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March 13, 2006

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the 1st Administrative
Review of Certain Frozen Fish Fillets from the Socialist Republic
of Vietnam

SUMMARY:

We have analyzed the case and rebuttal briefs of interested parties in the administrative review of certain frozen fish fillets from the Socialist Republic of Vietnam (“Vietnam”). As a result of our analysis, we have made changes to Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review, 70 FR 54007 (September 13, 2005) (“Preliminary Results”).

The specific calculation changes for Vinh Hoan Company Ltd. (“Vinh Hoan”) can be found in Analysis for the Final Results of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Vinh Hoan Company Ltd., dated March 13, 2006 (“Vinh Hoan Final Analysis Memo”). The specific calculation changes for Can Tho Agricultural and Animal Products Import Export Company (“CATACO”) can be found in Analysis for the Final Results of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Can Tho Agricultural and Animal Products Import Export Company, dated March 13, 2006 (“CATACO Final Analysis Memo”).

We recommend that you approve the positions we have developed in the “Discussion of the Issues” section of this Issues and Decision Memorandum. Below is the complete list of the issues in this antidumping duty administrative review for which we received comments and rebuttal comments from interested parties:

I. CHANGES FROM THE PRELIMINARY RESULTS

II. ISSUES FOR THE FINAL RESULTS:

Comment 1: Total Adverse Facts Available (“AFA”) for CATACO

Comment 2: AFA Calculation Methodology

Comment 3: Surrogate Factor Valuations (Whole Fish, Fish Oil, Fish Waste)

Comment 4: Byproduct Offset Cap

Comment 5: Importer-Specific Assessment Rates

Comment 6: Vinh Hoan Verification Clarifications (Byproduct Packing, Capacity, Telephone Communications)

BACKGROUND:

The merchandise covered by the order is certain frozen fish fillets as described in the “Scope of the Order” section of the Preliminary Results. The period of review (“POR”) is January 31, 2003, through July 31, 2004. After the Preliminary Results, the Department conducted sales and factors verifications for Vinh Hoan and CATACO. See Memorandum to the File, through, Alex Villanueva, Program Manager, AD/CVD Operations, Office 9, from, Irene Gorelik, Case Analyst, AD/CVD Operations, Office 9, RE: Verification of Sales and Factors of Production for Vinh Hoan Company Ltd. (“Vinh Hoan”) (November 14, 2005) (“Vinh Hoan Verification Report”); see also Memorandum to the File from Alex Villanueva, Program Manager, Verification of Sales and Factors of Production for Can Tho Agricultural and Animal Products Import Export Company (“CATACO”) in the First Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam (November 1, 2005) (“CATACO Verification Report”) and Memorandum to the File from Alex Villanueva, Program Manager, Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Verification Report Correction (January 9, 2006) (“CATACO Verification Report Correction”).

In accordance with section 351.309(c)(ii) and 351.309(d) of the Department of Commerce’s (the “Department”) regulations, we invited parties to comment on our Preliminary Results. On January 24, 2006, Vinh Hoan and Petitioners¹ filed case briefs concerning Vinh Hoan. H&N Foods International (“H&N”), an importer of subject merchandise, an interested party in this proceeding, submitted its case brief on January 24, 2005. On January 27, 2006, Petitioners filed a case brief concerning CATACO. On February 3, 2006, Vinh Hoan, H&N, and Petitioners submitted rebuttal briefs. On February 9, 2006, the Department requested that Petitioners remove new information contained in their January 24, 2006, case brief. On February 10, 2006, Petitioners resubmitted their case brief absent the unsolicited and untimely new information included in their January 24, 2006 case brief.

¹ The Catfish Farmers of America and individual U.S. catfish processors are, hereinafter, referred to as “Petitioners.”

DISCUSSION OF THE ISSUES:

I. Changes from the Preliminary Results

Based on a review of the record as well as comments received from parties regarding our Preliminary Results, we have made revisions to the margin calculations for the final results. Specific changes to Vinh Hoan's margin calculation include a revision of the inflator used for truck freight, a recalculation of labor and electricity reported for byproduct production resulting from verification findings, an update to the margin program language merging Vinh Hoan's sales and factors of production datasets, and other changes resulting from Comments 5 and 6 below. See Vinh Hoan Final Analysis Memo. See also Memorandum from Irene Gorelik, Case Analyst, through Alex Villanueva, Program Manager, Office 9 and James C. Doyle, Office Director, Office 9, to The File, Antidumping Duty Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam ("Vietnam"): Surrogate Values for the Final Results, dated March 13, 2006 ("Final Factors Memo"). CATACO's margin calculation changes are addressed in Comments 1 and 2 below. A full discussion of the calculation methodology is described in CATACO's analysis memorandum. See CATACO Final Analysis Memo.

II. Issues for the Final Results

Comment 1: Total Adverse Facts Available ("AFA") for CATACO

Petitioners argue that the Department should apply total AFA to CATACO given its failure to cooperate to the best of its ability in light of its termination of participation in this review. Petitioners note that in the Preliminary Results, the Department applied partial AFA to CATACO after concluding that CATACO undermined the Department's statutory obligation to ensure assessment of the correct antidumping duty amount and that it has also submitted contradictory information on the record with respect to its sales of subject merchandise to the United States. As a result, Petitioners state that the Department assigned the Vietnam-wide rate to certain sales made by CATACO. See CATACO Preliminary Analysis Memorandum (Public Version) at 9.

Petitioners maintain that following the Preliminary Results, the Department attempted to verify the factual information that CATACO had submitted in this review, but that on October 13, 2005, CATACO prematurely terminated the verification. See CATACO Verification Report (Public Version) at 4. Petitioners state that CATACO formally advised the Department that it "no longer would participate in the administrative review" and requested that its BPI be removed from the record or destroyed. See CATACO submission dated October 13, 2005 ("CATACO Withdrawal Letter"). Petitioners state that these facts demonstrate CATACO's unwillingness to cooperate to the best of its ability and warrant the use of total AFA to determine CATACO's cash deposit and assessment rates. See 19 U.S.C. § 1677e(b). As total AFA, Petitioners suggest that the Department should withdraw CATACO's eligibility for separate rate treatment and calculate CATACO's dumping rate based on the corroborated Vietnam-wide rate from the original investigation, as adjusted on the basis of information on the administrative record.

CATACO did not comment on this issue.

Department's Position

We agree with Petitioners' request to apply total AFA to CATACO.²

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

The Department attempted to verify CATACO's questionnaire responses. However, on October 12, 2005, the third day of verification, CATACO terminated the verification, promptly reclaimed all of its exhibits, and indicated that it understood the consequences of withdrawing from the administrative review. See CATACO Verification Report at 1. As a result, we are unable to discuss whether discrepancies existed with regard to any of the items identified in the verification outline. Furthermore, the Department cannot state whether any of the information in CATACO's responses corresponded to its books and records. Id., at 2.

Therefore, in accordance with sections 776(a)(2)(C) and (D) of the Act, the Department finds that applying facts available is warranted for CATACO because CATACO prematurely terminated verification and withdrew its BPI from the record of the instant proceeding, thereby significantly impeding this proceeding and rendering the information submitted unverifiable.

Further, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as facts otherwise available. 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 Statement of Administrative Action ("SAA") accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. See section 776(b) of the Act.

