
 - B. Movement Expenses**
 - C. Packing Labor**
- COMMENT VII: RESCISSION OF ANVIFISH JSC**
- COMMENT VIII: CASH DEPOSIT INSTRUCTIONS FOR ESS LLC**
- COMMENT IX: RATE FOR VINH HOAN**
- A. Freight Distances for Fish**
 - B. Farming Factors**
 - C. Electricity and Coal for Byproducts**

DISCUSSION OF THE ISSUES:

General Issues

COMMENT I: SELECTION OF SURROGATE COUNTRY

A. Economic Comparability

Petitioners' Arguments

- The Department found the Philippines economically comparable in the last two segments and in the Preliminary Results, as it properly found all countries on the Surrogate Country List⁶ to be equally economically comparable.

Respondents' Arguments

- The large differences in gross national income (“GNI”) between the Philippines and Vietnam do not support a conclusion that the Philippines is economically comparable to Vietnam.
- Given the Department’s statements in a surrogate country memorandum for the antidumping duty investigation on copper pipe and tube from the People’s Republic of China (“PRC”),⁷ it is evident that the Department has considered non-GNI factors in identifying potential surrogate countries.
- The Philippines was added to the Policy List of economically comparable countries recently with no explanation of its inclusion. In addition, parties were not invited to comment on this selection.

Department’s Position:

Because Vietnam is being treated as a non-market economy (“NME”), when calculating normal value (“NV”), section 773(c)(4) of the Tariff Act of 1930, as amended (“the Act”) requires, to the extent possible, that the Department value the FOPs in a surrogate country that is (A) is at a level of economic development comparable to Vietnam and (B) is a significant producer of comparable merchandise. Using 2007 GNI data, the Department provided parties with a list of potential surrogate countries found to be economically comparable to Vietnam which included Bangladesh, Pakistan, India, Sri Lanka, the Philippines and Indonesia.

Respondents argue that given the large differences in GNI between the Philippines and Vietnam, the Philippines is not economically comparable to Vietnam. Section 773(c)(4)(A) of the Act is silent with respect to how the Department may determined that a country is economically comparable to the NME country. As such, the Department’s long standing practice has been to identify those countries which are at a level of economic development similar to Vietnam in terms of GNI data available in the World Development Report provided by the World Bank.⁸ In

⁶ See Memorandum from Kelly Parkhill, Acting Director, Office of Policy, to Alex Villanueva, Program Manager, China/NME Group, Office 9: Request for a List of Surrogate Countries (October 15, 2009) (“Surrogate Country List”).

⁷ See Memorandum from Kelly Parkhill, Acting Director, Office of Policy, to Robert Bolling, Program Manager, AD/CVD Operations, Office 4: Request for a list of Surrogate Countries (January 7, 2010) (“Copper Tube Surrogate Country List”).

⁸ See Pure Magnesium from the People’s Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review of the Antidumping Duty Order, 75 FR 80791 (December 23, 2010) and accompanying Issues and Decision Memorandum at Comment 4.

this case, the GNI available is based on data from 2007. The GNI levels for the list of potential surrogate countries ranged from \$470 to \$1,650.⁹ The Department is satisfied that they are equally comparable in terms of economic development and serve as an adequate group to consider when gathering surrogate value (“SV”) data. Further, providing parties with a range of countries with varying GNIs is reasonable given that any alternative would require a complicated analysis of factors effecting the relative GNI differences between Vietnam and other countries which is not required by the statute. In contrast, by identifying countries that are economically comparable to Vietnam based on GNI, the Department provides parties with a predictable practice which is also reasonable and consistent with the statutory requirements. Identifying potential surrogate countries based on GNI data has been affirmed by the Court of International Trade (“CIT”):

GNI is a broad indicator spanning over 180 countries and territories, and that an excessive focus on the exact ranking of each country on the list would only provide an illusion of precision and distort the appropriate purpose of using per capita GNI as the primary indicator, which is to give a general sense of the level of economic development of the country in question.¹⁰

Finally, the list of potential surrogate countries identified as economically comparable to Vietnam, “are also most likely to have good data availability and quality” for purposes of valuing the FOPs. *Id.* Selecting a surrogate country is not limited to those identified in the Surrogate Country List as we may consider “other countries on the case record if the record provides {us} adequate information to evaluate them.”¹¹

We disagree with Respondents that the Department has considered non-GNI factors in other cases. In the copper pipe and tube case referenced by Respondents, the Department did not consider non-GNI factors as Respondents claim, but in fact took note that the difference between India’s GNI and the PRC was such that one day it may not be at a comparable level of economic development within the meaning of the statute. However, the Department still considered India economically comparable to the PRC, notwithstanding the absolute difference in GNI of \$1,870.¹² See Copper Tube Surrogate Country List.

Finally, we disagree with Respondents that the Philippines was added as a potential surrogate country without explanation or invitation to comment. As we noted in the Preliminary Results, we provided all interested parties the list of potential surrogate countries on December 18, 2009 – over six months before the preliminary results deadline.¹³ At that time, all parties were provided with a deadline to submit comments and parties submitted comments between April 8, 2010 and August 16, 2010. *Id.* Therefore, Respondents were given the opportunity to submit any arguments regarding the Philippines as a potential surrogate country. Moreover, the Philippines was not identified as a potential surrogate country for the first time in these reviews. The Philippines was first identified as a potential surrogate country in the prior reviews and

⁹ See Surrogate Country List.

¹⁰ See Fujian Lianfu Forestry Co., Ltd. v. United States, 638 F. Supp. 2d 1325 (Ct. Int’l Trade 2009).

¹¹ See Surrogate Country List.

¹² We note that the difference between India’s GNI and the PRC’s GNI in that case was still \$1,000 greater than the difference between the Philippines and Vietnam in the instant review.

¹³ See Preliminary Results, 75 FR at 56066.

thoroughly discussed in a recently completed administrative and NSRs.¹⁴ Therefore, it is incorrect for Respondents to argue that the Philippines was identified in these reviews without notice or an opportunity to comment.

Given the above, the Department will continue to consider the Philippines economically comparable to Vietnam for these final results.

B. Significant Producer of the Comparable Merchandise

Petitioners' Arguments

- The Department found the Philippines to be a significant producer of comparable merchandise, defining comparable merchandise as frozen fish fillets in the last two segments and the Preliminary Results, and should continue to do so.

Respondents' Arguments

- “Comparable merchandise” should be based on whole live *Pangasius* fish production as the Policy Bulletin¹⁵ directs the Department to rely on main inputs to classify “comparable merchandise” when one country dominates the production of the subject merchandise.
- Bangladesh has a significant *Pangasius* industry (from at least 59,400 to over a million metric tons (“MT”)), while the record indicates only 47 MT in the Philippines.
- Bangladesh exported the identical merchandise during the POR while the record contains no evidence that the Philippines exported any frozen *Pangasius* fillets during the POR.

Department's Position:

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. As such, Petitioners argue that the Department ought to consider the broad category of frozen fish fillets as the comparable merchandise, while Respondents argue that comparable merchandise for purposes of selecting a surrogate country should be *Pangas* production, the main input to producing subject 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.”¹⁶ In the Preliminary Results we explained the following:

As we stated in prior administrative review determinations, there is no world production data of *Pangasius* frozen fish fillets available on the record with which

¹⁴ See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Preliminary Results of New Shipper Reviews and Fifth Antidumping Duty Administrative Review, 74 FR 45805 (September 4, 2009) (“Fish AR5/NSR4 Preliminary Results”), unchanged in Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews, 75 FR 12726 (March 17, 2010) (“Fish AR5/NSR4 Final Results”).

¹⁵ See Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (“Policy Bulletin”).

¹⁶ See Policy Bulletin, at 2.

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.¹⁷

After the Preliminary Results, Respondents placed on the record two invoices from a Bangladeshi company that offers for sale "semi-IQF Pangas fillets" to a Bulgarian company.¹⁸ However, a couple of invoices are not sufficient to consider the entire country of Bangladesh a significant producer of identical merchandise, *i.e.*, Pangas frozen fish fillets. The Policy Bulletin provides additional guidance:

"In cases where the identical merchandise is not produced, the team must determine if other merchandise that is comparable is produced. How the team does this depends on the subject merchandise." See Policy Bulletin, at 2. 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.¹⁹

Also stated in the Policy Bulletin is the following:

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

In this case, we find that frozen fish fillets are a more suitable product to consider as comparable merchandise. Each respondent provided the Department with a description of the production process for producing *Pangasius* frozen fish fillets.²⁰ What is evident from these descriptions is that the production process is generally the same amongst the three Respondents: receive fish in whole form, cut into fillets, freeze, package and ship in boxes.²¹ Although frozen fish fillets are a broader category than *Pangasius* frozen fish fillets, it is nonetheless comparable and superior to consideration of the main input as comparable merchandise because it will allow for the selection

¹⁷ See Preliminary Results, 75 FR at 56066.

¹⁸ See Vinh Hoan's November 12, 2010, submission at Exhibit 18.

¹⁹ See Policy Bulletin, at 3.

²⁰ See Vinh Hoan's January 6, 2010, Questionnaire Response at Exhibit 6, Vinh Quang's January 6, 2010, Questionnaire Response at Exhibit D-2 and CL-Fish's October 9, 2009, Questionnaire Response at Exhibit 4.

²¹ Vinh Hoan, one of the largest processors of frozen fish fillets in Vietnam, also processes other types of fish and seafood (*e.g.*, tilapia, snapper, shrimp, crab lobster, trout, sea carp, *etc.*) and some of these are also made into fillet. See Vinh Hoan's December 4, 2009 Questionnaire Response at Exhibit 19.

of surrogate financial ratios from producers of similar products with similar capital structures.

Based on the 2007 U.N. Comtrade export data on the record, both the Philippines and Bangladesh are significant producers of frozen fish fillets as the data show the Philippines exported 1,965,192 kilograms and Bangladesh exported 801,648 kilograms of frozen fish fillets in 2007.²² For the reasons outlined above, we find it appropriate to consider frozen fish fillets as the category of comparable merchandise and thus find both the Philippines and Bangladesh to be significant producers of comparable merchandise.

C. Data Considerations

WHOLE FISH INPUT

Philippines

Petitioners' Arguments

- Record now contains published contemporary volume and value data for *Pangasius* fish from the FS 07-09,²³ an official government publication.
- *Pangasius* data in the FS 07-09 is specific to input, as an affidavit and a UN FAO database shows *Pangasius Hypophthalmus* as the only species introduced to Philippines.
- The data in the FS 07-09 was collected using a statistically valid method.
- The FS 07-09 is a price for 47 MTs which is a volume comparable to 78 MTs from the “FAO Report” which the Department used in prior segments. See Economics of Aquaculture Feeding Practices in Selected Asian Countries: FAO Technical Paper 505 (Rome, 2007) (“FAO Report”)
- Prices in the FS 07-09 are market prices irrespective of how high or variable they are.
- The certified Fish Pond Report²⁴ was incorporated into FS 07-09, so it is reliable.
- There is no evidence of countervailable subsidization in the Philippines.
- No evidence that the *Pangasius* price in FS 07-09 includes “cut or cleaned” fish prices.
- *Kanduli* (a wild-caught fish) in the FS 07-09 is not *Pangasius* (an aquacultured fish) or else Philippines government would have classified it as *Pangasius*.
- There is no evidence that any price fixing contracts were ever executed in the Philippines for *Pangasius*.
- Respondents have failed to tie any of techno-demo²⁵ farms to any data in the FS 07-09.

Respondents' Arguments

- The Department previously rejected Fish Pond Report, but still used it in FS 07-09.
- Official letters from two high level Philippine government officials stating that the Philippine *Pangasius* industry is an infant industry, with extensive government support, thus, leading to non-market prices.
- Costs of producing *Pangasius* in the Philippines is high due to insufficient supply of fry,

²² See Memorandum from Javier Barrientos, Senior Case Analyst through Alex Villanueva, Program Manager, to the File Regarding Surrogate Values for the Preliminary Results, dated September 7, 2010, Attachment 1.

²³ Fisheries Statistics of the Philippines 2007-2009 (“FS 07-09”), an official publication of the Philippine Bureau of Agricultural Statistics (“BAS”).

²⁴ The Fish Pond Report from the BAS is a schedule showing quantities and values of different aquaculture products in different regions. This report forms part of the working papers containing the statistical data used to prepare the FS 07-09.

²⁵ Startup farms run in partnership with private industry (e.g., processors) along with government assistance in technical areas and for the purchase of inputs.

high feed costs, initial start up-costs, etc., thus, leading to higher selling prices.

