

Final Results of Redetermination Pursuant to *Catfish Farmers of America et al. v. United States*, Court Nos. 11-00109 and 11-00110, Slip Ops. 13-63 and 13-64, (May 23, 2013)

I. Summary

The U.S. Department of Commerce (“Department”) has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (“CIT” or the “Court”) in *Catfish Farmers of America et al. v. United States*, Consol. Court Nos. 11-00109 and 11-00110, Slip Ops. 13-63 and 13-64, (May 23, 2013) (“*Catfish Farmers*”). This remand addresses several issues in the sixth administrative review and aligned new shipper review of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam (“Vietnam”).¹

In accordance with the Court’s instructions, the Department reconsidered its selection of the primary surrogate country, the selection of the surrogate values (“SVs”) for broken meat and fish skin by-products, and the impact of the ministerial error allegations.² At the Department’s request, the Court granted the Department a remand to reconsider: (1) the use of Gemini’s financial statements to address a possible countervailable subsidy, and (2) the selection of the SV for the fish waste by-product.³

As described further below, and after further evaluating the record evidence, the Department continues to determine that Bangladesh is the best option for the surrogate country. The Department has also determined to select different SVs for the broken meat, fish skin, and fish waste by-products. Additionally, the Department finds that the evidence regarding the presence of a countervailable subsidy in Gemini’s financial statements is insufficient to render them unsuitable for the purpose of calculating the surrogate financial ratios. Lastly, the

¹ See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Sixth Antidumping Duty Administrative Review and Sixth New Shipper Review*, 76 FR 15941 (March 22, 2011) (“AR6 Final”).

² See *Catfish Farmers* at 6-34 and 37-41.

³ *Id.*, at 4-6.

Department has accounted for all of the changes in the margin calculations pursuant to this remand redetermination and has addressed the issues raised by the Court with respect to the ministerial error allegations. In doing so, the Department finds that, after accounting for all such changes and issues, the resulting antidumping margin for respondent Vinh Hoan Corporation (“Vinh Hoan”) is \$0.06 per kilogram. The margins for the voluntary respondent Vinh Quang Fisheries Corporation (“Vinh Quang”) and the new shipper review respondent Cuu Long Fish Joint Stock Company (“CL-Fish”) did not change from the draft results of redetermination issued on November 15, 2003 (“Draft Results”), and remain *de minimis*. Because Vinh Hoan’s margin is now above *de minimis*, it would also become the margin for those companies not individually examined but receiving a separate rate in the event the Court sustains these final results of redetermination, and the Department subsequently issues amended final results.

II. Analysis

A. Surrogate Country Selection

The CIT remanded the entire issue of surrogate country selection to the Department.⁴ We observe that parties’ arguments and the Court’s opinion regarding our selection of a surrogate country center around evaluating the Philippine Bureau of Aquaculture Statistics (“BAS”) data and Bangladeshi Department of Agricultural Marketing (“DAM”) data. Thus, our underlying determinations in the *AR6 Final* with respect to whether the two countries at issue (Bangladesh and the Philippines) are economically comparable and are significant producers of comparable merchandise⁵ are not at issue in this proceeding.

⁴ See *Catfish Farmers* at 34.

⁵ See *AR6 Final*, and accompanying Issues and Decision Memorandum at Comments I.A. and I.B.

Contribution of Different Factors of Production (“FOPs”) to the Margin Calculation

As in the underlying administrative review, the SV for whole fish dominates the decision of which surrogate country to select, given its overwhelming contribution to the cost of manufacturing (“COM”) and normal value (“NV”).⁶ In addition, the respondents in this POR overwhelmingly purchased whole live fish, as opposed to farming it themselves, thus making purchased fish more important relative to other FOPs. Of these other FOPs, the surrogate financial ratios are generally a more important component of the margin calculation. For the reasons explained in the *AR6 Final* (and not in dispute here), the Department generally prefers to average multiple usable financial statements where available, and Bangladesh has three usable financial statements as opposed to one in the Philippines. Thus, while the SV data for some secondary FOPs are more contemporaneous in the Philippines than the corresponding Bangladeshi data, we do not place significant weight on that fact when rendering our overall decision on the surrogate country, especially given the fact that we can inflate these values to make them current with the POR in order to mitigate against the fact that certain data are not as contemporaneous. The surrogate financial ratios are a more important component of the margin calculation in this instance than a handful of secondary FOPs that contribute minimally to the overall NV.⁷