CATACO has failed to cooperate by not acting to the best of its ability because it withdrew from verification. In addition, the Department has recently applied, and the Courts have upheld, the

² The Department has applied total AFA to CATACO for the final results of this administrative review. As a result, all issues pertaining to CATACO's margin calculations regarding sale or factors of production are moot. Therefore, the Department is not addressing Petitioners' comments regarding any portion of CATACO's margin calculation. However, Petitioners argue that the Department should address CATACO's use of alternative labels for subject merchandise during the POR with CBP to ensure that CATACO and its importers comply fully with United States law. The Department acknowledges that CATACO's labeling of subject merchandise may potentially affect CBP's assessment of CATACO's entries and will work with CBP to address this issue.

use of AFA when a respondent refused to participate in verification.³ Thus, pursuant to section 776(b) of the Act, for the final results, we will apply facts available with an adverse inference, in selecting from among the facts otherwise available, to CATACO because it failed to cooperate to the best of its ability when it terminated verification and withdrew its information from the record of this review. For further details regarding the AFA rate applied to CATACO, please see comment 2 below.

Comment 2: AFA Calculation Methodology

As an initial matter, Petitioners argue that the Department, as the administrator of the antidumping laws, must ensure the accurate assessment of antidumping duties. In order to properly assess and require an accurate cash deposit for future entries, Petitioners maintain that the Department should adjust the AFA (Vietnam-wide rate) assigned to CATACO for these final results. Specifically, Petitioners request the Department recognize and incorporate the reimbursement verification findings when calculating the cash deposit and assessment rates.

Reimbursement Verification Findings

Petitioners submit that in assigning an AFA dumping rate to CATACO, the Department should account for evidence that Department officials observed at verification. Petitioners argue that the Department's observations should not be ignored and that CATACO's decision to withdraw from the review and remove its submitted information from the record does not permit the Department to disregard information that it gathered or learned from its own observations or research, which remain on the record.

Cash Deposit

Petitioners argue that the reimbursement verification findings should be taken into account when calculating CATACO's cash deposit. Petitioners argue that the current Vietnam-wide rate of 63.88 percent should be adjusted to account for the reimbursement verification findings. The adjusted cash deposit rate proposed by Petitioners is 80.88 percent. The specific calculation proposed by Petitioners can be found in their January 27, 2006, case brief submission at 5-16.

Assessment Calculation - Numerator

Petitioners argue that because CATACO withdrew from verification before the Department could fully verify its findings, the Department should apply an adverse inference that its findings

³ See, e.g., Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review, 70 FR 38873, 38878-80, (July 6, 2005); Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam, 69 FR 71005, 71008-09, (December 8, 2004); Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review; Final Rescission, in Part; and Intent to Rescind, in Part, 68 FR 58064, 58067, (October 8, 2003); see also Crawfish Processors Alliance v. United States, 343 F. Supp.2d 1242 (CIT 2004).

applied to all of CATACO's entries of subject merchandise during the POR and adjust the Vietnam-wide rate accordingly. Petitioners argue that because CATACO removed its U.S. sales data from the record, the Department must use the best available information on the record to determine CATACO's total U.S. sales value during the POR, which, in turn, can be used to derive the total dumping duties owed (numerator) for purposes of the assessment rate.⁴ Petitioners submit that the best available information is the public version of CATACO's most recent quantity and value chart. See CATACO's submission dated April 6, 2005 (Public Version) at Exhibit A-1. Petitioners maintain that the Department has previously relied upon ranged public data in order to calculate constructed value ("CV") selling expenses and profit.⁵ Petitioners suggest that, as AFA, the Department should calculate the total dumping duties owed (numerator) on CATACO's sales of subject merchandise during the POR using this ranged number. Alternatively, Petitioners suggest the Department use the aggregate entered value for CATACO's entries of subject merchandise during the POR, obtained from CBP as a surrogate for total U.S. sales value. See Memorandum to the File from Javier Barrientos, Analyst, through Alex Villanueva, Program Manager; Certain Frozen Fish Fillets from the Socialist Republic of Vietnam ("Vietnam"): Can Tho Agricultural and Animal Products Import Export Company ("CATACO") Analysis for the Preliminary Results of the Administrative Review (Proprietary Version) ("CATACO Prelim Analysis Memo") at Attachment III ("CBP Data for CATACO").

Assessment Calculation - Denominator

With regard to the denominator used in the assessment calculation, Petitioners argue that the Department should use the entered value as the "denominator" as found in the CBP Data for CATACO.⁶ Petitioners argue that, as this information was obtained directly from CBP, it is reliable to use as the total entered value in calculating CATACO's assessment rate. Petitioners state that when the Department calculated CATACO's per unit assessment rate in the Preliminary Results, it divided the total dumping duties owed by the quantity of TYPE 03 suspended entries. Petitioners note that when calculating CATACO's assessment rate for the final results, the Department should continue to divide the total antidumping duties owed by the POR TYPE 03 suspended entries, *i.e.*, subject to antidumping duties. Petitioners explain that this methodology is necessary to ensure the proper assessment of the antidumping duties owed on CATACO's POR entries. Accordingly, for the final results, Petitioners argue the Department should employ a similar methodology as in the Preliminary Results to calculate a modified ad-valorem assessment rate. Alternatively, Petitioners suggest that if the Department decides to calculate a per-unit assessment rate, it should divide the duties owed by CATACO's TYPE 03 entered quantity, as in the Preliminary Results.

CATACO did not comment on this issue.

⁴ According to Petitioners, the best information available should be multiplied by the 80.88 rate for CATACO. However, Petitioners alternatively argue, that the 63.88 may also be used.

⁵ See Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From Thailand, 69 FR 34122 (June 18, 2004) ("Carrier Bags From Thailand") and accompanying Issues and Decision Memorandum at Comment 4.

⁶ In the CBP Data for CATACO memorandum, the Department provided an analysis of CBP's data with respect to CATACO's entries during the POR. Specifically, the Department was able to segregate the data by entry type (suspended and not suspended). For the specific figure referenced by Petitioners, please see page 14 of the Petitioners' January 27, 2006 comments.

Department's Position

We agree with Petitioners that the reimbursement verification findings should be applied to CATACO for cash deposit and assessment purposes.

First, the Department agrees with Petitioners that the verification findings cannot be ignored and should be considered in the final results, which has been upheld by the Court of International Trade. See Timken U.S. Corporation and Timken Nadellager, GmbH v. United States, Slip Op. 04-135, Ct. No. 00-09-00454 (CIT 2004) (“Timken”) at 8-10 (“...accordingly, Timken’s Channel descriptions must be considered credible because of the Court’s due deference given to verification reports. see FAG Kugelfischer, 25 CIT at 106-7, 131 F. Supp. 2d at 133 (stating that not giving deference would leave every verification effort vulnerable to successive subsequent attacks, no matter how credible the evidence and no matter how burdensome on the agency further inquiry would be...When a verification has occurred, as it has here, the verified information must be considered more reliable than unverified information. see id.; see also FAG Kugelfischer, 25 CIT at 106-7,131 F. Supp. 2d at 133. Failing to give due deference to verified information would be a tragic waste of time, resources, and energy with seemingly no end to the administrative review process’’)).

Second, we agree with Petitioners that for cash deposit purposes the Department must take into account the reimbursement findings at verification and modify CATACO’s cash deposit rate for future entries. However, the Department finds that it would be inappropriate to apply the reimbursement finding to all exporters that are part of the Vietnam-Wide Entity. Therefore, the Department has determined to assign CATACO an individual rate. While it would be consistent with the Department’s normal practice for CATACO to be subject to the Vietnam-Wide Entity rate because it failed to cooperate to the best of its ability and withdrew from the proceeding, the Department’s additional finding that CATACO agreed to reimburse antidumping duties warrants a different result under these unusual circumstances. A finding of reimbursement is necessarily exporter-importer specific, and is treated as a unique adjustment. Moreover, in this case, as a result of the application of AFA, the reimbursement adjustment is exogenous to the normal calculation of the dumping margin. In order to properly account for CATACO’s reimbursement activities, the Department will adjust CATACO’s cash deposit and assessment rates, but not apply these adjustments to the rest of the Vietnam-Wide Entity. In this unique situation in which CATACO terminated verification and where we also found reimbursement of antidumping duties, it is appropriate to assign CATACO a rate inclusive of the Vietnam-Wide Entity and the reimbursement adjustment.⁷ Consequently, the cash deposit rate assigned to CATACO for these final results is 80.88 percent.⁸ See CATACO Final Analysis Memo at 2-3. The Department’s assessment calculations are outlined below.