- *Pangasius* industry in Philippines is subsidized (i.e., techno-demo farms) in the two regions where FS 07-09 obtained most of its data, thus prices are non-market.
- These techno-demo farms have a buy-back scheme with partner processors for the buy-back of whole fish at fixed non-market prices.
- Only two out of five regions²⁶ in the FS 07-09 account for 98% of the data in the report, thus it is not superior to the country-wide Bangladeshi data.
- The data in the FS 07-09 is from a sample and not a broad market country-wide price.
- The price in the FS 07-09 may include “cut or cleaned fish” prices and not only farm-gate prices.
- The survey used to gather data in the FS 07-09 does not include *Pangasius* as one of the listed species, thus the data gathering is not structured to analyze *Pangasius*.
- The Philippines prices in the FS 07-09 are highly variable and higher than in the United States.
- If the Department selects the Philippines, it should use the price data for *Kanduli* in the FS 07-09, as *Kanduli* is the local name for *Pangasius Hypophthalmus*.

Bangladesh

Respondents’ Arguments

- The new DAM 08-09²⁷ government statistics or the FAO Report (which the Department used in prior proceedings) are both reliable sources for whole *Pangasius* fish price.
- The DAM 08-09 is: 1) official Government data; 2) POR weekly whole live *Pangas* price data; 3) from all 70 districts within Bangladesh; 4) a wholesale price; 5) maintained by DAM and can be provided to any member of the public upon request; and 6) collected using a scientific method.
- The DAM 08-09 is superior to the FS 07-09 as it is price data specific to the POR and from all over Bangladesh, thus, containing thousands of data points, versus a dozen in the Philippines.

Petitioners’ Arguments

- The DAM 08-09: 1) is not an official government publication as it is not published; 2) is for *Pangas/Pangash* and not *Pangasius*; 3) contains “#DIV0” errors in the worksheets; 4) is for wholesale prices and not farm-gate price; and 5) does not list any volumes.
- The FAO Report fish price is not contemporaneous because it reflects 2005-2006 data versus the 2008-2009 fish price in the FS 07-09.
- The single region fish price in the FAO Report is not as broad a market average or a national level price as compared to the five regions in FS 07-09.
- The FAO Report is not a national level price as it was a survey of farms in one district.
- The FAO Report is an estimate of prices (collected by surveyors).
- All other Bangladeshi sources (conference papers, academic reports, etc.) are not reliable sources for reasons similar to those listed above for Bangladesh government statistics.

²⁶ 12 regions reported no volume and value data for *Pangasius*.

²⁷ The Bangladeshi Ministry of Agriculture 2008-2009 (“DAM 08-09”) data is compiled by the Department of Agricultural Marketing, a nodal agency responsible for collecting and disseminating the wholesale market price of various agricultural commodities, livestock and fisheries, including *Pangas*.

Department's Position:

Above, we have concluded for the final results that both the Philippines and Bangladesh are economically comparable and significant producers of comparable merchandise. We then examined the available data to determine whether the record with respect to the Philippines or Bangladesh contained the best available information for surrogate valuation purposes regarding the primary input to the subject merchandise, whole live fish.

Since the Preliminary Results, both Petitioners and Respondents placed significant additional data on the record with respect to these two countries. We now have an updated publication of the FS 07-09 which contains *Pangasius* prices for 2008 and 2009 and we also have weekly *Pangas* price data compiled in DAM 08-09 data. With respect to Bangladesh, the DAM 08-09 data is contemporaneous with the POR. As such, we find the DAM 08-09 data to be superior in terms of the FAO Report with respect to contemporaneity and, therefore, focus our analysis on the DAM 08-09 data for Bangladesh. Similarly, the record now contains the 2008 and 2009 pricing data for *Pangasius* in the FS 07-09; therefore, we will no longer consider the Fish Pond Report data in the Fisheries Statistics of the Philippines 2006 to 2008 data, as more recent information is available.

Prior to evaluating the DAM 08-09 data and the FS 07-09 data, we first examined the additional potential SVs Respondents placed on the record. Specifically, after the Preliminary Results, Respondents placed voluminous data (internet articles, conference papers, academic reports, company specific prices, etc.) on the record to assist the Department in valuing whole live fish.²⁸ After reviewing the data, we find that they are all variations of data less suited to surrogate valuation than the remaining official government statistics under consideration and are therefore not the best available information to use as either SVs or as benchmarks in support of their preferred whole live fish value. It is the Department's general practice not to use price quote data if other suitable publicly available data is on the record because: 1) price quotes do not represent actual prices or broad ranges of data; and 2) the Department does not know the conditions under which they are solicited and whether or not they are self-selected from a broader range of quotes. Consequently, because these sources are less suitable with respect to these two criteria, for the final results, we have also not considered them for benchmarking purposes.²⁹

Bangladesh DAM 08-09 data vs. Philippines FS 07-09

In evaluating the two remaining sources of information, the DAM 08/09 data and FS 07-09, we note that we are in the unusual situation of having on the record two sources of information issued by two governments, both representing official statements of those governments as to the price of whole live fish relevant to our analysis. While we typically do not scrutinize official government statistics in such detail, the necessity to both respond to the comments raised by Petitioners and Respondents and to select one of the sources compels us to do so in this case.

²⁸ See VASEP's post-preliminary results surrogate value submission at Exhibits 1G, 8A, and 9A (November 12, 2010). See also, Vinh Hoan's, post-preliminary results surrogate value submission at Exhibits 6, 7, 14, 20, 23, 24, 26, 27 and 32 (November 12, 2010).

²⁹ See, e.g., Silicon Metal from the People's Republic of China: Notice of Final Results of 2005/2006 New Shipper Reviews, 72 FR 58641 (October 16, 2007) ("Silicon Metal") and accompanying Issues and Decision Memorandum at Comment 7; See also Court No. 05-00439, Slip Op. 07-138 (CIT September 13, 2007).

We consider first the DAM 08/09 data and Petitioners' objections raised to it. Petitioners argue that similar to the Department's rationale for rejecting the Fish Pond Report in the Fish AR5/NSR4 Final Results, the DAM 08/09 data should also be rejected because it is not an official, published government source. According to Petitioners, because it is not published, the DAM 08/09 data cannot be considered a publicly available source. We disagree with Petitioners that the attributes of the DAM 08/09 data are so similar to those of the Fish Pond Report that they would warrant rejecting it as a viable source to value the whole fish.

With respect to the Fish Pond Report in the Fish AR5/NSR4 Final Results, we agree we acknowledged that the report was not published. Our concerns with respect to publication, however, were rooted in the fact that Petitioners claimed the data *were* to be published. In the Fish AR5/NSR4 Final Results, we referred to the Fish Pond Report as "source data to be used in a yet-to-be determined manner for official publication in the Fisheries Situationer."³⁰ As such, the Department had legitimate concerns that the data may not have been finalized or was in draft form prior to publication. Moreover, in the Fish AR5/NSR4 Final Results, we emphasized that the Fish Report data were not accompanied by any official statements from the Government of the Philippines, but rather solely a personal affidavit by the statistician in charge of compiling the data. We emphasized that there was no mention in the affidavit as to whether the affiant was responsible for providing the data to the public, and we further noted our concerns with the partially hand-written title of the worksheet. In sum, we found that "the data may still not be finalized and therefore, not the best available information with which to value the fish input." Id.

In contrast, the DAM 08/09 data is accompanied by a letter from Fahmida Akhter, the Deputy Director of Market Intelligence and Statistics of the Bangladesh Department of Agricultural Marketing, the agency in the Ministry of Agriculture in charge of "collecting and disseminating the wholesale market price of various agricultural commodities, livestock, and fisheries, including *Pangas*." See VASEP's November 21, 2009, SV Submission, at Exhibit 7A. We find that this is a significant difference when compared to the lack of official government documentation accompanying the Fish Pond Report in the Fish AR5/NSR4 Final Results. Moreover, in that letter, the DAM official explains that "this data can be provided to any member of the public upon request, free of cost." Id. In addition, with respect to the completeness of the data, the DAM official states that the price data contained within is "country-wide data" representing "all months of years 2008 and 2009, covering all districts of Bangladesh." Id. Unlike the Fish Pond Report in the fifth review referenced by Petitioners, the DAM 08/09 data does not appear to be incomplete or not finalized. Here, we have a Bangladeshi Government official certifying as to the nature and breadth of the DAM 08/09 data, the completeness of the data, and the availability of the data to the public upon request. Moreover, we note that the Department has been consistent in applying the same criteria in evaluating the merits of the DAM 08/09 data and the Fish Pond report. In fact, in the Preliminary Results of these reviews the Department relied on the data contained within the Fish Pond Report because Petitioners addressed the concerns identified in the Fish AR5/NSR4 Final Results and Fish NSR5 Final Results.³¹ See Preliminary Results, 75 FR at 56067.³² In conclusion, for purposes of these reviews we find that the DAM 08/09 data constitutes publicly available information.

³⁰ See Fish AR5/NSR4 Final Results, and accompanying Issues and Decision Memorandum at Comment 1.

³¹ See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Fifth New Shipper Review, 75 FR 38985 (July 7, 2010) and accompanying Issues and Decision Memorandum ("Fish NSR5 Final Results") at Comment 1.

³² "Subsequent to that segment, the Department again evaluated the public availability of the Philippines data and found that although Petitioners supplemented the record with additional information and documentation, serious

We next consider Petitioners' argument that the DAM 08/09 data is not specific to the species covered by the order and therefore not useable. They note that the DAM 08/09 data in relevant part identifies "*Pangas*" as the relevant species, not *Pangasius*. As we stated in the Preliminary Results, "in prior reviews, the Department used whole fish SV data, proposed by Petitioners, that was identified as *Pangas* and found it to be comparable to the fish input used by Respondents."³³ In fact, from the original antidumping duty investigation through the third administrative review, the Department relied on the same source for purposes of valuing whole live fish: financial statements from Gachihata Aquaculture Farms, Ltd. In those segments, even though the Department expressly stated that there were prices on the record for varying species included in the *Pangasius* genus, we noted that there was no information on the record that would lead us to conclude that any difference between species names would necessarily generate a price difference. Id. Finally, and most importantly, the Department notes that the FAO Report makes clear that in Bangladesh "*Pangas*" refers to a species subject to the order.³⁴ We did not receive any information on the record that would lead us to a different conclusion for these final results.

Next, Petitioners argue that the DAM 08/09 data contains the term, "#DIV0!" for some of the weekly prices of certain districts, and that the observation of the same term led the Department previously to reject the Fish Pond Report. While Petitioners' observation is correct in that we cited to this factor, among many, in rejecting the Fish Pond Report, there is a clear distinction in this case, as the term appears in the DAM 08/09 data when there is no data for any given district of any given week for that month. In other words, if there were no *Pangas* pricing data available from the Jhineda district for any of the weeks in a month, the monthly average column will show the term "#DIV0!." In fact, in every instance where the term "#DIV0!" appears there is no weekly price data for that district, thereby causing the monthly average column to generate the formulaic term "#DIV0!." Therefore, it is reasonable to conclude that this term is generated simply as a function of the mathematical formula trying to perform a calculation on cells with no data in them. As such, we do not find the appearance of this term of any significance such that it would question the DAM data's quality or reliability as Petitioners have argued.

Petitioners also argue that the DAM 08/09 data is not be the best available information with which to value the whole fish input because those prices are wholesale prices, rather than farm-gate level prices, and thus may include delivery costs, taxes and duties, and/or mark ups for wholesaler's profit. In Mr. Akhter's letter, he states that the DAM 08/09 data are "wholesale prices data for *Pangas*."³⁵ Although it is unclear whether the DAM 08/09 data wholesale prices necessarily include other costs as argued by Petitioners, the prices in FS 07-09 proposed by

concerns remained (e.g., not an official government publication in and of itself, an affidavit not made on behalf of the Philippines government, no discussion of public dissemination, etc.). On the record of these reviews however, Petitioners submitted information clearly generated by a Philippine government agency, on official Philippines government letterhead, and with an explanation of the data collection methods. In addition, they provided a complete copy of the Fisheries Statistics of the Philippines, 2006-2008, published by the Bureau of Agricultural Statistics, Department of Agriculture ("Fisheries Statistics") published in November 2009, which links the Philippines data provided in this and prior segments to an official Philippines government publication. Therefore, the Department no longer has concerns with the public availability of the Philippines data in this segment."

³³ See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission, 73 FR 15479 (March 24, 2008) ("Third Fish Fillets Final") and accompanying Issues and Decision Memorandum, at Comment 4.