Turning our attention to the SV for the whole fish FOP, we continue to consider two sources of information for the whole fish SV issued by two governments, both representing official statements of those governments as to the price of whole live fish relevant to our surrogate country selection. In examining the two government sources, the Tariff Act of 1930,

⁶ See the memorandum “Business Proprietary Information Referenced in the Draft Remand,” dated November 15, 2013 (“Draft Results BPI Memo”), for the precise percentages of COM and NV accounted for by the whole fish input.

⁷ *Id.* (showing low percentage of COM and NV accounted for by all of the combined secondary FOPs.)

as amended, (“Act”) and the Department’s well-established SV practice provide guidance. Section 773(c)(1) 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 SVs, the Department considers several factors including whether the SV is: 1) publicly available, 2) contemporaneous with the POR, 3) represents a broad market average, 4) chosen from an approved surrogate country, 5) are tax and duty-exclusive, and 6) specific to the input.⁸ 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 on a case-by-case basis.⁹ As there is no hierarchy for applying the above-mentioned factors, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the “best” available SV is for each input.¹⁰

B. SV Selection Criteria Applied to the BAS and DAM Data

As an initial matter and for purposes of this remand, given the arguments espoused by the parties in litigation and the issues highlighted in the Court’s opinion, of the six SV selection criteria noted above, as in the *AR6 Final*, the Department continues to find that both sources are publicly available, contemporaneous with the period of review (“POR”), from an approved surrogate country, and tax and duty exclusive. Thus, these four factors are not in dispute. Below, we elaborate on the application of the remaining selection criteria (broad market average and specificity) to the BAS and DAM data.

⁸ 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.

⁹ See *Certain Preserved Mushrooms from the People’s Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006), and accompanying Issues and Decision Memorandum at Comment 1 (“*Mushrooms from the PRC*”); see also *Freshwater Crawfish Tail Meat from the People’s Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

¹⁰ See *Mushrooms from the PRC*.

1. Broad Market Average

BAS Data

Considering whether the BAS data represent a broad market average, we first note that the BAS reports data for various seafood products covering a total of 81 provinces and cities.¹¹ In sampling from these 81, the BAS selects respondents from both top-producing provinces and less significant-producing provinces.¹² Out of 81 provinces, only four provinces reported any *Pangasius* production in 2008, and only eight of 81 provinces reported production in 2009.¹³ Additionally, the production figures reported in the published BAS data are extrapolated estimates of total production by province, meaning that the quantities sampled were much less.¹⁴ The sum total of these provincial production estimates for *Pangasius* for the entire Philippines reported for 2008 was 12.80 metric tons (“MTs”), and for 2009 was 34.34 MTs.¹⁵ Thus, the BAS data for two full years represent a grand total of 47.14 MTs of *Pangasius* production, or 0.08 percent of the Bangladeshi production amount for a single year (*see below*). In addition, the Philippine *Pangasius* production represents less than 0.001 percent of total national aquaculture production (last in terms of production among all products).¹⁶ Furthermore, the Philippines Secretary of Agriculture¹⁷ described the Philippines *Pangasius* industry (one year and four months *after* the POR) as: (1) being provided extensive support; (2) one with high production costs; (3) having limited production and sales; and, (4) still merely in its incipient stage and

¹¹ See Petitioners’ November 12, 2010, submission at Exhibit 1.

¹² See Petitioner’s July 9, 2010, submission at Attachment 1.

¹³ See Petitioners’ November 12, 2010, submission at Exhibit 1.

¹⁴ See Petitioners’ December 13, 2010, submission at Exhibit 8 (2.2.1.3.C Aquaculture Production: Estimation and/or Compilation Procedure).

¹⁵ See Petitioners’ November 12, 2010, submission at Exhibit 1.

¹⁶ See Petitioner’s November 12, 2010, submission at Exhibit 1 (Table 16)

¹⁷ The Fisheries Statistics Division is an agency under the BAS. The BAS is an agency under the Department of Agriculture.

considered an infant industry.¹⁸ Lastly, the BAS survey forms themselves suggest that the *Pangasius* industry is not well-established, as *Pangasius* is not one of the types of fish listed on the forms and must be written in separately.