With respect to CATACO’s assessment rate, section 351.212(b)(1) of the Department’s

⁷ As part of the adverse inference, the Department’s finding of reimbursement will be applied to all of CATACO’s importers for cash deposit and assessment purposes. See CATACO Final Analysis Memo at 2-3.

⁸ The Department corroborated the Vietnam-wide rate of 63.88 percent component of the 80.88 percent in the Preliminary Results. No interested party commented on the Department’s corroboration of this rate, thus the Vietnam-wide rate of 63.88 percent remains unchanged for the final results.

regulations states that:

{T}he Secretary normally will calculate the assessment rate by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise for normal customs duty purposes. The Secretary then will instruct the Customs Service to assess antidumping duties by applying the assessment rate to the entered value of the merchandise.

In the Preliminary Results, the Department stated that it was unable to calculate an accurate assessment rate for entries of subject merchandise exported by CATACO based upon the information CATACO submitted. Therefore, to ensure proper assessment, the Department adjusted the total volume of the examined sales. See Preliminary Results at 54012. For the final results, we are continuing to adjust the total volume of the examined sales in the CBP data, as in the Preliminary Results, to ensure the accurate assessment of antidumping duties.⁹ Following the Preliminary Results, CATACO terminated verification and withdrew its participation in this review. As in the Preliminary Results, the Department is unable to calculate an accurate assessment rate for entries of subject merchandise by CATACO. Therefore, as AFA this adjustment is necessary, because simply instructing CBP to multiply CATACO's suspended entries by the Vietnam-wide rate would result in a significant under-collection of the antidumping duties owed due to issues with the entered value of the merchandise as recorded by CBP. See CATACO Final Analysis Memo.

With regard to using information already on the record of the instant review to calculate CATACO's total dumping duties owed, we agree with Petitioners, in part. In the Preliminary Results, we compared CATACO's reported sales quantity to CBP data and found that the CBP data roughly equaled CATACO's reported sales quantity during the POR, thus providing a high level of confidence that practically all of CATACO's sales were captured. See CATACO Prelim Analysis Memo (Public Version) at 8. We continue to find that the CBP data is the best available information with which to calculate CATACO's total antidumping duties owed, as the data is from an accurate, consistent, and reliable source.

To support their argument for using CATACO's publicly ranged data when calculating CATACO's total antidumping duties owed, Petitioners cite Carrier Bags From Thailand, in which the Department relied on ranged public data. However, in Carrier Bags From Thailand, the Department used ranged public data to calculate CV selling expenses and profit, which constitute only a portion of the normal value ("NV") calculation, whereas in the instant review, we are seeking a surrogate for total sales, which is a larger component of the overall margin calculation. In addition, the Court of International Trade ("CIT") has upheld the Department's decision not to use publicly ranged data as the basis for an AFA calculation.¹⁰ Therefore, we find

⁹ For the business proprietary explanation of the Department's calculation methodology, see CATACO Final Analysis Memo.

¹⁰ Allegheny Ludlum Corp. Et al. V. United States, Slip Op. 03-126, Ct. No. 01-01091 (CIT September 29, 2003) ("Allegheny Ludlum") at 11. ("In this action, it is undisputed that the data in the public versions of ALZ's proprietary questionnaire responses were ranged, and at oral argument counsel for defendant-intervenors demonstrated the high degree of variation in margins that can result depending on the extent to which the numbers used in the calculation are adjusted up or down. See Oral Argument Tr. at 37-39. Since these data were, by design, inaccurate, the Court holds that Commerce's decision not to use them in calculating an adverse facts available

that CBP data is the best information available with which to calculate CATACO's total antidumping duties owed as it is from an accurate, consistent, and reliable source. For the final results, we will continue to use CBP data for assessment calculations.

Finally, we agree with Petitioners with regard to dividing the total dumping duties owed by the entered value of TYPE 03 entries. In the Preliminary Results, the Department was unable to calculate an accurate assessment rate for entries of subject merchandise from CATACO based upon the information CATACO submitted and thus, modified the methodology. See CATACO Prelim Analysis Memo at 9. In addition, as Petitioners note, the CBP data the Department obtained is a reliable source of information. Therefore, to ensure the proper assessment of antidumping duties owed on CATACO's POR entries, the Department will continue to employ the methodology used in the Preliminary Results, except that we will divide total dumping duties owed by TYPE 03 entered value as opposed to TYPE 03 entered quantity. We note that this methodology is consistent with the Department's practice of using an AFA ad-valorem rate for liquidation assessment purposes. See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 71 FR 7013 (February 10, 2006).

Comment 3: Surrogate Factor Valuations

A. Valuation of Whole Fish

Dhaka Fisheries Limited 2002/2003 and 2003/2004 Annual Reports

Vinh Hoan states that, for the final results, the Department should utilize the 2002/2003 and 2003/2004 Annual Reports of Dhaka Fisheries Limited ("Dhaka"), a Bangladeshi company to value whole fish rather than Gachihata Aquaculture Farm's ("Gachihata") 2000/2001 Annual Report, used in the Preliminary Results. Vinh Hoan contends that Dhaka's Annual Reports are the best information available on the record because they are: (1) contemporaneous with the POR; (2) publicly available; (3) from the preferred surrogate country; (4) specific to *Pangasius* fish; (5) audited; and (6) free of auditors' reservations regarding the propriety or accuracy of the company's books and records.

Vinh Hoan argues that Dhaka's Annual Reports are reliable despite Petitioners' earlier assertion that not all portions of Dhaka's Annual Reports are audited, and thus unreliable. See Petitioners' submission dated August 8, 2005, at Footnote 9. Vinh Hoan states that unaudited portions of the Annual Reports do not render them unreliable. Vinh Hoan further states that the Department is not limited to using surrogate data only from audited financial statements. Vinh Hoan asserts that Dhaka's Annual Reports do not contain any auditors' comments regarding the reliability of information, and thus do not warrant questionability of validity. Vinh Hoan also asserts that Dhaka's 2002/2003 Annual Report contains the stamp of the Bangladeshi Securities and Exchange Commission, thus showing that prices from 2001, 2002, and 2003, were reported by Dhaka to the Commission.

Vinh Hoan proposes that, for the final results, the Department should use either Dhaka's sales price of *Pangas* fish reported in the Director's letter to the shareholders or Dhaka's inventory

margin for ALZ is supported by substantial evidence and in accordance with law").

stock value of *Pangas* fish. See Vinh Hoan's submission dated September 30, 2005. Vinh Hoan claims the stock prices are sound and reliable due to a stock valuation performed by the company and an audit performed by the company's auditors.