³⁴ See FAO Report at page 33, where *Pangasianodon hypophthalmus*, one of the specific species listed in the scope of the order, is described as being "locally known as *Pangas*."

³⁵ See VASEP's November 21, 2009, SV Submission, at Exhibit 7A.

Petitioners do not contain *only* farm-gate prices. In a sworn statement from Ms. Virginia A. Viloría, the Philippine Government statistician who provided the original Fish Pond Report and also addresses the prices in the FS 07-09 indicates that the prices “quoted by the aqua farm farmers/operators (or other Respondents, as the case may be)” are “farm-gate or first-point-of-sale” prices.³⁶ At the public hearing, Petitioners attempted to explain that what was meant by Ms. Viloría with respect to “first point of sale prices was a reference to the place of sale, not the format of the sale.” See Hearing Transcript at 112. However, there is no record evidence to further clarify or corroborate Petitioners’ statement at the hearing. Moreover, a plain reading of the statement in Ms. Viloría’s affidavit suggests that the prices in the FS 07-09 include prices other than strictly farm-gate, *i.e.*, prices for different channels of distribution. Given the above, at the issue of whether the DAM 08/09 data or whether the FS 07-09 data represents solely farm-gate prices sheds little, if any, light in our analysis because both sources can be considered equally to contain information which suggests the prices are not solely farm-gate prices.³⁷

Finally, Petitioners argue that the DAM 08/09 data is not better than the prices in the FS 07-09 because they do not contain the quantities sold and, therefore, the Department cannot determine whether the prices are based on commercial sales of whole *Pangas*, or whether they are based on estimates or isolated spot prices. Although the data provided by Mr. Akhter do not list the volumes represented by the price, he stated that “all the price information therein are in Bangladeshi Taka on a per Quintal basis, *i.e.*, per 100 kg.”³⁸ Further, Mr. Akhter explained that the price data was

collected using a scientific method by the District Marketing Officers (DMO) posted in all districts. The DMOs collect the raw price data from each upazila (sub-districts) in the district using a structured questionnaire, by interacting with a network of all leading aqua farmers and wholesale traders as well as through direct market enquiry by visiting mandi (marketplace). These data are being collected each week and being forwarded to DAM and the monthly average price is based on such weekly price data points.³⁹

Although Petitioners appear to be ultimately concerned with the overall reliability of the DAM 08/09 data due to the absence of volumes sold, this further explanation on the data collection methods provides additional information which, in part, addresses any concerns with respect to reliability. Moreover, while it is our preference to rely on data that contain volume and value information, we have also used sources for major inputs in other cases that do not contain specific volume or value data used to generate the prices. For example, in two recent antidumping duty investigations where wire rod is the main input used to produce the subject merchandise (steel wire garment hangers and steel nails), the Department relied on a source that did not contain volume data.⁴⁰ Both of these cases cited to others involving similar fact patterns,

³⁶ See Petitioners’ July 9, 2010, SV Submission, at Exhibit 1, pg. 3.

³⁷ Moreover, it is uncertain the extent to which prices clearly identified as being farm-gate prices or wholesale prices are relevant in the surrogate valuation analysis most importantly because surrogate valuation seeks to determine the price a respondent would pay for an input if it were to be producing in the surrogate country, not necessarily what producers of that input in the surrogate country receive.

³⁸ See VASEP’s November 21, 2009, SV Submission, at Exhibit 7B.

³⁹ See VASEP’s November 21, 2009, SV Submission, at Exhibit 7A.

⁴⁰ See Certain Steel Nails from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 33977 (June 16, 2008) and accompanying Issues and Decision Memorandum, at Comment 10; see also Steel Wire Garment Hangers from the

e.g., one relied on a publication the Department uses in cases involving chemical inputs and another involved frozen shrimp where the SV for the main input, raw shrimp, is derived from a source without quantity data.⁴¹ In other words, all other factors being equal, we found these data sources to be the best available information with which to value the major inputs, even in the absence of volume information. Mr. Akhter's explanation on the data collection methods, albeit brief, when coupled with the fact that we have relied on SV data sources without volume information for major inputs in other cases renders the absence of volumes with respect to the DAM 08/09 data to be of lesser concern.

Having examined the objections to the DAM 08/09 data raised by Petitioners, we turn our attention to the objections raised by Respondents to the FS 07-09. First, we disagree with Respondents' arguments that the record evidence demonstrates that the *Pangasius* industry in the Philippines is unreliable or so gravely affected by non-market intervention or assistance from the Philippine government that the Philippines cannot be used as the primary surrogate country in this case. Respondents' evidence in this regard centers on the Philippine government's assistance in establishing techno-demo farms and buy-back schemes with partner processors for the buy-back of whole fish at fixed non-market prices. Moreover, Respondents argue that through the availability of fingerlings and other inputs supplied by the Philippine government, the *Pangasius* industry is not functioning in a proper, untainted market environment. In responding to these arguments, we note that it is the Department's practice to exclude data from consideration only when the record evidence demonstrates that the alleged subsidy programs constituted demonstrable countervailable subsidies.⁴² In prior reviews of this order, the Department explained its practice with respect to disregarding subsidized valuations and was ultimately affirmed by the CIT.⁴³ In this case, there is no record evidence that the subsidies alleged by Respondents with respect to the Philippine *Pangas* industry constitute subsidies previously determined to be countervailable and, therefore, the threshold for excluding the prices in FS 07-09 is not met.

Next, Respondents challenge the survey format underlying the FS 07-09 data, essentially arguing that unlike the DAM 08/09 data, which represents weekly data from a greater portion of the country and covers the entire POR, the Philippine data was gathered only from certain companies in certain parts of the country and was gathered less frequently. Specifically, as opposed to the 2,828 data points from 64 of 70 reporting districts contained in the DAM 08/09 data, the FS 07-09 survey methods, with respect to *Pangas*, generated only 12 data points from nine of the 81 provinces in the Philippines. Respondents also point out that the survey was sent only to certain aquaculture-related entities within those regions, excluding certain of the techno-demo farms noted above. Respondents also note that the survey reports *Pangas* production of

People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 47587 (August 14, 2008) and accompanying Issues and Decision Memorandum, at Comment 4.

⁴¹ See Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China, 72 FR 9508 (March 2, 2007) and accompanying Issues and Decision Memorandum, at Comment 18; see also Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review, 72 FR 52052 (September 12, 2007) and accompanying Issues and Decision Memorandum, at Comment 1.

⁴² See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results And Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 19174 (April 17, 2007) and accompanying Issues and Decision Memorandum at Comment 1, and Silicon Metal and accompanying Issues and Decision Memorandum at Comment 2.

⁴³ Third Fish Fillets Final, and accompanying Issues and Decision Memorandum at Comment 1.A, affirmed in Catfish Farmers of America v. United States, 641 F. Supp. 2d 1632 (Ct. Int'l Trade 2009).

47.14 MT during 2008 and 2009, which they contrast unfavorably to the 59,474 MT of *Pangas* production in Bangladesh from the same period, suggesting that the DAM 08/09 data are based on a much larger volume of production, making that data a better surrogate for Vietnam than the Philippines. We believe these distinctions should be considered in the context of comparing these two competing data sources, particularly when we add our observation that while the survey size is of 47.14 MT for 2008 and 2009, another Philippine source, *Status of the Pangasius Industry in the Philippines*, reports a total production of 2,264 MT of *Pangasius* in the Philippines as of 2009.⁴⁴ As an additional matter, we note there is some evidence that the data for one of the Philippine Regions may include a small volume of further processed whole live fish which is meaningful to the analysis because prices of cleaned and cut fish are substantially higher than those for whole fish.⁴⁵ This statement may explain Respondents' observation of price volatility in the FS 07-09 data for Region 2.⁴⁶ For example, in 2008, the highest price, other than Region 2 is 77.14 pesos/kg while the weighted average price for Region 2 was 128.82 pesos/kg. The Department notes that similar volatility is not seen in the Bangladeshi data and, in particular, we note that the DAM 08/09 data is corroborated to a large extent by the FAO Report. For example, for this POR, the fully inflated value for whole live fish based on the FAO Report and the resulting value from the DAM 08/09 data are very much in line with each other.

In conclusion, we find that both sources are publicly available, from a potential surrogate country, contemporaneous with the POR, broad market averages, are equally specific to the main input. Simultaneously, both can be considered equally to contain information which suggests the prices are not solely farm-gate prices. Given this degree of equivalence with respect to these factors, we examined the information upon which the Bangladeshi and Philippine potential surrogate whole live fish values were based, concluding that the Bangladeshi data represent a fuller set of data more appropriate for use as an SV. Therefore, as a result of the totality of the information considered above, we conclude that the DAM 08/09 data represent the best available data on the record with which to value the whole live fish input. Given the significance of the whole live fish input in the calculation of NV, we therefore conclude that the choice of Bangladesh offers more reliable SV information and thus select Bangladesh as the primary surrogate country for purposes of these final results.

COMMENT II: ZEROING

Vinh Quang's Argument

- The World Trade Organization ("WTO") Appellate Body has held that zeroing in administrative reviews is inconsistent with the United States' obligations under the WTO Anti-Dumping Agreement and the GATT 1994.⁴⁷
- The Department should grant an offset for non-dumped sales when calculating Vinh Quang's margin because: 1) U.S. law does not prevent the Department from reconsidering its zeroing practice; and 2) the Department's interpretation of section 771(35)(A) of the Act ("dumping margin" definition) has not been consistent.
- Furthermore, citing Antidumping Proceedings, the Department should reconsider its approach for calculating dumping margins.⁴⁸

⁴⁴ See Vinh Hoan's November 12, 2010, submission at Exhibit 7.

⁴⁵ Bureau of Fisheries and Aquatic Resources ("BFAR") within the Philippine Department of Agriculture.

⁴⁶ See Vinh Hoan's December 13, 2010, SV Submission at Exhibit 1.

⁴⁷ See United States- Measures Relating to Zeroing and Sunset Reviews, at pg. 190(c), WT/DS322/AB/R (January 7, 2007).

No other interested party commented on this issue.

Department’s Position:

For the final results, we have not changed our calculation of the weighted-average dumping margin as suggested by Vinh Quang.

Section 771(35)(A) of the Act defines “dumping margin” as the “amount by which the NV exceeds the export price or constructed export price of the subject merchandise.” Outside the context of antidumping duty (“AD”) investigations involving average-to-average comparisons, the Department interprets this statutory definition to mean that a dumping margin exists only when NV is greater than export price (“EP”) or constructed export price (“CEP”). As no dumping margins exist with respect to sales where NV is equal to or less than EP or CEP, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The Court of Appeals for the Federal Circuit (“CAFC”) has held that this is a reasonable interpretation of the statute.⁴⁹

Section 771(35)(B) of the Act defines weighted-average dumping margin as “the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer.” The Department applies these sections by aggregating all individual dumping margins, each of which is determined by the amount by which NV exceeds EP or CEP, and dividing this amount by the value of all sales.

The use of the term aggregate dumping margins in section 771(35)(B) of the Act is consistent with the Department’s interpretation of the singular “dumping margin” in section 771(35)(A) of the Act as applied on a comparison-specific level and not on an aggregate basis. At no stage of the process is the amount by which EP or CEP exceeds the NV permitted to offset or cancel out the dumping margins found on other sales.

This does not mean that non-dumped sales are disregarded in calculating the weighted-average dumping margin. It is important to note that the weighted-average margin will reflect any non-dumped merchandise examined during the POR: the value of such sales is included in the denominator of the weighted-average dumping margin, while no dumping amount for non-dumped merchandise is included in the numerator. Thus, a greater amount of non-dumped merchandise results in a lower weighted-average margin.

The CAFC explained in Timken that denial of offsets is a “reasonable statutory interpretation given that it legitimately combats the problem of masked dumping, wherein certain profitable sales serve to mask sales at less than fair value.”⁵⁰ As reflected in that opinion, the issue of so-called masked dumping was part of the policy reason for interpreting the statute in the manner interpreted by the Department. No U.S. court has required the Department to demonstrate

⁴⁸ See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings, 75 FR 81533 (December 28, 2010) (“Antidumping Proceedings”).

⁴⁹ See, e.g., Timken Co. v. U.S., 354 F.3d 1334, 1342 (Fed. Cir. 2004) (“Timken”); Corus Staal BV v. Department of Commerce, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005), cert. denied 126 S. Ct. 1023, 163 L. Ed. 2d 853 (Jan. 9, 2006) (“Corus I”).

⁵⁰ See Timken, 354 F.3d at 1343.