We do not question the validity of the BAS sampling methodology as a whole. Rather, the question is whether this data source represents the best information available for SV purposes given all of the information on the record. As applied to the nascent *Pangasius* industry, there are several reasons why the sampling would not produce a reliable and valid result. In terms of methodology, the BAS national estimates rely on previous year's data,¹⁹ of which there are none for *Pangasius* in the majority of the provinces in 2008. For example, the production figure in 2008 for the Isabela province was 3.51 MT.²⁰ However, according to the BAS methodology, this estimate was based on inflating the 2007 Isabela production estimate, which was zero. Moreover, none of the provinces reported *Pangasius* production in 2007, so the BAS could not have relied on another province's production as a proxy. Therefore, it is unclear exactly how the BAS inflated the 2007 "zero" production to produce 2008 estimated production for all the provinces. This same issue also applies to five of the eight provinces for the 2009 estimated production figures.²¹ The underlying problem is that there is no explanation on the record on how the BAS filled these gaps in the data. In other words, there are too many gaps in the BAS methodology that are not explained by record evidence. Thus, even though the underlying methodology may indeed be valid, using this methodology on an infant/nascent industry is problematic, given that there will be a very small response rate for *Pangasius* within the overall sample size, and there will be a number of respondents within the sample reporting nothing for

¹⁸ See Vinh Hoan's November, 12, 2010, submission at Exhibit 4.

¹⁹ See Petitioners' December 13, 2010, submission at Exhibit 8 (2.2.1.3.C Aquaculture Production: Estimation and/or Compilation Procedure).

²⁰ See Bas Data at page 358.

²¹ We also note that the BAS makes deductions to the prices it gathers to try to calculate a farm-gate price.

Pangasius at all. Put another way, the methodology relies on sampling to produce its estimated totals, and if there are numerous gaps in responses from those who are sampled, it makes the final reported number less dependable. It is, thus, unclear to what degree the estimated total *Pangasius* production figures provided in the BAS data are a reliable indicator of the country's production in this instance. Therefore, a further reading and close examination of the information on the record, as expressed by the above analysis, demonstrates that the BAS data for *Pangasius* do not represent a broad market average suitable for surrogate valuation purposes.

DAM Data

Several of the issues raised by the Court regarding the DAM data fall within the purview of whether the DAM data represent a broad market average. The remaining issues are addressed elsewhere in this remand redetermination. Specifically, the Court questioned several of our findings and required responses on the following items: (1) explain more fully our finding that the price data represent “a fuller set” than the Philippines data and are reliable because they were “collected using a scientific method;” (2) elaborate on past cases in which we had similar factual circumstances, where despite our preference for data containing volume and value information, we used data to value major inputs absent such information (such as the DAM data here); (3) clarify how the data would be representative of commercial quantities of whole fish sales; (4) address the affidavits submitted by Petitioners concerning DAM's price data collection methodology; (5) address the size of the DAM data as a factor, as well as our statement that the Philippine sampling methodology does not provide statistically equivalent representation in comparison; and (6) address Petitioner's contention that there is no record evidence that links the DAM Data and the *Fisheries Statistical Yearbook of Bangladesh* (which we relied upon to demonstrate the size of Bangladesh's *Pangasius* production), or any other basis for assuming that

the DAM 08/09 Data cover more sales or quantities than the Philippine national statistics. In addressing these points, we convey below how the DAM data satisfy the requirement that an SV source must represent a broad market average.

With regard to the DAM data being a “fuller set” than the BAS data, we based our finding on the following reasons: 1) the DAM data were collected using direct weekly price observations from each district covering the exact POR, whereas the BAS data are extrapolated estimates of total production; 2) *Pangasius* data were a category specifically collected by DAM, whereas the BAS data relied on users to input “*Pangasius*” under a general “Other” category; and 3) the DAM data contain data points for 64 out of 67 districts (91.43 percent) in Bangladesh, covering a total of 2,828 weekly price reports during exactly the POR (one year), whereas the BAS data cover only a few regions (*see above*).²²

As to these reviews being similar to *Nails* and *Hangers*²³ (in relying on a price source with no underlying values or volumes), similar to the Indian JPC data for steel wire rod used in *Nails* and *Hangers*, we note that the DAM price data represent systematic, national-level price monitoring specific to the same *Pangasius* species at issue, and are collected by a government agency and maintained on a regular basis.