Petitioners rebut Vinh Hoan's argument that Dhaka's 2002/2003 and 2003/2004 Annual Reports are the best information available on the record. Petitioners also contend that the values proposed by Vinh Hoan are unreliable and should not be used to value whole fish. See Petitioners' submission dated August 8, 2005. Petitioners note that despite Vinh Hoan's assertions that Dhaka's stated sales prices in the Director's report are reliable, Vinh Hoan has not cited any evidence on the record supporting the selling prices provided in the Director's report. Petitioners state that Vinh Hoan has not and cannot cite anything to substantiate the reliability of Dhaka's sales prices. Petitioners claim that because the Director's report in Dhaka's annual report is not audited, the selling prices of *Pangas* are not as reliable as the selling prices taken directly from audited financial statements, such as Gachihata's 2000/2001 annual report.¹¹

Petitioners further argue that Dhaka's Director's report only reports the *Pangas* sales prices but does not provide a quantity of *Pangas* sold or a discussion of how the sales prices in the report were derived, making it impossible to determine whether these prices are based on actual commercial transactions. Additionally, Petitioners note that it is unclear whether the sales prices in the Director's report are derived from a weighted average sales price from the fiscal year, chosen from a price point during the year, such as year-end sales price, or selected by management for aberrational purposes to explain their poor financial performance. Petitioners also state that the inconsistency between sales price and stock price of *Pangas* fish in the 2003/2004 financial statements suggests that the sales prices in the Director's report were selected by management. Petitioners conclude that Dhaka's fish prices within the annual report contain too many inconsistencies for them to be a reliable source.

Petitioners request that the Department reject Dhaka's stock value of *Pangas* fish from Dhaka's 2002/2003 and 2003/2004 annual reports to value whole fish. Petitioners cite to the original less than fair value ("LTFV") investigation of this case to support their argument that the Department should reject stock value prices as it had done in the LTFV investigation.¹² Petitioners argue that Vinh Hoan does not cite to any Department precedent where stock values were accepted as surrogate values, when other more reliable sales data was simultaneously available on the record. Petitioners state that in the LTFV investigation, the Department was reluctant to value whole fish using the cost incurred by a producer for that input, or a value resulting from an accounting formula. Petitioners request that, consistent with its practice, the Department should continue to

¹¹ See Persulfates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review: Notice of final results of antidumping duty administrative review, 66 FR 42628 (August 14, 2001) and accompanying Issues and Decision Memorandum at Comment 2; see also Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation, 64 FR 38626 (July 19, 1999).

¹² See Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam, 68 FR 4986 (January 31, 2003) ("Investigation Preliminary Determination"); see also Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 37116, (June 23, 2003) ("Investigation Final Determination") and accompanying Issues and Decision Memorandum ("Investigation Decision Memo").

reject stock values for valuing whole fish.

Gachihata 2002/2003 and 2003/2004 Annual Reports

H&N rebuts Vinh Hoan's arguments for whole fish valuation using Dhaka. H&N requests that the Department use Gachihata's 2002/2003 and 2003/2004 annual reports for valuing whole fish as they represent the best available information on the record because they: are precisely contemporaneous with the POR, satisfy the Department's criteria for selecting surrogate values, and are reliable sources. H&N states that general claims regarding accounting irregularities at Gachihata do not undermine the credibility and reliability of Gachihata's reported sales revenue figures for 2002/2003 and 2003/2004. Therefore, H&N argues that Gachihata's 2002/2003 and 2003/2004 annual reports are the best available information on the record and should be used to value whole fish. H&N cites section 773(c)(1)(B) of the Act and Hangzhou Spring Washer Co., Ltd. v. United States, 387 F. Supp. 2d 1236, (CIT 2005) to establish the Department's requirement to value material inputs using the best information available on the record. H&N contends that its October 17, 2005, submission of Gachihata's 2002/2003 and 2003/2004 annual reports represents the best information available on the record, combined or used individually, to value whole fish.

Gachihata 2000/2001 Annual Report

Vinh Hoan argues that for the final results, the Department should not continue using Gachihata's 2000/2001 financial statements to value whole fish as in the Preliminary Results. Vinh Hoan notes that no parties raised the issue of the auditors' cautionary notes in Gachihata's 2001 Annual Report in the original investigation. Since Gachihata's 2001 Annual Report is on the record of this proceeding, Vinh Hoan requests that those cautionary notes of irregularities must be addressed by the Department.¹³ Vinh Hoan requests that the Department compare the accuracy of Gachihata's 2001 Annual report with Dhaka's Annual Reports.

Vinh Hoan also states that, in the event that the Department continues to value whole fish using Gachihata 2000/2001, the value should not be inflated because record evidence shows that the price of *Pangas*, whether sales or stock value, has been steadily decreasing in Bangladesh. Vinh Hoan notes that both Dhaka's 2003/2004 and Gachihata's 2003/2004 Annual Reports show a decline in fish selling prices since 2001, thus not requiring inflating the whole fish price.

Petitioners argue that the Department had correctly used Gachihata's 2000/2001 annual report to value whole fish, as it is the best information available on the record of this review. Petitioners state that Gachihata's 2000/2001 sales price satisfies Departmental criteria for the selection of surrogate values.¹⁴

¹³ See Petitioners' submission dated July 13, 2005 at Exhibit C.

¹⁴ See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review, 67 FR 19546 (April 22, 2002) and accompanying Issues and Decision Memorandum; see also Tapered

Specifically, Petitioners state that Gachihata's *Pangas* sales price is: (1) publicly available, (2) independently audited, (3) located in Bangladesh, the primary surrogate country selected by the Department in the instant proceeding, (4) specific to the whole fish input in question for this review, (5) an actualized sales data derived from quantity and value reported in the financial statements, and (6) reasonably close to the POR.

Though they recognize that Gachihata 2000/2001 annual report is not as contemporaneous as Dhaka's 2002/2003 and 2003/2004 annual reports on the record, Petitioners note that contemporaneity is only one factor in considering surrogate value data.¹⁵ Petitioners note that the Department has previously selected surrogate value data that was less contemporaneous than other data on the record because of superior reliability. Petitioners contend that such is the case in the instant proceeding, where Dhaka's sales prices and inventory values are less reliable and specific than Gachihata's 2000/2001 data on the record. Petitioners also rebut Vinh Hoan's claim that Gachihata's 2000/2001 financial statements are affected by accounting irregularities. Petitioners contend that the Department reviewed Gachihata's 2000/2001 annual report and determined that the 2000/2001 fish price was not affected by the accounting irregularities present in the 2001/2002 annual report. See Investigation Final Determination, and Investigation Decision Memo at Comment 14A. Petitioners stress that the auditor's notes from Gachihata's 2000/2001 annual report do not contain auditors' concerns with respect to internal control procedures and valuation of biological assets as seen in the 2001/2002 auditors' notes.

Lastly, Petitioners rebut Vinh Hoan's request to deflate the fish price used in the Preliminary Results, should the Department continue to use Gachihata's 2000/2001 financial statements. Petitioners request that the Department reject Vinh Hoan's argument to deflate the fish price based on the sales prices reported in the 2002/2003 and 2003/2004 annual reports for Dhaka and Gachihata. Petitioners argue that Gachihata's 2000/2001 fish value, which precedes the POR, must be inflated for contemporaneity with the POR, pursuant to the Department's consistent practice. See Notice of Final Results of Antidumping Duty New Shipper Review: Honey From the People's Republic of China, 69 FR 24128 (May 3, 2004). Petitioners reiterate that Dhaka's and Gachihata's 2002/2003 and 2003/2004 Annual Reports are unreliable and thus cannot be relied upon to establish pricing trends. Additionally, Petitioners note the evidence they placed on the record in the form of two internet news articles showing that the price of *Pangasius* fish has not been declining as Vinh Hoan claims. See Petitioners' submission dated July 13, 2005 at Exhibit 3B. Petitioners contend that the price range in these articles supports the reasonableness of the Gachihata price used in the Preliminary Results. Petitioners conclude that the Department should reject Vinh Hoan's arguments and remain consistent with the methodology used in the

Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2003-2004 Administrative Review and Partial Rescission of Review, 71 FR 2517 (January 17, 2006), Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Ukraine, 67 FR 55785 (August 30, 2002) ("Wire Rod from Ukraine"), and Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Steel Concrete Reinforcing Bars From the People's Republic of China, 66 FR 8339 (January 30, 2001).