“masked dumping” before it is entitled to invoke this interpretation of the statute and deny offsets to dumped sales.⁵¹

Vinh Quang cites to WTO dispute-settlement reports (“WTO reports”) finding the denial of offsets by the United States to be inconsistent with the AD Agreement. As an initial matter, the CAFC has held that WTO reports are without effect under U.S. law, “unless and until such a {report} has been adopted pursuant to the specified statutory scheme” established in the Uruguay Round Agreements Act (“URAA”).⁵² Congress has adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports. See 19 U.S.C. 3538. As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department’s discretion in applying the statute. See 19 U.S.C. 3538(b)(4) (implementation of WTO reports is discretionary). Moreover, as part of the URAA process, Congress has provided a procedure through which the Department may change a regulation or practice in response to WTO reports.⁵³ With regard to the denial of offsets, the United States has not adapted a methodology to implement the WTO decisions in administrative reviews.

The Department has only modified its calculation of weighted-average dumping margins when using average-to-average comparisons in antidumping investigations.

With respect to United States-Measures Relating to Zeroing and Sunset Reviews, WT/DS322/AB/R (Jan. 9, 2007), the steps taken in response to that report does not require a change to the Department’s approach of calculating weighted-average dumping margins in the instant administrative review. For all these reasons, the various WTO Appellate Body reports regarding zeroing do not establish whether the Department’s denial of offsets in this administrative review is consistent with U.S. law. Accordingly, and consistent with the Department’s interpretation of the Act described above, in the event that any of the EP transactions examined in these reviews are found to exceed NV, the amount by which the price exceeds NV will not offset the dumping found in respect of other transactions.

COMMENT III: LABOR RATE METHODOLOGY

VASEP’s Arguments

- The Department’s methodology for calculating the labor rate using “earnings” data double counts “gratuity expense” in the calculation of: 1) the industry-specific wage data; and 2) the overhead portion of the surrogate financial ratio. To avoid this double counting, the Department should use “wages” rather than “earnings” data from the International Labor Organization (“ILO”) Chapter 5B to calculate the labor rate.
- The Department should calculate the labor rate using the more contemporaneous 2008 Philippines “wage” data rather than the 2003 Philippines inflated “earnings” data.
- Finally, the Department should include the Indian and Nicaraguan “earnings” data reported in the International Standard Industrial Classification (“ISIC”) Revision 2 under sub-classification, “Manufacture of Food, Beverages & Tobacco” in its labor rate calculation.

⁵¹ See, e.g., Timken, 354 F.3d at 1343; Corus I, 395 F.3d 1343; Corus Staal BV v. U.S., 502 F.3d 1370, 1375 (Fed. Cir. 2007) (“Corus II”); and NSK Ltd. v. U.S., 510 F.3d 1375 (Fed. Cir. 2007) (“NSK”).

⁵² See Corus I, 395 F.3d at 1347-49; accord Corus II, 502 F.3d at 1375; NSK, 510 F.3d 1375.

⁵³ See 19 U.S.C. 3533(g); see, e.g., Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722 (December 27, 2006).

By including India and Nicaragua, the Department will then have sector-specific “earnings” data from five countries in its labor rate.

Vinh Quang’s Argument

- The Department should not use classification, “manufacture of food products and beverages” because it includes an unlimited range of products and processes that may not be similar to the operations of Vinh Quang.
- Instead, the Department should use the ILO data from classification, “slaughtering, preparing and preserving meat” to calculate the wage rate because it is more specific to the process of producing frozen fish fillets.
- Furthermore, the classification of “slaughtering, preparing, and preserving meat” is based on data from five countries and after applying the Department’s methodology for calculating the wage rate, produces an average wage rate of \$0.52 per hour.
- Finally, if the Department does not use classification, “slaughtering, preparing, and preserving meat” the Department should then calculate the labor rate using the more contemporaneous 2008 Philippines “wage” data.

Petitioners’ Arguments

- The Department should continue to use the “earnings” rather than “wages” data to calculate the labor rate.
- Furthermore, the Department should continue to use the 2003 Philippines “earnings” data rather than the 2008 Philippines “wage” data because the Department’s preference is “earnings” data and only selects “wages” data when “earnings” data is not available.
- Finally, the Department should continue to use the industry specific earnings data from the ISIC Revision 3 rather than ISIC Revision 2.

Department’s Position:

In Dorbest Ltd. v. United States, 604 F.3d 1363, 1372 (Fed. Cir. 2010) (“Dorbest”), the CAFC invalidated the Department’s regulation, 19 CFR 351.408(c)(3), which directs the Department to value labor using a regression-based method. As a consequence of the CAFC’s decision, the Department is no longer relying on the regression-based wage rate. The Department is continuing to evaluate options for determining labor values in light of the recent CAFC decision. For the final results of these reviews, we have calculated an hourly wage rate in valuing labor input by averaging industry-specific earnings and/or wages in countries that are economically comparable to Vietnam.

Section 773(c)(4) of the Act requires the Department “to the extent possible” to use “prices or costs of factors of production in one or more market economy countries that are (A) at a level of economic development comparable to that of the non-market economy country, and (B) significant producers of comparable merchandise.” Accordingly, to calculate a wage rate, the Department first looked to the Surrogate Country Memo issued in this proceeding to determine countries that were economically comparable to the PRC.⁵⁴

⁵⁴ See Memorandum to Alex Villanueva, Program Manager, Office 9, from Kelly Parkhill, Acting Director, Office of Policy, re: Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Certain Frozen Fish Fillets (“Fish Fillets”) from the Socialist Republic of Vietnam (“Vietnam”), dated October 15, 2009 (“Surrogate Country Memo”).

In analyzing economic comparability, the Department places primary emphasis on GNI. Consistent with 19 CFR 351.408, the Department places primary emphasis on GNI in determining economically comparable surrogate countries.⁵⁵ In the Preliminary Results, the Department selected six countries for consideration as the primary surrogate country for these reviews based on the Surrogate Country Memo.⁵⁶ From the list of countries contained in the Surrogate Country Memo, the Department used the country with the highest GNI (i.e., Indonesia) and the lowest GNI (i.e., Bangladesh) as “bookends” for economic comparability. The Department then identified all countries in the World Bank’s World Development Report with per capita GNIs for 2007 that fell between the “bookends.” This resulted in 37 countries, ranging from Indonesia with a GNI of U.S. Dollars (“USD”) 1,650 to Bangladesh with a GNI of USD 480.⁵⁷

Next, regarding the “significant producer” prong of the statute, the Department identified all countries which have exports of comparable merchandise (defined as exports under the Harmonized Tariff Schedule (“HTS”) 1604.19, 1604.19, 0305.59, and 0304.29, the HTS numbers identified in the scope of the order)⁵⁸ between 2007 and 2009. In this case, we have defined a “significant producer” as a country that has exported comparable merchandise between 2007 through 2009. After screening for countries that had exports of comparable merchandise, we determine that 20 of the 37 countries designated as economically comparable to Vietnam are also significant producers. Accordingly, for purposes of valuing wages for the final results, the Department determines the following 20 countries out of 37 countries designated as economically comparable to Vietnam are also significant producers of comparable merchandise: 1) Bangladesh, 2) Bolivia, 3) Cote d’Ivoire, 4) Egypt, 5) Ghana, 6) Guyana, 7) India, 8) Indonesia, 9) Kenya, 10) Mali, 11) Mauritania, 12) Nicaragua, 13) Pakistan, 14) the Philippines, 15) Sao Tome & Principe, 16) Senegal, 17) Sri Lanka, 18) Sudan, 19) Yemen, and 20) Zambia.⁵⁹

The Department then identified which of these 20 countries also reported the necessary wage data. In doing so, the Department has continued to rely upon ILO Chapter 5B “earnings,” if available and “wages” if not.⁶⁰ We used the most recent data available (2007) and went back

⁵⁵ The Department notes that 19 CFR 351.408(b) specifies that the “Department places primary emphasis on per capita GDP.” However, it is the Department’s practice to use “per capita GNI, rather than per capita GDP, because while the two measures are very similar, per capita GNI is reported across almost all countries by an authoritative source (the World Bank), and because the Department believes that the per capita GNI represents the single best measure of a country’s level of total income and thus level of economic development.” See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716 (October 19, 2006) (“Antidumping Methodologies”).

⁵⁶ The Department notes that these six countries are part of a non-exhaustive list of countries that are at a level of economic development comparable to Vietnam. See Surrogate Country Memo.

⁵⁷ See Memorandum to the file through James C. Doyle, Office 9 Director, and Alex Villanueva, Office 9 Program Manager, from Emeka Chukwudebe, Office 9 Case Analyst, Sixth Antidumping Duty Administrative and New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam (“Vietnam”): Industry-Specific Wage Rate Selection, dated November 5, 2010 (“Wage Rate Memo”).

⁵⁸ See Notice of Antidumping Duty Order: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam, 68 FR 47909 (August 12, 2003).

⁵⁹ See Wage Rate Memo.

⁶⁰ The Department maintains its current preference for “earnings” over “wages” data under Chapter 5B. However, under the previous practice, the Department was typically able to obtain data from somewhere between 50-60+ countries. Given that the current basket now includes fewer countries, the Department found that our long-standing preference for a robust basket outweighs our exclusive preference for “earnings” data. Thus, if earnings data is unavailable from the base year (2008) or the previous five years (2003-2007) for certain countries that are economically comparable and significant producers of comparable merchandise, the Department will use “wage”

five years, resulting in wage data from 2002-2007. We then adjusted the wage data for countries where it was available to the period of review using the relevant Consumer Price Index (“CPI”).⁶¹ Of the 20 countries that the Department has determined are both economically comparable and significant producers, 17 countries, *i.e.*, 1) Bangladesh, 2) Bolivia, 3) Cote d’Ivoire, 4) Ghana, 5) Guyana, 6) India, 7) Kenya, 8) Mali, 9) Mauritania, 10) Nicaragua, 11) Pakistan, 12) Sao Tome & Principe, 13) Senegal, 14) Sri Lanka, 15) Sudan, 16) Yemen, and 17) Zambia were omitted from the wage rate valuation because there were no earnings or wage data available. The remaining countries reported either earnings or wage rate data to the ILO within the prescribed six-year period.⁶²

While information from a single surrogate country can reliably be used to value other FOPs, wage data from a single surrogate country does not constitute the best available information for purposes of valuing the labor input due to the variability that exists across wages from countries with similar GNI. Using the high- and low-income countries identified in the Surrogate Country Memo as bookends provides more data point which the Department prefers as more preferable. While there is a strong worldwide relationship between wage rates and GNI, too much variation exists among the wage rates of comparable market economy countries.⁶³ As a result, we find reliance on wage data from a single country is not preferable where data from multiple countries are available for the Department to use.

For example, when examining the most recent wage data, even for countries that are relatively comparable in terms of GNI for purposes of factor valuation (*e.g.*, countries with GNIs between USD 470 and USD 1,650), the hourly wage rate spans from USD 0.41 to USD 1.91.⁶⁴ Additionally, although both Indonesia and Egypt have GNIs below USD 3,000, and both could be considered economically comparable to Vietnam, Indonesia’s observed wage rate is USD 0.41, as compared to Egypt’s observed wage rate of USD .94.⁶⁵ There are many socio-economic, political and institutional factors, such as labor laws and policies unrelated to the size or strength of an economy, that cause significant variances in wage levels between countries. For this reason, and because labor is not traded internationally, the variability in labor rates that exists among otherwise economically comparable countries is a characteristic unique to the labor input. Moreover, the large variance in these wage rates illustrates why it is preferable to rely on data from multiple countries for purposes of valuing labor. The Department thus finds that reliance

data, if available, from the base year or previous five years. The hierarchy for data suitability described in the Antidumping Methodologies still applies for selecting among multiple data points within the “earnings” or “wage” data. This allows the Department to maintain consistency as much as possible across the basket.

⁶¹ Under the Department’s regression analysis, the Department limited the years of data it would analyze to a two-year period. See Antidumping Methodologies, 71 FR at 61720. However, because the overall number of countries being considered in the regression methodology was much larger than the list of countries now being considered in the Department’s calculations, the pool of wage rates from which we could draw for two years’ worth of data was still significantly larger than the pool from which we may now draw for five years’ worth of data (in addition to the base year). The Department believes it is acceptable to review ILO data up to five years prior to the base year as necessary (as we have previously), albeit adjusted using the CPI. See Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology, 70 FR 37761, 37762 (June 30, 2005). In this manner, the Department is able to capture the maximum number of countries that are significant producers of comparable merchandise, including those countries that choose not to report their data on an annual basis. See also Wage Rate Memo at Attachment II for the CPI data used in the instant case.

⁶² See ILO’s Yearbook of Labor Statistics.