¹⁵ See Wire Rod from Ukraine at Comment 1.

Preliminary Results, continue to use Gachihata's 2000/2001 fish price, and continue to inflate that value for contemporaneity with the POR.

Department's Position

We agree with Petitioners that whole fish should continue to be valued using Gachihata's 2000/2001 financial statements and that it should be inflated as it is not contemporaneous with the POR. We disagree with Vinh Hoan and H&N regarding the valuation of whole fish using Dhaka's and Gachihata's 2002/2003 and 2003/2004 Annual Reports, respectively.

In the Preliminary Results, the Department valued whole fish using Gachihata's 2000/2001 financial statements. Specifically, the Department selected the *Pangas* whole fish price from the "Details of Sales" portion of the audited financial statement, which represents the unit value of *Pangas* derived from the quantity and value of the *Pangas* sold. This unit price is a substantiated derivation of actualized commercial transactions from the reported year.

In valuing factors of production ("FOP") information, section 773(c)(1)(B) of the Act directs the Department to use the "best available information" from the appropriate market-economy country. In choosing the most appropriate surrogate value, it is Department practice to consider several factors, including whether the value: is from the among the list of chosen surrogate countries, is specific to the input, represents a broad market average, is publicly available, and contemporaneous with the POR.¹⁶ Additionally, when the information on the record shows various sources with similarities regarding several selection criteria described above, the Department will also consider underlying factors regarding those sources to select the best available information.¹⁷

Dhaka's 2002/2003 and 2003/2004 Annual Reports

First, we disagree with Vinh Hoan's request that the Department use Dhaka's *Pangas* stock values as a surrogate value for whole fish. It is the Department's preference to use a selling price rather than stock prices to value FOPs. See Investigation Preliminary Determination at 4994 ("As the Department prefers the use of actual sales data rather than inventory data, use of this

¹⁶ See e.g., Investigation Decision Memo at Comment 14A ("The Department's general policy is to use publicly available data to determine factor prices that among other things represent a broad market average, are contemporaneous with the period of investigation, specific to the input in question, and tax and duty-exclusive"); Sulfanilic Acid From the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review, 67 FR 31770 (May 10, 2002) ("In examining surrogate values, we selected, where possible, the publicly available value which was: (1) an average non-export value; (2) representative of a range of prices within the POR or most contemporaneous with the POR; (3) product-specific; and (4) tax-exclusive").

¹⁷ See e.g., Shandong Huarong General Corp., et. al., v. United States, Slip Op. 01-88 (CIT 2001) at 18-19. ("When the data are equal in terms of specificity, contemporaneity, and representativeness, Commerce's practice is to use an import price over a domestic price"); Luoyang Bearing Factory v. United States, Slip Op. 03-41 (CIT 2003) at 15-16 (When other selection criteria being equal, the Department chose a value "relying upon our preference for valuing factors in a single country").

source is less than ideal”).

Second, Vinh Hoan’s argument that Dhaka’s 2002/2003 and 2003/2004 annual reports are more contemporaneous, thus preferable, does not exhaust the Department’s requirement for selecting a surrogate value. The Department does not place more weight on contemporaneity above the other surrogate value selection criteria.¹⁸ The fact that Dhaka’s Annual Reports are contemporaneous is but one of the selection criteria that we examined in choosing from among various alternative sources for surrogate value selection.

Third, we agree with Petitioners’ argument that Dhaka’s selling price is simply quoted in the Director’s letter to the Shareholders, containing neither the methodology describing the calculation of the selling price, nor a reference to the financial statements, which would have supported their reported selling prices. That Dhaka’s selling prices, as stated in the Director’s letter to the Shareholders, are audited is not sufficient to overcome the other problems with those prices. Specifically, the Director does not explain how the selling prices were derived, does not refer to the financial statement to support the quoted selling prices, and does not provide quantitative evidence that would substantiate the quoted selling price. Therefore, we reject Dhaka’s 2002/2003 and 2003/2004 Annual Reports as a reliable source to value whole fish for the final results of the instant proceeding.

Gachihata’s 2002/2003 and 2003/2004 Annual Reports

The Department disagrees with H&N’s request to use Gachihata’s 2002/2003 and 2003/2004 financial statements to value whole fish. The Department has determined that in 2002, Gachihata developed an unfavorable financial standing followed by unreliable financial information reported with regard to the company’s internal control procedures and Gachihata’s valuation of its biological assets, which include the *Pangas* fish. See Investigation Decision Memo at 78.

Specifically, Petitioners pointed out that the auditor’s report in the 2002/2003 Annual Report states that: “Internal control procedures of the company with regard to purchase, sale and issues of stores, raw-materials, live-stock, poultry, fisheries, plantation and maintaining of records thereto including the registers of Fixed assets and Growth report of biological assets require to be accommodated keeping consistency as to the size and nature of the company.” See H&N submission dated October 17, 2005. Additionally, Petitioners also noted that Gachihata’s 2003/2004 Annual Report contains a similar auditor’s note. See Vinh Hoan’s submission dated September 30, 2005. This information in Gachihata’s Annual Report calls into question the data underlying the quantity and value of the Gachihata fish value. In the underlying investigation, the Department stated that:

¹⁸ See Hebei Metals & Minerals Import & Export Corporation and Hebei Wuxin Metals & Minerals Trading Co., Ltd. v. United States, Slip Op. 05-32 (CIT 2005). In this case, CIT found that “while contemporaneity of data is one factor to be considered by Commerce...three months of contemporaneity is not a compelling factor where the alternative data is only a year-and-a-half distant from the POI.” Consistent with the CIT’s holding in this case, we find that other factors outweigh the use of more contemporaneous data.

the auditors' comments, which include several comments on the company's internal control procedures and Gachihata's valuation of its biological assets, which include fish, are sufficient to cast reasonable doubt upon the reliability and accuracy of the overall report. Combined with news reports the Department placed on the record regarding concerns about Gachihata's 2001-2002 financial statement, the Department cannot be confident of its accuracy and therefore, disagrees with the Respondents that it should calculate a surrogate value for live fish using this financial statement.

See Investigation Decision Memo at 78.

No parties have placed any information on the record of this review that contradicts our finding from the investigation. Moreover, Petitioners placed information on the record of this review that supports the Department's above-referenced finding that Gachihata's 2002/2003 and 2003/2004 financial statements are still unreliable. See Petitioners' submission dated October 27, 2005.

Moreover, Petitioners also submitted numerous news articles discussing various irregularities beginning in 2002 with Gachihata's dividend payments, profit margin fluctuations, and money laundering allegations. See Petitioners' submission dated October 27, 2005. As there is no evidence on the record that these irregularities affected Gachihata's 2000/2001 Annual Report, the Department rejects only Gachihata's 2002/2003 and 2003/2004 Annual Reports as a reliable source with which to value whole fish for the final results of the instant proceeding.

Gachihata's 2000/2001 Annual Reports

The Department disagrees with Vinh Hoan's argument that the auditors' notes in Gachihata's 2000/2001 financial statement contain concerns of accounting irregularities. The auditors' note referenced by Vinh Hoan does not pertain to Gachihata's reporting of revenues, but to elements of the cost portion of its business, which do not warrant negating Gachihata's selling price.