⁶³ See *e.g.*, ILO, Global Wage Report: 2009 Update, (2009) at 5, 7, 10. http://www.ilo.org/wcmsp5/groups/public/-/dgreports/-/dcomm/documents/publication/wcms_116500.pdf.

⁶⁴ See Wage Rate Memo at Attachment II.

⁶⁵ See *id.*

on wage data from a single country is not preferable where data from several countries are available. For these reasons, the Department maintains its long-standing position that, even when not employing a regression methodology, more data are still better than less data for purposes of valuing labor. Accordingly, in order to minimize the effects of the variability that exists between wage data of comparable countries, the Department has employed a methodology that relies on as large a number of countries as possible that also meet the statutory requirement that a surrogate be derived from a country that is economically comparable and also a significant producer. Indeed, for this reason, although the Department is no longer using a regression-based methodology to value labor, the Department has determined that reliance on labor data from multiple countries, as opposed to labor data from a single country constitutes the best available information for valuing the labor input.⁶⁶

Based on the selection methodology set forth above, the Department has determined it is most appropriate to rely on industry-specific wage data reported by ILO for the final results. Determinations as to whether industry-specific ILO datasets constitute the best available information must necessarily be made on a case-by-case basis. In making these determinations, the Department considers a number of factors such as the appropriateness of the ILO industry-specific data in light of the subject merchandise and the availability of industry specific data.

Because an industry-specific dataset relevant to this proceeding exists within the Department's preferred ILO source, and because absent evidence to the contrary, the industry-specific data would be *at least* more specific to the subject merchandise than the national manufacturing data, the Department used industry-specific data to calculate a surrogate wage rate for the final results, in accordance with section 773(c)(1) of the Act. Thus, the Department determines to calculate the wage rate using a simple average of the data provided to the ILO under Sub-Classification 15 of the ISIC-Revision 3 standard by countries determined to be both economically comparable to Vietnam and significant producers of comparable merchandise. We have determined that this is the best available information from which to derive the surrogate wage rate based on the analysis set forth below.

The ISIC code is maintained by the United Nations Statistical Division and is updated periodically. The ILO, an organization under the auspices of the United Nation, utilizes this classification for reporting purposes. Currently, wage and earnings data are available from the ILO under the following revisions: ISIC-Rev.2, ISIC-Rev.3, and ISIC-Rev.4. The ISIC code establishes a two-digit breakout for each manufacturing category, and also often provides a three- or four-digit sub-category for each two-digit category. Depending on the country, data may be reported at either the two-, three- or four-digit subcategory.

Due to concerns that the industry definitions may lack consistency between different ISIC revisions, the Department finds that averaging wage rates within the same ISIC revision (*i.e.*, not mixing revisions) constitutes the best available information for the final results. While the Department finds use of industry-specific information is the best available information herein, the fact remains that there is a lack of information available that indicates how the wages from

⁶⁶ Both the statute and our regulations recognize the need to source factor data from more than one country.⁶⁶ Although 19 CFR 351.408(c)(2) provides that the Department will *normally* source the FOPs from a single surrogate country, the language in the regulation provides sufficient discretion for the Department to address situations where sourcing an FOP from a single source would not be preferable. Use of the word "normally" means that this is not an absolute mandate. As we explained, the unique nature of the labor input warrants a departure from our normal preference of sourcing all factor inputs from a single surrogate country.

the selected category and other manufacturing sectors are weighted or combined. The Department finds that averaging wage rates that were reported under the same revision standard provides specificity to the industry being examined, but also ensures some degree of consistency across multiple labor data points being averaged. Accordingly, for the final results, the Department has only used industry-specific wage data from a single revision.

It is the Department's preference to use data reported under the most recent revision, however, in this case we found that none of the countries found to be economically comparable and significant producers reported data pursuant to ISIC-Rev.4. Accordingly, in this case, we turned to the industry definitions contained in ISIC-Rev.3 to find the appropriate classification for fish fillets. Under the ISIC-Rev.3 standard, the Department identified the two-digit series most specific to fish fillets as Sub-Classification 15, which is described as "manufacture of food products and beverages." The explanatory notes for this sub-classification states that this sub-classification includes the "processing and preservation of fish and fish products."⁶⁷ Accordingly, for these reviews, the Department has calculated the wage rate using a simple average of the data provided to the ILO under Sub-Classification 15 of the ISIC-Rev.3 standard by countries determined to be economically comparable to Vietnam and significant producers of comparable merchandise. Additionally, when selecting data available from the countries reporting under ISIC-Rev.3, Sub-Classification 15, we used the most specific wage data available within this revision.

From the 20 countries that the Department determined were both economically comparable to Vietnam and significant producers of comparable merchandise, the Department identified those with the necessary wage data. Of these 20 countries, the following three reported industry-specific data under the ISIC-Rev.3 under Classification 15, "manufacture of food products and beverages:" 1) Egypt, 2) Indonesia, and 3) the Philippines. The following 17, however, did not report wage data on an industry-specific basis: 1) Bangladesh, 2) Bolivia, 3) Cote d'Ivoire, 4) Ghana, 5) Guyana, 6) India, 7) Kenya, 8) Mali, 9) Mauritania, 10) Nicaragua, 11) Pakistan, 12) Sao Tome & Principe, 13) Senegal, 14) Sri Lanka, 15) Sudan, 16) Yemen, and 17) Zambia. Accordingly, these 17 countries are not included in our wage rate calculation.

While, the Department prefers to use the most specific wage data available within the selective ISIC revision, because no country that was considered economically comparable and a significant producer reported earnings or wage data below the two-digit level, the Department has relied on the two-digit sub-classification in our industry-specific wage rate calculation. Accordingly, based on the above, the Department relied on data reported under ISIC-Rev.3 Sub Classification 15 "manufacture of food products and beverages" from the following countries to arrive at the industry-specific wage rate calculated for these reviews: 1) Egypt, 2) Indonesia, and 3) the Philippines.

Regarding VASEP's argument concerning double counting of gratuity in the Philippines financial data, the Department is not relying on the Philippines' financial statements for the final results in these reviews. Therefore, this issue is moot.

Regarding both VASEP's and Vinh Quang's arguments concerning the Philippines, in this case, we have three Philippines data points that reflect the relevant industry-specific wages: (1) a 2003 Philippines data point for "earnings per month," which is within five years of the base year; and

⁶⁷ See Wage Rate Memo at Attachment I.

(2) two 2008 Philippines data points for “wage rates per day.” In accordance with Department practice, we prefer to use the former data point instead of a more contemporaneous Philippines data points for “wage rates per day.”⁶⁸ Specifically, the Department’s preference is to use “earnings” data over “wages” data because the ILO defines “earnings” as being inclusive of wages, bonuses, and gratuities, and thus better represents the remunerations received by workers.⁶⁹ Therefore, consistent with this practice, we have continued to use the ILO data for the Philippines reflecting “earnings per month” in 2003, rather than the ILO data for the Philippines reflecting “wage rates per day” in 2007.

Finally, regarding VASEP’s argument concerning Indian and Nicaraguan earnings data reported under ISIC Rev.2, and Vinh Quang’s argument concerning classification, “slaughtering, preparing and preserving meat,” we disagree with both respondents and, for the final results, we have used industry-specific wage data from ISIC Rev.3 to value labor. As stated above, due to concerns that the industry definitions may lack consistency between different ISIC revisions, the Department finds that averaging wage rates within the same ISIC revision (*i.e.*, not mixing revisions) constitutes the best available information for the final results. While the Department finds use of industry-specific information is the best available information herein, the fact remains that there is a lack of information available that indicates how the wages from the selected category and other manufacturing sectors are weighted or combined. The Department finds that averaging wage rates that were reported under the same revision standard provides specificity to the industry being examined, but also ensures some degree of consistency across multiple labor data points being averaged.⁷⁰ Therefore, for the final results, we have continued to use only industry-specific wage data from ISIC Rev.3.

Based on the foregoing methodology, the revised wage rate to be applied in the final results is 1.09 USD/Hour. This wage rate is derived from comparable economies that are also significant producers of the comparable merchandise, consistent with the CAFC’s ruling in Dorbest and the statutory requirements of section 773(c) of the Act.

COMMENT IV: SURROGATE VALUES

A. Financial Ratios

Philippines

Petitioners’ Arguments

- The Department should select the RDEX⁷¹ 2009, and Bluefin⁷² 2008, financial statements because they both process finfish.
- There is no evidence that RDEX receives any countervailable subsidies.
- Bluefin’s overhead (“OH”) should not be adjusted as it would only introduce inaccuracies.
- The Department should not use 2009 financial statements for other Philippines

⁶⁸ See *id.*

⁶⁹ See Antidumping Methodologies, 71 FR at 61721.

⁷⁰ See *e.g.*, Certain Activated Carbon From the People’s Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review, 75 FR 70208 (November 17, 2010) and accompanying Issues and Decisions Memorandum at Comment 4F.

⁷¹ RDEX Food International Phils., Inc (“RDEX”) and Bluefin Seafood Export Inc. (“Bluefin”)

⁷² See *id.*

companies⁷³ on record (i.e., not frozen seafood processors, incomplete statements, etc.)

Respondents' Arguments

- RDEX should not be used because it is partnered with the Philippine government in the establishment and running of techno-demo farms.
- The 2008 and 2009 Bluefin financial statements lack detail for OH, so OH is over-inclusive (double counting) of some costs.
- If the Department selects the Philippines as the primary surrogate country, it should use the 2009 financial statements for other Philippines companies on record as they all produce seafood products.

Bangladesh

Petitioners' Arguments

- APEX⁷⁴ and Gemini⁷⁵ should not be used as they process frozen shrimp and not fish fillets.
- Respondents did not provide any new surrogate Bangladeshi financial companies.

Respondents' Arguments

- APEX and Gemini are the most appropriate companies on the record as they process fish and shrimp and are more contemporaneous than the Philippine financial companies.

Department's Position:

As noted above in Comment I, for the final results of these reviews, we have selected Bangladesh as the primary surrogate country. It is the Department's practice to rely upon the primary surrogate country for all SVs whenever possible.⁷⁶ The record of these reviews contains three suitable financial statements from producers of comparable merchandise in Bangladesh (see below). Therefore, we find it unnecessary to look outside Bangladesh, i.e., to the Philippines, for purposes of calculating surrogate financial ratios.

2008-2009 Apex Foods Ltd.

2008-2009 Gemini Seafood Ltd.

With respect to the public availability and contemporaneity of Apex's and Gemini's financial statements, we note that no party challenged our preliminary conclusions regarding these criteria, which we continue to find are satisfied. With regard to the merchandise produced and sold by these companies, we note that both companies state they process fish and shrimp;⁷⁷ the production processes (capital structure) of which we believe to be similar in terms of: cold processing area, freezing machines, and cold storage. Thus, we find Apex's and Gemini's

⁷³ A&L Fishpond & Hatchery Inc., Seatrade Canning Corporation, Santa Cruz Seafoods, Bluebay Aquaculture Inc., and Millennium Ocean Star Corp.

⁷⁴ Apex Foods Ltd. ("Apex").

⁷⁵ Gemini Sea Food Ltd. ("Gemini").

⁷⁶ See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Fifth New Shipper Review, 75 FR 38985 (July 7, 2010) and accompanying Issues and Decision Memorandum at Comment 2B; See also Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China, 69 FR 67313 (November 17, 2004) and accompanying Issues and Decision Memorandum at Comment 3 ("Furniture from China").

⁷⁷ See Petitioner's April 8, 2010, submission at: Exhibit 26-A (Notes 4 and 20 to Apex's Financial Statements and page 5: Condition 1.3); and Exhibit 26-B (Gemini's Company Profile – 02. Business of the Company).

production experiences to be similar to that of the Respondents. As a result, for these final results, we will rely on Apex's and Gemini's 2008-2009 financial statement for the calculation of surrogate financial ratios. In addition, as there is no indication that Apex or Gemini is fully integrated, we will average the resulting ratios for the two companies' and apply the resulting average to the non-integrated Respondents, Vinh Quang and CL-Fish.⁷⁸

2008-2009 Fine Foods

The Department notes that no party is arguing for the use of Fine Food's financial statements for purposes of calculating surrogate financial ratio for these final results. However, Fine Foods' annual report (notes to the accounts 1.3), states that its principal activities and nature of operations include: "Production of fish, fish product, fish spawn breeding, fingerling growing; production of fish meal & oil, processing fish and marketing the same products in local and foreign market; Plantations of good quality timber trees."⁷⁹ Therefore, as it is a seafood processor, we consider it an appropriate surrogate producer for these final results. We find Fine Food's financial statements are publicly available, contemporaneous with the POR, and reflective of a producer of comparable merchandise located in the primary surrogate country. In addition, as the record indicates that Fine Food's is an integrated producer, we find that its production experience to be most similar to that of Vinh Hoan. Thus, we will rely on Fine Food's 2008-2009 financial statement for purposes of calculating surrogate financial ratios for Vinh Hoan.⁸⁰

B. Salt

VASEP's Arguments

- For the final results, VASEP argues that the Department should not use GTA⁸¹ Philippines data to value salt because it is not reliable and not the best information on the record.
- Instead, VASEP contends that the Department should use a price quote from a Bangladesh Financial Express article ("price quote") dated May 15, 2008, to value salt because: 1) it is a domestic price quote from the primary surrogate country, Bangladesh; and 2) the Department's preference is to use domestic values, rather than import values, when calculating SVs.

Petitioners' Arguments

- In their rebuttal comments, Petitioners contend that the Department should continue to value salt using GTA Philippines data because it represents the best available information on the record to value this input.
- Petitioners also argue that if the Department selects Bangladesh as the surrogate country, the Department should then value salt using 2007 Bangladesh UN Comtrade data as it did

⁷⁸ See Memorandum to the File, from Alan Ray, Case Analyst, through Alex Villanueva, Program Manager, regarding Sixth Administrative Review and Sixth New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Values for these Final Results, dated March 14, 2011 ("Final Results Surrogate Value Memo") at Attachment 9.

⁷⁹ See Petitioners' February 23, 2010, submission at Exhibit 3.

⁸⁰ See Final Results Surrogate Value Memo at Attachment 9.

⁸¹ In the Preliminary Results, we note that we used both the terms Global Trade Atlas ("GTA") and World Trade Atlas ("WTA") to describe the data used to calculate the surrogate values. However, we have determined that the data we used originated from the WTA website, sourced in the local currency. Therefore, in our positions we are using WTA to describe the correct source.

in the Fish AR5/NSR4 Final Results⁸² because that information is: 1) publicly available; 2) specific to the input; and 3) represents a broad market average.

Department's Position:

We agree with Petitioners, in part. Section 773(c)(1) of the Act directs the Department to use “the best available information” from an appropriate market-economy country to value FOPs. In selecting the most appropriate SV, the Department considers several factors including whether the SV is: publicly available, contemporaneous with the POR, represents a broad market average, from an approved surrogate country, tax and duty-exclusive, and specific to the input.⁸³ The Department's preference is to satisfy the breadth of the aforementioned selection criteria. 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.⁸⁴ As there is no hierarchy for applying the above-mentioned principles, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what constitutes the “best” available surrogate value for each input.⁸⁵

As noted above in Comment I, for the final results of these reviews, we have selected Bangladesh as the primary surrogate country. It is the Department's preference to value all FOP utilizing data from the primary surrogate country and to consider alternatives only when a suitable value from the primary surrogate country does not exist on the record.⁸⁶ In these reviews, the record contains a suitable value for salt from the primary surrogate country (see below). Therefore, for these final results, we will not consider data from the Philippines for purposes of valuing this FOP.

With regard to VASEP's argument concerning the price quote on the record of these reviews, it is the Department's general practice not to use price quote information if other suitable publicly available data is on the record because a quote does not represent actual prices or broad ranges of data. In addition, the Department is often unaware of the conditions under which the quote was solicited and whether or not it was self-selected from a broader range of quotes.⁸⁷ Therefore, we have determined that even though the salt value from 2007 Bangladesh UN Comtrade data pre-dates the POR by seven months, it is the best available information on the record for valuation

⁸² See Fish AR5/NSR4 Preliminary Results, unchanged in Fish AR5/NSR4 Final Results.

⁸³ See e.g., First Administrative Review of Sodium Hexametaphosphate From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review, 75 FR 64695 (October 20, 2010), and accompanying Issues and Decision Memorandum at Comment 3 (“Sodium Hex”).

⁸⁴ See Certain Preserved Mushrooms from the PRC: Final Results and Final Partial Rescission of the Sixth Administrative Review, 71 FR 40477 (July 17, 2006), and accompanying Issues and Decision Memorandum at Comment 1 (“Mushrooms from the PRC”); see also Freshwater Crawfish Tail Meat from the PRC: 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.

⁸⁵ See Mushrooms from the PRC.

⁸⁶ See e.g., Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Fifth New Shipper Review, 75 FR 38985 (July 7, 2010) and accompanying Issues and Decision Memorandum at Comment 2B (“NSR5 Final Results”); See also Furniture from China, and accompanying Issues and Decision Memorandum at Comment 3.

⁸⁷ See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 3987 (January 22, 2009) (“TRB”) and accompanying Issues and Decision Memorandum at Comment 5; see also Drill Pipe From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances 76 FR 1966 (January 11, 2011) (“Drill Pipe”) and accompanying Issues and Decision Memorandum at Comment 6.

purposes because it is from the primary surrogate country and it satisfies the other SV selection criteria.⁸⁸ Therefore, for these final results, we have valued salt using data from 2007 Bangladesh UN Comtrade, inflated to the POR.⁸⁹

C. Water

VASEP's Arguments

- On the Preliminary Results, the Department valued water using data from Philippine Maynilad Water Services, Inc.⁹⁰
- For the final results, the Department should not value water using data from the Philippines because the country is not suitable as the primary surrogate country.
- Instead, the Department should use data from the Bangladesh Dhaka Water Supply & Sewage Authority because it is: 1) contemporaneous with the POR; 2) broad based; 3) specific; and 4) reliable.

Petitioners' Arguments

- The Department should continue using data from the Philippines to value water because the data is: 1) from the primary surrogate country; 2) specific; 3) contemporaneous; and 4) publicly available.

Department's Position:

We agree with VASEP. As noted above in Comment I, for the final results of these reviews, we have selected Bangladesh as the primary surrogate country. It is the Department's preference to value all FOPs utilizing data from the primary surrogate country and to consider alternative sources only when a suitable value from the primary surrogate country does not exist on the record.⁹¹ In these reviews, the record contains a suitable value for water from the primary surrogate country. Therefore, for these final results, we will not consider data from the Philippines to value this FOP.

In these reviews, we have determined that data from the Bangladesh Dhaka Water Supply & Sewage Authority is the best available information for valuing water because it is from the primary surrogate country and it satisfies the other surrogate value selection criteria.⁹² Therefore, for these final results, we have valued water using data from the Bangladesh Dhaka Water Supply & Sewage Authority.⁹³

D. STPP, CO Gas, PE bags, Carton, Tape, Label, Plastic Sheet, Banding, and Diesel

VASEP's Arguments

- For the final results, the Department should not use GTA Philippines data to value the aforementioned inputs because: 1) this data is not on the record; and 2) it is not from the primary surrogate country.

⁸⁸ See, e.g., Sodium Hex.

⁸⁹ See Final Results Surrogate Value Memo at Attachment 3.

⁹⁰ See Memorandum to the File, from Javier Barrientos, Senior Case Analyst, through Alex Villanueva, Program Manager, regarding Antidumping Administrative and New Shipper Reviews of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results, dated September 7, 2010 ("Preliminary Surrogate Value Memo") at 5C.

⁹¹ See, e.g., NSR5 Final Results; see also Furniture from China.

⁹² See, e.g., Sodium Hex.

⁹³ See Final Results Surrogate Value Memo at Attachment 5.

- Instead, the Department should use the Bangladesh UN Comtrade data because it is: 1) on the record; and 2) from the primary surrogate country.

Petitioners' Arguments

- The Department should continue using data from the Philippines to value these inputs because the data is: 1) from the primary surrogate country; 2) specific; 3) contemporaneous; and 4) publicly available.

Department's Position:

We agree with VASEP. As noted above in Comment I, for the final results of these reviews, we have selected Bangladesh as the primary surrogate country. It is the Department's preference to value all FOP utilizing data from the primary surrogate country and to consider alternative sources only when a suitable value from the primary surrogate country does not exist on the record.⁹⁴ In these reviews, the record contains suitable values for the factors listed above from the primary surrogate country. Therefore, for these final results, we will not consider data from the Philippines to value the aforementioned inputs.

In these reviews, we have determined that even though data from 2007 Bangladesh UN Comtrade pre-dates the POR, it is the best available information on the record for valuing the aforementioned inputs because it is from the primary surrogate country and it satisfies the Department's SV selection criteria.⁹⁵ Therefore, for these final results, we have valued the aforementioned inputs using 2007 Bangladesh UN Comtrade data, inflated to the POR.⁹⁶

E. Electricity

VASEP's Arguments

- For the final results, the Department should not value electricity using data from the Manila electric company because the Philippines: 1) does not qualify as a surrogate country and 2) is not a significant producer of comparable merchandise.
- Instead, the Department should use 2002 data from the Bangladesh Statistical Yearbook because it: 1) is based on a broad market average; 2) is specific; 3) is reliable; and 4) was used in prior segments of this proceeding.

Petitioners' Arguments

- The Department should continue using data from the Philippines to value electricity because the data is: 1) from the primary surrogate country; 2) specific; 3) contemporaneous; and 4) publicly available.

Department's Position:

We agree with VASEP. As noted above in Comment I, for the final results of these reviews, we have selected Bangladesh as the primary surrogate country. It is the Department's preference to value all FOP utilizing data from the primary surrogate country and to consider alternative sources only when a suitable value from the primary surrogate country does not exist on the record.⁹⁷ In these reviews, the record contains a suitable value for electricity from the primary

⁹⁴ See NSR5 Final Results at Comment 2B; see also Furniture from China.

⁹⁵ See, e.g., Sodium Hex.

⁹⁶ See Final Results Surrogate Value Memo at Attachments 3, 6 and 5.

⁹⁷ See NSR5 Final Results at Comment 2B; see also Furniture from China.

surrogate country. As such, for these final results, we will not consider data from the Philippines to valuation purposes.

In these reviews, we have determined that even though data from the 2002 Bangladesh Statistical Yearbook pre-dates the POR, it is the best available information on the record for purposes of valuing electricity because it is from the primary surrogate country and satisfies the Department's SV selection criteria.⁹⁸ Therefore, for these final results, we have valued electricity using the 2002 data from the Bangladesh Statistical Yearbook, inflated to the POR.

F. Truck Freight

VASEP's Arguments

- For the final results, the Department should not value truck freight using the Philippine data from the Caminares Sur website because the Department should determine that the Philippines is not the primary surrogate country.
- Instead, the Department should use 2005 data from the Bangladesh Statistical Yearbook because it: 1) is based on a broad market average; 2) is specific; 3) is reliable; and 4) was used in prior segments of this proceeding.

Petitioners' Arguments

- The Department should continue using data from the Philippines to value truck freight because it is: 1) from the primary surrogate country; 2) specific; 3) contemporaneous; and 4) publicly available data.

Department's Position:

We agree with VASEP. As noted above in Comment I, for the final results of these reviews, we have selected Bangladesh as the primary surrogate country. It is the Department's preference to value all FOP utilizing data from the primary surrogate country and to consider alternative sources only when a suitable value from the primary surrogate country does not exist on the record.⁹⁹ In these reviews, the record contains a suitable value for truck freight from the primary surrogate country (see below). Therefore, for these final results, we will not consider data from the Philippines for valuation purposes.

In these reviews, we have determined that even though data from the 2005 Bangladesh Statistical Yearbook pre-dates the POR, it is the best available information on the record for purposes of valuing truck freight because it is from the primary surrogate country and satisfies the Department's SV selection criteria.¹⁰⁰ Therefore, for these final results, we have valued truck freight using data from the 2005 Bangladesh Statistical Yearbook, inflated to the POR.¹⁰¹

G. Brokerage and Handling

VASEP's Arguments

- For the final results, the Department should not value brokerage and handling using data from the Philippine Tariff Commission ("PTC") because the Philippines is not suitable as the primary surrogate country.

⁹⁸ See, e.g., Sodium Hex.

⁹⁹ See NSR5 Final Results at Comment 2B; see also Furniture from China.

¹⁰⁰ See, e.g., Sodium Hex.

¹⁰¹ See Final Results Surrogate Value Memo at Attachment 8.

- Instead, the Department should value brokerage and handling by averaging Indian charges paid by Kejirwal Paper Ltd. and Agro Dutch Industries Ltd. because the Indian value: 1) is derived from data from a surrogate country; 2) is from a significant producer of comparable merchandise; 3) is contemporaneous to the POR; 4) is derived from actual commercial transactions; and 5) was used in prior segments of this proceeding.