Unlike the 2002/2003 and 2003/2004 Annual Reports noted above, Gachihata's 2000/2001 Annual Report contains no such auditor's comments questioning Gachihata's sales of stock, internal control procedures, or proper reporting of biological assets. See Petitioners' submission dated July 13, 2005 at Exhibit C.

Additionally, we disagree with Vinh Hoan's assertion that a downward pricing trend of *Pangas* fish should preclude the Department from inflating the 2000/2001 selling price for contemporaneity with the POR. The Department has determined that since Dhaka's quoted selling price in the 2002/2003 and 2003/2004 annual reports are unsubstantiated, we cannot use them to determine pricing trends.

The Department recognizes that both Gachihata's and Dhaka's reported *Pangas* selling prices satisfy the specificity requirement; both Gachihata and Dhaka are located in the primary surrogate country, Bangladesh; and both companies' sources are publicly available. However, the distinctions between Gachihata and Dhaka focus on contemporaneity of the selling price and

a substantive quantitative explanation of how the selling price was derived.

The Department recognizes that Dhaka's annual reports are more contemporaneous than Gachihata's 2000/2001 financial statement. However, when analyzing the alternatives, the Department chose a selling price with credible support and evidence of actualized commercial transactions on which the selling price was based. The Department determines that it provided a thorough and complete explanation for selecting Gachihata's 2000/2001 financial statement, thus exhibited due diligence in our requirement to make a reasonable decision regarding the best available information on the record. The Department notes that when it is presented with various surrogate value alternatives on the record, the Department may choose the better surrogate value based on underlying factors related to the source itself.¹⁹

In comparing Gachihata's selling price to Dhaka's selling price, the Department determines that the calculated selling price in Gachihata's "Details of Sales" portion of the financial statement is more reliable as a source than Dhaka's quoted selling price in the Director's letter to the shareholders. In light of this fact, the Department chooses the surrogate value option derived from the quantitative information reported in the Gachihata's financial statement.

The Department determines that among the sources placed on the record of the instant review, Gachihata's 2000/2001 financial statement is the best available information from which to select a whole fish surrogate value for the final results of the instant proceeding.

B. Valuation of Fish Oil

Indian Import Statistics

Petitioners argue that the Harmonized Tariff Schedule ("HTS") number used in the Preliminary Results, 1504.20, described as "Fats and Oils and their fractions, of fish, other than liver oils" is less specific to the fish oil byproduct output produced by Vinh Hoan. Petitioners argue that in the LTFV investigation, the Department rejected using this HTS number from a basket category of the Indian import statistics as an appropriate surrogate value source because of its lesser specificity to Vinh Hoan's fish oil byproduct. See Investigation Final Determination, and Investigation Decision Memo at Comment 14E.

Additionally, Petitioners argue that the fish oil value from the Indian import statistics at \$1.17 per kilogram is aberrational when compared to the Preliminary Results price of whole fish, \$1.29 per kilogram. Petitioners claim that \$1.17 as a percentage of the whole fish price of \$1.29 results in 91 % of the whole fish yielding fish oil.

¹⁹ See FMC Corporation v. United States, Slip Op. 03-15 (CIT 2003) at 17. ("Commerce did not choose Calibre as a surrogate because it was a perfect match. It chose Calibre because it was a better option than NPL.") In this case, the CIT upheld its previous determinations that "when Commerce is faced with the decision to choose between two reasonable alternatives and one alternative is favored over the other in their eyes, then they have the discretion to choose accordingly," citing Technoimportexport, UCF America Inc. v. United States, 783 F. Supp. 1401, 1406 (CIT 1992).

Vinh Hoan rebuts Petitioners contention that Indian import statistics used in the Preliminary Results are inappropriate to value fish oil byproduct. Specifically, Vinh Hoan argues that there is insufficient evidence on the record of the instant proceeding that shows Indian import statistics for fish oil are not specific to the fish oil byproduct they produced. Vinh Hoan claims that Petitioners' dismissal of HTS 1504.20 as a broad basket category is nonsensical. Rather, it is comparably more specific than other basket categories contained within the HTS provisions. Vinh Hoan finds Petitioners' argument suspect in that no other surrogate values derived from HTS tariff provisions were argued by Petitioners concerning specificity. Vinh Hoan argues that, contrary to Petitioners' assertion that HTS 1504.20 refers to unspecified fish, there is no evidence on the record that shows price differences between various types of fish. Vinh Hoan argues that Petitioners have provided no basis upon which to reject the HTS tariff provision as a basket category, when it is more specific than most other tariff provisions used by the Department in non-market economy cases.

Vinh Hoan also rebuts Petitioners' argument that the value of a byproduct and the completed subject merchandise are relevant to the reasonableness of a surrogate value used for the byproduct. Vinh Hoan asserts that since fish oil is further processed from fish waste, as observed during on-site verification, it is reasonable to consider a higher value. Vinh Hoan states that comparing the relative values of the byproduct and the finished subject merchandise is irrelevant because no laws require the Department to assign a lower value to a byproduct in relation to the subject merchandise. Vinh Hoan asserts that in doing so, a results-based effect occurs.

Moreover, Vinh Hoan notes that it submitted U.S. import data of fish oil to serve as a benchmark to the Indian import statistics. See Vinh Hoan's submission dated July 27, 2005. Vinh Hoan argues that the comparison of publicly available U.S. fish oil prices from import data is more in line with the Indian fish oil price, effecting Petitioners' affidavit price as aberrational and that the publicly available information on the record of this review shows the India fish oil value is in line with world prices.

Affidavit Price Quote

Petitioners argue that for the final results of this review, the Department should value fish oil using the affidavit they submitted on July 13, 2005, a source which the Department used in the LTFV investigation of this case. Petitioners argue that the conditions under which the Department rejected Indian import statistics in the investigation are still relevant in the instant proceeding with no compelling record evidence for a departure from the Department's decision in the investigation. Specifically, Petitioners request that the Department reverse its preliminary decision to use Indian import statistics to value fish oil and instead use Petitioners' affidavit containing a price quotation from a U.S. fish oil producer. See Petitioners' submission dated July 13, 2005. Petitioners claim that this price represents an updated and contemporaneous value from a producer of fish oil in addition to being the source used by the Department in the LTFV investigation.

Vinh Hoan rebuts Petitioners argument that the affidavit from fish oil producer is the best information available on the record. Vinh Hoan further states that nothing on the record of this review indicates that the 1504.20 HTS used in the Preliminary Results is so aberrational or

unreasonable as to compel the Department to use Petitioners' business proprietary source.

Vinh Hoan points out that Petitioners' affidavit is so heavily bracketed, that no substantive information for which to value fish oil is made publicly available. Moreover, Vinh Hoan argues that Petitioners did not provide any citation to the Department's regulations concerning treatment of business proprietary information in the affidavit. Vinh Hoan also notes that the affiant provided no information to substantiate: (1) the confidential price quoted in the affidavit, such as commercial invoices, price lists, or accounting records or (2) how the 2005 average price quoted in the affidavit is relevant to the POR and why the affiant did not provide the same for the appropriate review period. Vinh Hoan also finds dubious credibility in the affiant's neutrality in the outcome of this administrative review with respect to affiliation with any or all parties comprising the Petitioners of this case. Vinh Hoan argues that since no details are provided in the affidavit as to the affiant company's interest in this case, the reliability of the affidavit is further questionable. Vinh Hoan also questions Petitioners' decision to provide only one affidavit from one source rather than several to support their claim regarding the low price of fish oil.