Petitioners' Arguments

- The Department should continue to use the PTC rates to calculate brokerage and handling because: 1) the data is contemporaneous with the POR; and 2) the Department has used the PTC data in other segments of these reviews.
- Further, the Department should correct the calculation of the SV for brokerage and handling. Specifically, the PTC brokerage and handling rate is a combination of a base rate plus a percentage of the value above a certain amount, but the Department only included the latter.

Department's Position:

We agree with Petitioners. As noted above in Comment I, for the final results of these reviews, we have selected Bangladesh as the primary surrogate country. It is the Department's preference to value all FOP utilizing data from the primary surrogate country and to consider alternative sources only when a suitable value from the primary surrogate country does not exist on the record.¹⁰² In these reviews, the record does not contain a suitable value for brokerage and handling from the primary surrogate country. In instances where Bangladeshi data is not available, we have selected the Philippines as the secondary surrogate country.¹⁰³

In this case, we have determined that the PTC brokerage and handling value from the Philippines represents the best available information on the record to value brokerage and handling because it is from the secondary surrogate country and satisfies the Department's SV selection criteria.¹⁰⁴ Therefore, for these final results, we have continued to use the PTC data to value brokerage and handling.

Additionally, because we are utilizing the PTC data, we have corrected the clerical error made in the Preliminary Results, and have revised the calculation for brokerage and handling accordingly.¹⁰⁵

H. Containerization

VASEP's Arguments

- The Department should not value containerization using the Department's online Indian data from June 1994, because the web address provided by Petitioners is not active.
- Instead, the Department should use the February 1, 2008, to January 1, 2009, Indian data from Falcon Marine Exports Limited ("Falcon Marine") because: 1) it is already on the record; 2) it is publicly available; 3) it is contemporaneous with the POR; 4) it is derived from commercial transactions between unaffiliated parties; and 5) the Department has previously considered data from public submissions to be a reliable source of SV data.

No other interested party commented on this issue.

¹⁰² See NSR5 Final Results; see also Furniture from China.

¹⁰³ See Comment I.

¹⁰⁴ See, e.g., Sodium Hex.

¹⁰⁵ See Final Results Surrogate Value Memo at Attachment 8.

Department's Position:

We agree with VASEP. As noted above in Comment I, for the final results of these reviews, we have selected the Bangladesh as the primary surrogate country. The record of these reviews does not contain a suitable value for containerization from the primary or secondary surrogate country. Therefore, we have considered other values that meet the Department's SV selection criteria.¹⁰⁶

In this case, we have determined that the Indian value for containerization from Falcon Marine represents the best available information on the record. Although the Falcon Marine value is based on warmwater shrimp and not fish fillets, we find that the value is sufficiently representative of a company involved in shipping frozen seafood. Additionally, the Falcon Marine value is contemporaneous with the POR, whereas the data used in the Preliminary Results, pre-dates the POR by 14 years. Therefore, for these final results, we have valued containerization using data from Falcon Marine.

I. By-products

i. Fish Waste

Petitioners' Arguments

- The Department used an inappropriate source to value fish waste, GTA import data from the Philippines under HTS 0304.90 (other fish meat of marine fish), as this is a basket category that includes various types of processed products.
- In past segments of this proceeding, the Department has rejected import data under this same HTS because the category includes higher-value, processed products, and has chosen instead price quotes.¹⁰⁷
- A better source is the Vitarich Corporation ("Vitarich") price quote, as it is specific to *Pangasius* waste, comes from the primary selected SC, and is an ex-factory price that is tax-exclusive.

Respondents' Arguments

- The use of GTA Philippine data under HTS 0304.90 was inappropriate because the Philippines does not qualify as the primary surrogate country.
- The Department should derive the value for fish waste from India, a qualified secondary surrogate country, using a price quote from Shivani Network, as it is specific to fish waste and is contemporaneous with the POR.
- The Vitarich price quote contains no official stamp, is not a price quote from a manufacturer to a commercial enterprise, lists no terms of payment, does not list who provided the quote, and the secondary document provided with the price quote is an affidavit from the lawyer retained by Petitioners' counsel.

Department's Position:

We disagree with Petitioners and Respondents, in part, and will continue to value fish waste using Philippine UN Comtrade import statistics under HTS 0304.90, as we find it to be the best available information on the record. It is the Department's preference to value all FOP utilizing

¹⁰⁶ See NSR5 Final Results at Comment 2B; see also Furniture from China.

¹⁰⁷ See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results and Partial Rescission of New Shipper Reviews, 73 FR 36840 (June 30, 2008), and accompanying Issues and Decision Memorandum at Comment 3; see also Fish AR5/NSR4 Final Results, and accompanying Issues and Decision Memorandum at Comment 2.C.

data from the primary surrogate country and to consider alternative sources only when a suitable value from the primary surrogate country does not exist on the record.¹⁰⁸ In this instance, the Bangladeshi import data is from 2003. While we could inflate that figure to make it contemporaneous with the POR, we find the Philippine import data to be the best available information as it is contemporaneous with the POR and from the secondary surrogate country.

With regard to the Vitarich price quote, we note that the quote contains no official company stamp, was obtained outside the context of an actual business transaction, lists no terms of payment, does not list the person who provided the price, and was obtained after the POR. As a result, the price quote does not represent an actual transaction or a price representative of a broad market average. Furthermore, the Department has concerns as to whether this price quote is truly publicly available, to the extent that anyone from the public could duplicate it. Moreover, it is the Department's general practice to not use price quotes for valuation purposes if other suitable, publicly available data is on the record.¹⁰⁹ We acknowledge that we have valued byproducts using price quotes in prior segments of this proceeding, when it has represented the best information on the record.¹¹⁰ However, we note that in Fish Final AR 3, with respect to valuing fish oil, we stated:

In the past, the Department has overlooked product specificity as a criterion for selecting an FOP surrogate value from an unreliable source in favor of a more reliable source that satisfies a wider range (excluding specificity) of the Department's surrogate value selection criteria.¹¹¹

We recognize that the Vitarich quote may be more specific to fish waste, but when considering the other criteria the Philippines import data is superior. The Vitarich price quote is not contemporaneous, does not represent a broad market average, and it not publicly available. Therefore, the Department has determined not to rely on the Vitarich price quote for purposes of valuing fish waste for these final results.

Similarly, with regard to the Shivani price quote, the Department notes that it does not represent a broad market average, is not from a producer located in the primary or secondary country, and is not specific to *Pangasius*. Given these concerns, the Department determines that this price quote is also not the best available information for purposes of valuing fish waste.

With regard to the 2008 Philippine import statistics under HTS 0304.90, the Department finds this source to be from the secondary surrogate country, publicly available, a broad market average, contemporaneous with the POR, and tax and duty free. While this HTS category does include the particular byproduct generated by Respondents, the Department acknowledges that it also includes products other than unprocessed fish waste. However, given the lack of preferable alternatives, we find that the 2008 Philippine import statistics for HTS 0304.90 are the most suitable source on the record for valuing fish waste. While these statistics may include products other than fish waste and are from the secondary rather than the primary surrogate country, these concerns are secondary to the concerns that we have regarding the Vitarich and Shivani price

¹⁰⁸ See NSR5 Final Results at Comment 2B; see also Furniture from China.

¹⁰⁹ See, e.g., TRB and Drill Pipe.

¹¹⁰ See Memorandum to the File through Alex Villanueva, Program Manager, Office 9, from Javier Barrientos, Senior Case Analyst, Office 9, regarding 5th New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results, dated January 19, 2010.

¹¹¹ See Third Fish Fillets Final, and accompanying Issues and Decision Memorandum at Comment 8E.

quotes and the lack of contemporaneity with respect to the Bangladeshi import data. Thus, the Department will value fish waste using Philippine import statistics for the HTS (0304.90).

ii. Broken Meat

Petitioners' Arguments

- The Department used an inappropriate source to value broken meat, GTA import data from the Philippines under HTS 0304.90 (other fish meat of marine fish).
- This HTS subheading is a basket category that includes many types of meat (other than fillets) from many species of fish.
- A better source for valuing broken meat is the Vitarich price quote for *Pangasius* meat and trimmings.

No other interested party commented on this issue.

Department's Position:

We disagree with Petitioners and will continue to value broken meat using Philippine UN Comtrade data under HTS 0304.90 (other fish meat of marine fish). As an initial matter, the Department notes that Petitioners make the same argument as they did with regard to fish waste (that the HTS used is too broad and instead propose the use of Vitarich price quote). Therefore, similar to our reasoning for fish waste above, we find that the 2008 Philippine import statistics for HTS 0304.90 are the most suitable source on the record for valuing broken meat because, even though these statistics may include products other than *Pangasius* broken meat and is from the secondary rather than the primary surrogate country, these concerns are secondary to the concerns that we have regarding the Vitarich price quotes. Thus, the Department will value broken meat using Bangladesh import statistics for the HTS (0304.90).

iii. Fish Skins

Petitioners' Arguments

- HTS 0303.80 (Fish Livers, Roes) was an inappropriate source to value fish skin, as livers and roes are completely different products from fish skin.
- Bangladesh UN Comtrade data under HTS 2301.20 is a basket category.
- A better source for valuing fish skin is the Vitarich price quote for *Pangasius* fish skin.

Respondents' Arguments

- The Philippines should not be considered the primary surrogate country.
- The Department should value fish skin using Bangladesh UN Comtrade data under HTS 2301.20, as used in prior segments of this proceeding.

Department's Position:

We agree with Respondents and will value fish skin using Bangladesh import data under HTS category 2301.20 (Flours, Meals And Pellets, Of Fish Or Of Crustaceans). Petitioners make a similar argument about import data under HTS category 2301.20 and as they did with broken meat and fish waste (that the HTS categories are too broad and instead propose the use of the Vitarich price quote).

In prior segments of this proceeding, we have valued fish skin using import data under HTS 2301.20. See Fish AR5/NSR4 Final Results. In the current segment, we reviewed other options for valuing fish skin because what we had been using was not actual data for fish skins. Based

on the descriptions of the HTS numbers 2301.20 and 0303.80, we find that neither HTS category specifically reflects *Pangasius* fish skin nor do we have any information that would demonstrate that one category is more specific to Respondents' fish skins than the other. However, it is the Department's preference to value all FOPs utilizing data from the primary surrogate country, and to consider alternative sources only when a suitable value from the primary surrogate country does not exist on the record.¹¹² Therefore, for these final results, we will rely on Bangladesh import statistics under HTS 2301.20, because, even though these values pre-date the POR, and may include products other than *Pangasius* fish skin, these concerns are secondary to the concerns that we have regarding the Vitarich price quotes. The HTS data represent broad market averages, are from the primary surrogate country, and are tax and duty exclusive. Thus, the Department will value fish skin using Bangladesh import statistics for HTS 2301.20. See Final Results Surrogate Value Memo.

J. Adjustment for Finished Goods Inventory

Respondents' Arguments

- If the Department uses the Philippine surrogate ratio company RDEX in its surrogate ratio calculation, it should include the change in finished goods inventory in the denominator of the selling, general, and administrative ("SG&A") and profit ratio calculation.

No other interested party commented on this issue.

Department's Position:

As noted above in Comment I, for the final results of these reviews, we have selected Bangladesh as the primary surrogate country. It is the Department's preference to value all FOPs utilizing data from the primary surrogate country and to consider alternative sources only when a suitable value from the primary surrogate country does not exist on the record.¹¹³ In the instant review, the record contains suitable surrogate financial ratios from the primary surrogate country (see Comment I). Therefore, for the final results, we will not consider data from the Philippines to value the surrogate financial ratios. Thus, the issue of whether an adjustment should be made to RDEX's financial statements is moot.

COMMENT V: RATE FOR SOUTH VINA

Richwell's Argument

- In prior proceedings, the Department either calculated a zero percent rate or rescinded the review with respect to South Vina.
- In the Preliminary Results of these reviews, the margin rate calculated for South Vina sharply increased from the rate previously assigned to it because the Department used data from the Philippines, rather than Bangladesh, to calculate the SVs.
- The margin rate calculated for South Vina is now more than the Vietnam-wide margin rate for entities that did not cooperate in these reviews.
- Therefore, because South Vina has not changed its business practices, for the final results, the Department should calculate an individual rate for South Vina.

¹¹² See id.

¹¹³ See id.

Petitioners' Argument

- The Department should assign South Vina the rate calculated for Vinh Hoan because the Department has an established practice for calculating the rate for Separate Rate Respondents.
- Petitioners cite to prior cases in Bedroom Furniture from the PRC and Paper Products from the PRC as examples where the Department has followed this precedent.