Finally, Vinh Hoan argues that the Department is not bound in these final results by decisions made in the original investigation. Vinh Hoan asserts that, in light of record evidence in this review, the Department has already preliminarily analyzed the factor value submissions and rejected Petitioners' affidavit in favor of Indian import statistics. Vinh Hoan requests that the Department continue to reject Petitioners' heavily bracketed affidavit in favor of the publicly available and credible Indian import statistics using HTS 1504.20 for the final results.

H&N also rebuts Petitioners' argument that the Department should value fish oil using the affidavit rather than Indian import statistics. H&N asserts that the Department's practice is use publicly available, reliable data to value FOPs.²⁰ H&N argues that Petitioners' suggested oil price is not publicly available, thus not appropriate as a source for the fish oil surrogate value.

FAO Oil World

Petitioners also refer to their October 17, 2005, submission of world fish oil prices from *Oil World* obtained from the FAO website, which provides fish oil prices based on CIF NW Europe destination and ranging from \$.548/kg to \$.695/kg. Petitioners note that they submitted this information to illustrate that the fish oil surrogate value used in the Preliminary Results was overstated.

Vinh Hoan argues that the comparison fish oil prices obtained from *Oil World* on the FAO website are not a reliable source as Petitioners placed no information on the record regarding FAO's function or how FAO collects and reports price data. Vinh Hoan also asserts that

²⁰ See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China, 69 FR 70997 (December 8, 2004) and accompanying Issues and Decision Memorandum; see also Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China, 62 FR 9168 (February 28, 1997).

Petitioners erroneously refer to the FAO fish oil prices as global prices, when in actuality, it appears that these prices are based on CIF northwest Europe. Vinh Hoan claims these prices are aberrational compared to the Indian import statistics, which are more representative of the world market for fish oil.

Department's Position

The Department agrees with Vinh Hoan and H&N that it should continue valuing fish oil byproduct using Indian import statistics. In the Preliminary Results, the Department valued Vinh Hoan's fish oil byproduct using Indian import statistics obtained from the World Trade Atlas ("WTA") (<http://www.wtaserver1.com>) provided by the Directorate General of Commercial Intelligence & Statistics, Government of India, Calcutta.

As previously stated, section 773(c)(1)(B) of the Act directs the Department to use "the best available information" from the appropriate market-economy country to value FOPs. In selecting the most appropriate surrogate values, the Department considers several factors including whether the surrogate value is: publicly available, contemporaneous with the POR, represents a broad market average, chosen from an approved surrogate country, and specific to the input. The Department's preference is to satisfy the breadth of the aforementioned selection criteria. However, where all the criteria cannot be satisfied, the Department will choose a surrogate value based on the best available information on the record.

Indian Import Statistics

We agree with Vinh Hoan and H&N that the Indian import statistics using HTS number 1504.20, is the best information available on the record to value fish oil. As stated above, our general policy is to use publicly available data to determine factor valuations that, from among other things, represent a broad market average, are from the chosen surrogate country, are contemporaneous with the POR, are specific to the input in question, and are tax and duty-exclusive. Given the selection criteria, we determine that the Indian import statistics, which, though not from the primary surrogate country, represent a broad market average, are contemporaneous with the POR, and are publicly available.

The Indian import statistics of HTS 1504.20 collected by the Department from WTA supports that India imported a significant quantity and value of this product from many countries during the POR. Therefore, from among the information available on the record, the publicly available data obtained from the Government of India is a more appropriate source with which to value fish oil. Though Petitioners' preferred source may be more specific than the tariff description to the type of fish from which the oil is produced, the source, when taken as a whole, is not publicly available, is not from among the approved surrogate countries, and does not appear to represent a broad market average. 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.²¹

Moreover, Vinh Hoan has supported its argument that the India import price derived from HTS 1504.20 is not aberrational when public U.S. import data of the same tariff classification number is used as a benchmark. See Vinh Hoan's submission dated July 27, 2005 at Exhibit 1. We agree with Vinh Hoan that, in certain circumstances in the past, the Department has used U.S. import data as benchmark to test the validity of a surrogate value source. See The Timken Company v. United States, Slip Op. 02-38 (CIT 2002). In the instant proceeding, the Department was satisfied that the Indian import statistics of HTS 1504.20 used in the Preliminary Results were not aberrational when using the U.S. import statistics of HTS 1504.20 as a benchmark.²²

Affidavit Price Quote

For the final results, the Department will not value any byproducts, processed or unprocessed, using the business proprietary affidavit submitted by Petitioners. The affidavit on the record is not publicly available, thus not consistent with the Department's long-established preference to use public data to value FOPs. See Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam, 69 FR 71005 (December 8, 2004) and accompanying Issues and Decision Memorandum ("Vietnam Shrimp Decision Memo") at 9.

FAO Oil World

The Department need not address Vinh Hoan's argument with respect to Petitioners' *FAO Oil World* submission, since Petitioners did not request the Department to use the *FAO Oil World* price quotes to value fish oil. Petitioners only submitted that information to support the fish oil

²¹ See Polyethylene Retail Carrier Bag Comm. v. United States, Slip Op. 05-157 (CIT 2005) ("The record shows that while the Hindustan data is more product-specific as it provides values for those input products valued in this case, it represents only 30% of the Indian sales of those products") and ("Commerce found it could not use the other data Glopac submitted because the data came from individual producers, was derived from importing countries not economically comparable to the PRC, and was not publicly available"); see also Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From the People's Republic of China, 69 FR 34125 (June 18, 2004), and accompanying Issues and Decision Memorandum at Comment 9 ("While we recognize that Hindustan's pricing data is more specific to black and color inks, the data is less preferable in terms of other factors we considered because the data is not contemporaneous, the pricing data is based on an experience by a single Indian producer of ink and, therefore, not completely representative of the cost of this input, and the pricing data has little or no supporting documentation").

²² Additionally, we disagree with Petitioners' argument that the surrogate price for the fish oil byproduct reported by Vinh Hoan is too large relative to the surrogate price of whole fish used by the Department in the Preliminary Results. Although not obligated to do so, the Department ran a test program calculating fish oil as a percentage of the normal value using Vinh Hoan's FOP data. Our results of this test program indicate that fish oil is an insignificant percentage of the normal value (as compared with whole fish) when taking the fish surrogate value price and fish oil consumption ratio from the FOP data into account. See Vinh Hoan's Final Analysis Memo at Exhibit 3. The Department finds that our results of this calculation do not support Petitioners' assertion that the fish oil price to whole fish price ratio is aberrationally high when considering Vinh Hoan's actual FOP data in this calculation.

price quoted in the business proprietary affidavit. See Petitioners' case brief submission dated February 10, 2006 at 4.

Therefore, for the final results, the Department will continue to value fish oil using Indian import statistics obtained from the WTA, which satisfy the Department's threshold for surrogate value selection criteria and thus, are more appropriate than Petitioners' proprietary price quote, which did not satisfy the Department's preference for publicly available prices that represent a broad market average from a surrogate country economically comparable to Vietnam.

C. Valuation of Fish Waste

Petitioners argue that the Department should value raw fish waste using the price of an unprocessed byproduct. Petitioners request that for the final results, the Department should value unprocessed fish waste using a price quote in the affidavit they submitted. See Petitioners' submission dated July 13, 2005.

CATACO did not comment on this issue

Department's Position

We disagree with Petitioners' request to value fish waste using their business proprietary affidavit.

First, as noted above in Footnote 2, this issue is moot for CATACO. For Vinh Hoan, the Department will not value any fish waste, processed or unprocessed, using the business proprietary affidavit submitted by Petitioners because it is not publicly available. See Vietnam Shrimp Decision Memo at 9. On the record of this review, the Department has a publicly available source (Indian import statistics) to value the fish waste. Therefore, the Department will continue to value byproducts, processed or unprocessed, using the Indian import statistics.