Department's Position:

In situations where there is only one mandatory respondent, it is the Department's practice to assign the rate of the single mandatory respondent to the non-selected separate rate respondents subject to the review.¹¹⁴ In this segment, the Department is reviewing only one mandatory respondent which received a calculated rate of zero.

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. The Department's practice in this regard, in cases involving limited selection based on exporters accounting for the largest volumes of trade, has been to weight-average the rates for the selected companies excluding zero and de minimis rates and rates based entirely on adverse facts available ("AFA"). Generally we have looked to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents we did not individually examine in an administrative review. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any zero or de minimis margins or any margins based on total facts available ("FA"). Section 735(c)(5)(B) of the Act also provides that, where all margins are zero, de minimis, or based on total FA, we may use "any reasonable method" for assigning the rate to non-selected respondents. One method that section 735(c)(5)(B) of the Act contemplates as a possibility is "averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated."

In the Preliminary Results, the Department applied to the separate rate companies the rate calculated for the single mandatory respondent in the administrative review. For these final results, the rate calculated for the single mandatory respondent is zero. While the statute contemplates that we may use an average of the zero, de minimis and AFA rates determined in an investigation, we have available in these reviews information that would not be available in an investigation, namely rates from prior proceedings. We have determined that it is more appropriate in these reviews to use a calculated rate from a previous segment to apply to the separate rate companies as this method does not rely on zero, de minimis or FA margins and there is no reason to find that it is not reasonably reflective of potential dumping margins for the non-selected companies. See Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act, H. Doc. 316, 103d Cong., Vol. 1 (1994) at 873.

The most recent calculated rate from a previous administrative review that is not zero, de minimis or based on FA, is \$0.02 per kilogram, which was based on the calculated rate for QVD Food Company in the fourth administrative review. See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Amended Final Results of the Fourth Antidumping Duty

¹¹⁴ 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).

Administrative Review, 74 FR 17816 (April 17, 2009). This is similar to the method applied in the most recently completed administrative review. See Fish AR5/NSR4 Final Results, 75 FR at 12728. As a result, we have assigned South Vina a rate of \$0.02 per kilogram for these final results.

COMMENT VI: RATE FOR VINH QUANG

A. Indirect Selling Expenses

Vinh Quang's Argument

- In the Preliminary Results, the Department triple counted the indirect selling expenses (“ISEs”) for sales by H & N Foods International, Inc. (“H&N”) and calculated zero ISEs for sales by Expack Seafoods, Inc. (“Expack”) and Joe Pucci & Sons, Inc. (“Joe Pucci”).
- The Department should correct the calculation of ISEs for these companies for the final results.

No other interested party commented on this issue.

Department's Position:

We agree with Vinh Quang. Therefore, for these final results, we have corrected the margin program for Vinh Quang to: 1) remove the triple counting of ISEs for H&N; and 2) properly account for the reported ISEs for Expack and Joe Pucci.

B. Movement Expenses

Vinh Quang's Argument

- The Department's inclusion of U.S. movement expenses in the calculation of CEP profit is contrary to the Act.
- Citing Hangers from the PRC,¹¹⁵ Vinh Quang notes that the Department did not include U.S. movement expenses in the calculation of CEP profit in other NME proceedings.
- Therefore, the Department should correct the calculation of CEP profit for the final results.

No other interested party commented on this issue.

Department's Position:

We agree with Vinh Quang. Therefore, for these final results, we have revised Vinh Quang's margin program to remove U.S. movement expenses from the calculation of CEP profit.

C. Packing Labor

Petitioners' Argument

- In the Preliminary Results, the Department did not include packing labor cost in the calculation of NV for Vinh Quang.
- The Department should revise Vinh Quang's margin program for the final results to include packing labor cost.

No other interested party commented on this issue.

¹¹⁵ See Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 47587 (August 14, 2008) (“Hangers from the PRC”) and accompanying Issues and Decision Memorandum at Comment 9-F.

Department's Position:

We agree with Petitioners. Therefore, for these final results, we have revised Vinh Quang's margin calculation to include packing labor cost.

COMMENT VII: RESCISSION OF ANVIFISH JSC*Anvifish JSC's Arguments*

- In the Anvifish JSC Rescission Memo, the Department stated its intention to rescind the review of Anvifish JSC in the final results.¹¹⁶
- Because no interested party submitted comments on its rescission, the Department should immediately rescind the review with respect to Anvifish JSC and issue liquidation instructions to U.S. Customs and Border Protection ("CBP").

No other interested party commented on this issue.

Department's Position:

We agree with Anvifish JSC. On November 10, 2010, the Department stated in its Anvifish JSC Rescission Memo that after examining data submitted by Anvifish JSC regarding its management, production facilities, supplier relationships, and customer base, that although there were some changes between Anvifish Co., Ltd. and Anvifish JSC, when taken as a whole, the Department finds that Anvifish JSC is the successor-in-interest to Anvifish Co., Ltd. Therefore, the Department finds that Anvifish JSC is entitled to use the separate rate assigned to Anvifish Co., Ltd. in the 4th AR Fish Fillets from Vietnam,¹¹⁷ the most recent review for which Anvifish Co., Ltd. was assigned a rate. In these final results, with respect to Anvifish JSC, the Department will rescind the review and instruct CBP to liquidate all appropriate entries made during the POR at \$0.02 per kilogram, pursuant to 19 CFR 351.212(b).

COMMENT VIII: CASH DEPOSIT INSTRUCTIONS FOR ESS LLC*ESS LLC's Arguments*

- The Department should correct the spelling of its name in the cash liquidation instructions accompanying the final results.

No other interested party commented on this issue.

Department's Position:

We agree with ESS LLC and will correct its name and incorporate the change into the final cash deposit instructions.

¹¹⁶ See Memorandum to the File through Susan H. Kuhbach, Acting Deputy Assistant Secretary, from James C. Doyle, Director, Office 9, Sixth Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Rescission of Anvifish Joint Stock Company, dated November 10, 2010 ("Anvifish JSC Rescission Memo").

¹¹⁷ 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), and accompanying Issues and Decisions Memorandum at Comment 1 ("Fish AR4 Final Results").

COMMENT IX: RATE FOR VINH HOAN

A. Freight Distances for Fish

Petitioners' Arguments

- Vinh Hoan failed to provide the distance and volume between each of the farms and processor.
- As partial FA, the Department should use the highest reported distance from a farm to a processor to value freight for farmed fish.

Vinh Hoan's Arguments

- The movement of fish from farms to processing facilities represents internal transfers of an input, and should not be assigned an SV to account for movement expenses as these expenses are already captured in the financial ratios.
- Vinh Hoan provided distances from farms to processing facilities, but did not include a weighted average distance.

Department's Position:

We agree with Petitioners. Section 776(a)(1) of the Act provides that if necessary information is not available on the record, the Department shall use facts otherwise available in reaching the applicable determination. The Department finds that the application of facts otherwise available is warranted under section 776(a)(1) of the Act because Vinh Hoan did not provide the weighted average distances between Van Duc Food Export Joint Stock Company's ("Van Duc") fish farms to Van Duc Tien Giang's ("VDTG") processing facility.

In response to the original questionnaire and a supplemental questionnaire response, Vinh Hoan provided the weighted-average distance for the farmed fish to the processing facilities. However, at verification, the Department discovered that the weighted-average distance provided by Vinh Hoan did not include the distances for Van Duc's farmed fish. Instead, Vinh Hoan's reported weighted-average distance incorrectly included the distance between two processing facilities.¹¹⁸ Therefore, FA is appropriate in accordance with 776(a)(1) of the Act, as necessary facts are not available on the record with which to calculate the accurate weighted average distance between Van Duc's fish farms and VTDG's processing facility.

Pursuant to section 776(b) of the Act, the Department may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available when the party fails to cooperate by not acting to best of its ability.¹¹⁹ Additionally, the Department notes that the standard for using AFA does not condone "inattentiveness, carelessness, or inadequate record keeping."¹²⁰ Accordingly, adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See SAA,

¹¹⁸ See Memorandum to the file from Javier Barrientos, Senior Analyst, Office IX, and Alan Ray, Case Analyst, Office IX, through Alex Villanueva, Program Manager, Office IX, Verification of the Factors of Production Response of Vinh Hoan Corporation in the Antidumping Duty Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, dated December 20, 2010 ("Verification Report") at 2, 14, and Exhibit 26.

¹¹⁹ See Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review, 62 FR 53808 (October 16, 1997); and Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil, 67 FR 55792, 55794-96 (August 30, 2002).

¹²⁰ See Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382 (Fed. Cir. 2003).

at 870. Furthermore, “{a}ffirmative evidence of bad faith on the part of a Respondent is not required before the Department may make an adverse inference.”¹²¹

The Department finds that an adverse inference is warranted due to Vinh Hoan’s failure to put forth sufficient efforts to report an accurate weighted-average distance between Van Duc’s farms to VDTG’s processing facility. As a respondent who has participated in multiple administrative reviews, Vinh Hoan understands the importance of accurately reporting freight distances of farmed fish from its own farms to processing facilities. Contrary to the Department’s request, the freight distances reported by Vinh Hoan were not actual weight-averaged distances from all of the fish farms to each of the corresponding processing facilities. With respect to Vinh Hoan’s argument that this movement is an internal transfer, the Department notes that the whole live fish was delivered from the farms to the processing areas by unaffiliated boat transport providers¹²² which shows that it would be improper for Vinh Hoan to consider as internal transfer given the lack of affiliation with the fish transporters. As such, these costs are otherwise not captured by any of the reported FOPs.

Therefore, consistent with the Department’s practice in other cases where a respondent fails to cooperate to the best of its ability, and in keeping with section 776(b) of the Act, the Department finds that the use of partial AFA is warranted for Vinh Hoan’s failure to report an accurate weighted-average freight distances between Van Duc’s fish farms and VDTG’s processing facilities. As partial AFA, we will apply the highest reported distance between one of Vinh Hoan’s farms and the processing facility and include it in the weighted average of all the distances incurred to get fish to Vinh Hoan’s processing facilities.¹²³

Because we are using Vinh Hoan’s own data and not information from separate, independent sources as the basis for partial AFA, it is unnecessary to corroborate the partial AFA data pursuant to section 776(c) of the Act

B. Farming Factors

Petitioners’ Arguments

- The Department found at verification that Vinh Hoan’s reported farming factors for fish feed, labor, fingerlings, medicines, salt, and lime did not account for all months of farm production during the POR.
- The Department should either not accept Vinh Hoan’s farming factors outright or use the highest reported monthly usage of the inputs.

Vinh Hoan’s Arguments

- Medicine was accurately and fully reported.
- The Department did not list any shortcomings in Vinh Hoan’s reporting for any of the farming factors.

Department’s Position:

We agree with Vinh Hoan. With regard to concerns about fish feed, the Department noted the following in the Vinh Hoan Verification Report:

¹²¹ See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27340 (May 19, 1997).

¹²² See Verification Report”) at 14.

¹²³ See Vinh Hoan’s Final Analysis Memorandum at 5-6.

Company officials explained that activity for the first five months of the POR was not recorded for feed until January 2009, as the farms were in their infancy, they did not know the procedures, and the records had not been delivered to Vand Duc's headquarters. When asked, Van Duc officials provided us proof for January 2009 electronic warehouse-out slips. ... Company officials explained that each of the warehouse-out slips for January 2009 for each pond for each farm has a note detailing how much of the total activity is attributable to prior months.¹²⁴

Therefore, even though Van Duc's records did not show activity in those months, the company explained how consumption was accounted for in its normal books and records. Moreover, for feed and for each of the other factors listed above, the Department verified the consumption reported by Vinh Hoan by tying the numbers to the general ledger and/or financial statements. See Vinh Hoan Verification Report at 9-12. Therefore, we will continue to value Vinh Hoan's farming factors and will not apply partial AFA for these farming inputs.

C. Electricity and Coal for Byproducts

Petitioners' Arguments

- The Department did not account for electricity and coal consumption for byproducts as reported in the FOP database.

Respondents' Arguments

- The Department did not state that it intended to account for the energy consumption associated with byproducts.

Department's Position:

We agree with Petitioners and will include consumption of electricity and coal associated with byproducts in the margin calculation for Vinh Hoan. We intend to include byproduct electricity and coal because they were consumed in the production of the byproducts for which Vinh Hoan is claiming byproduct offset credit.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the margin calculation program accordingly. If accepted, we will publish the final results of review and the final dumping margins in the Federal Register.

AGREE _____ DISAGREE _____

Kim Glas
Acting Deputy Assistant Secretary
for Import Administration

Date

¹²⁴ See Vinh Hoan Verification Report at 11.