Comment 4: Byproduct Offset Cap

H&N contends that the Department incorrectly relied upon Vinh Hoan's reported gross production weight when calculating the byproduct offset cap in the Preliminary Results. H&N argues that by relying on the gross weight of total production, the Department erroneously included water weight from glazed products and water retained from the MTR-79 solution process. H&N contends that by having used gross production weight, the Department wrongly concluded that byproduct output and fish fillet production exceeded the total amount of direct raw material inputs. H&N requests that for the final results, the Department should reverse the byproduct offset cap applied in the Preliminary Results and grant the full byproduct offset to Vinh Hoan in the margin calculation program.

Vinh Hoan contends that during its on-site verification in October 2005, the Department was able to verify that production output and byproduct output did not exceed raw material input. Vinh Hoan requests that for that reason, the Department should reverse the byproduct offset cap for the final results. Vinh Hoan argues that in calculating a byproduct offset cap, the Department had

erroneously used Vinh Hoan's gross production weight, which was inclusive of glazing water weight and water retained from the MTR-79 solution process. Vinh Hoan cites to the Department's verification report to stress that the net weight of total production was lower in total kilograms than material inputs used. See Vinh Hoan Verification Report at Exhibit 32. Therefore, Vinh Hoan requests that in the final results, the Department should reverse its byproduct offset cap adjustment in the margin calculation program and grant Vinh Hoan its full byproduct offset.

Petitioners did not comment on this issue.

Department's Position

The Department agrees with H&N and Vinh Hoan that for the final results, the byproduct offset cap should no longer be applied to Vinh Hoan.

In the Preliminary Results, the Department calculated a byproduct offset cap because we noted that the total subject merchandise output and total byproduct output for the POR exceeded the amount of material inputs, whole fish and MTR-79.²³ However, in calculating the byproduct offset cap, the Department compared the gross quantity of total production, inclusive of water weight, to total raw material input, which did not include total water consumption and the additional percentage of weight retention resulting from MTR-79 treatment.²⁴ Therefore, the Department's comparison of total production output to total material input was not on the same weight basis.

Subsequently, the Department conducted an on-site verification of Vinh Hoan's questionnaire responses and FOP data from October 10, 2005, to October 14, 2005. In our verification report we noted the following:

Vinh Hoan provided an explanation for its total byproduct production quantity in response to the Department's preliminary results calculation for Vinh Hoan's reported byproduct production.

Vinh Hoan stated that the correct total finished products quantity should have been the net quantity rather than the gross quantity of total finished tra products due to the inclusion of glazed products in the gross quantity which increases the quantity solely by the presence of water.

See Vinh Hoan Verification Report at 12 and Exhibit 32.

²³ See Memorandum to the File from Irene Gorelik, Analyst, through Alex Villanueva, Program Manager; Certain Frozen Fish Fillets from the Socialist Republic of Vietnam ("Vietnam"): Vinh Hoan Company Ltd. ("Vinh Hoan") Analysis for the Preliminary Results of the Administrative Review ("Vinh Hoan's Prelim Analysis Memo") at 4-5.

²⁴ At the on-site verification, the Department noted through an MTR-79 treatment test that there is a percentage of water that is retained by the fish fillets after the MTR-79 additive is "tumbled" with the fillets. See Vinh Hoan Verification Report at 20 for a detailed explanation of this treatment test.

As such, the Department recognizes that the sum of the production output quantity, when examined on an equal basis as the material inputs, does not exceed the material inputs quantity, thus no cap on a byproduct offset is warranted. Therefore, for the final results, the Department will not cap the byproduct offset in the final margin calculation as it did in the Preliminary Results. See Vinh Hoan Final Analysis Memo.

Comment 5: Importer-Specific Assessment Rates

H&N states that the Department should have calculated importer-specific assessment rates in the Preliminary Results of this proceeding. H&N argues that as an importer of record during the POR, it is responsible for payment of antidumping duty deposits resulting from this proceeding. H&N requests that importer-specific assessment rates be calculated by: (1) following the export price appraisement instruction procedures found in the Import Administration Antidumping Duty Manual;²⁵ (2) derive importer-specific assessment rates based on the customer code field of the U.S. sales database; and (3) issue instructions to Customs and Border Protection reflecting importer-specific assessment rates calculated in the final results for all customers during the POR.

Petitioners did not comment on this issue.

Department's Position

We agree with H&N that it is appropriate to calculate importer-specific assessment rates.

In the Preliminary Results, the Department did not calculate importer-specific assessment rates because the respondent did not know, thus did not report the names of the importers. However, section 351.212(b) of the Department's regulations states that "the Secretary normally will calculate an assessment rate for each importer of subject merchandise covered by the review."

In this case, the respondent could not provide the importer name. However, it did provide the customer names. When the importer information is unknown, it is Department practice to use certain customer information to calculate importer-specific assessment rates.²⁶ Therefore, for the final results, the Department will calculate importer specific assessment rates based on the customer names provided by the respondent and instruct CBP to assess antidumping duties by applying the assessment rate to the entered value by each customer.

Comment 6: Vinh Hoan Verification Clarifications

A. Byproduct Packing

²⁵ See Import Administration Antidumping Manual, Chapter 18 at 17; <http://ia.ita.doc.gov/admanual/index.html>

²⁶ See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of 2002-2003 Administrative Review and Partial Rescission of Review, 69 FR 42041 (July 13, 2004) ("In accordance with 19 CFR 351.212(b)(1), we have calculated importer (**or customer**)-specific assessment rates for the merchandise subject to this review.") emphasis added.

Vinh Hoan notes that the Department erroneously stated in its analysis memorandum from the Preliminary Results that Vinh Hoan reported tape as a byproduct packing input. See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam (“Vietnam”): Vinh Hoan Company Ltd. (“Vinh Hoan”) Analysis for the Preliminary Results of the Administrative Review, dated August 31, 2005 (“Prelim Analysis Memo”). Vinh Hoan states that it neither reported tape as a byproduct packing input nor did the Department include tape as a byproduct input in its margin calculation program. Vinh Hoan states that it raises this issue as a cautionary measure for the final results in assuring that the Department does not reduce the byproduct offset by deducting tape usage.

Petitioners did not comment on this issue.

Department’s Position

We agree with Vinh Hoan that the Department inadvertently included tape as a byproduct packing input in the Preliminary Results. For the final results, the Department is not including tape as a byproduct packing input.

B. Capacity

Vinh Hoan notes that in the verification report, the Department referred to the Director’s statement that production was at capacity during the POR with respect to future production capabilities. See Vinh Hoan Verification Report at 8. Vinh Hoan states that during the on-site verification, the Department observed Vinh Hoan’s recent renovations to parts of its factory which would increase final product capacity.

Petitioners did not comment on this issue.

Department’s Position

For the final results, the Department clarifies that our reference to the factory’s capacity in Vinh Hoan’s verification report pertained only to factory processing capacity rather than final product storage capacity.

C. Telephone Communications

Vinh Hoan also notes that the Department’s verification report discusses a telephone communications diary which is used to record all phone communications. See Vinh Hoan’s Verification Report at 9-10. Vinh Hoan’s company officials state that they do not recall reporting at the verification that all telephone communications are recorded in this diary. Company officials state only some such communications are recorded in this diary.

Petitioners did not comment on this issue.

Department’s Position

For the final results, the Department acknowledges and amends Vinh Hoan verification report that only some rather than all telephone communication is recorded in a diary.

RECOMMENDATION:

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

AGREE _____ DISAGREE _____

David M. Spooner
Assistant Secretary
for Import Administration

Date