Regarding the DAM data representing commercial quantities, given the fact that whole live *Pangasius* fish are a highly perishable product, and given the scope, coverage, and frequency of collection of the DAM data, these factors demonstrate that the DAM data do not represent insignificant quantities. Moreover, other information on the record demonstrates that

²² See VASEP’s November 11, 2010, submission at Exhibit 7.

²³ 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 (“*Nails*”); *see also 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) and accompanying Issues and Decision Memorandum, at Comment 4 (“*Hangers*”).

the *Pangasius* market was significant (59,474 MTs)²⁴ during this period (*see* further below). While there is no direct link between the DAM data and the *Fisheries Statistical Yearbook of Bangladesh* such that one data source flows into the other, we find that data do not have to be all from the exact same source to provide useful, reliable government-generated information. The lack of direct linkage is not surprising as the Government of Bangladesh collected them for different purposes – one to report on weekly market prices, and the other to report on overall annual country-wide production. Thus, our conclusion that the DAM data represent a fuller set of data, and thus a broad market average, unlike the BAS data, is supported by the record. The DAM data, taken together, represent national-level governmental-price monitoring and reporting, covering numerous commodities for the POR, one of which was specifically the *Pangasius* fish species at issue. Corresponding national production data from the same government, and for nearly the exact same period, show overall production of 59,474 MTs, more than enough to supply any Respondents’ production requirements. Moreover, Bangladeshi *Pangasius* production represents 6.52 percent of total national aquaculture production (fifth largest overall among all products).²⁵ Lastly, information on the record indicates that the *Pangasius* industry has been well established in Bangladesh since at least 1998.²⁶

Concerning the three affidavits submitted by Petitioners discussing the DAM data, the primary one is from a Bangladeshi lawyer hired by Petitioners who spoke with DAM officials, and who in turn also obtained two affidavits from Bangladeshi farmers, all purporting to show that the prices in the DAM do not accurately reflect farm-gate prices.²⁷ However, the record also contains official statements from the Bangladeshi officials (who are in charge of the agency that

²⁴ See Vinh Hoan *et al*’s. November 12, 2010, submission at Exhibit 21 (*Fisheries Statistical Yearbook of Bangladesh*)-Table 16.

²⁵ See Vinh Hoan’s November, 12, 2010, submission at Exhibit 21 (Table 16).

²⁶ See Vinh Hoan *et al*’s April 8, 2010, submission at Exhibit 3 (*FAO 505 Report* - pg. 35).

²⁷ See Petitioners’ December 13, 2010, submission at Exhibits 13-15.

published the DAM data) stating that the prices in the DAM data are wholesale prices of whole live *Pangasius* sold into the marketplace throughout the country.²⁸ Even according weight to the affidavits submitted by Petitioners, we are left with conflicting evidence on the record. We determine that the letters from Bangladeshi officials, appearing on official letterhead and given as part of performing in their official capacity, are more reliable than affidavits that were procured for the specific purpose of being used in an antidumping duty proceeding. Given the totality of the above evidence, it is clear that DAM data satisfy the broad market average requirement to a significantly greater degree than the BAS data.

2. Specificity/Level of Trade

In the context of this remand redetermination, the specificity of the species of whole, live fish in both the BAS and DAM data is not at issue. Instead, specificity here involves the arguments espoused by Petitioners regarding the level of trade (farm-gate versus wholesale) of the reported prices.

Competing Affidavits Regarding the BAS Data

The Court disagreed with our finding that the Philippines BAS data “contain information which suggests that the prices are not solely farm-gate prices” as found in our interpretation of the two affidavits pertaining to the BAS data (Affidavit 1,²⁹ and Affidavit 2: Bureau of Fisheries and Aquatic Resources “BFAR” Official overseeing in Region 2).³⁰ The Court also stated that the plain reading of Affidavit 1 equates “first point of sale” to “farm-gate” prices and that this represents a single channel of distribution, not multiple channels. The Court was not convinced that the interpretation of the BFAR affidavit (Affidavit 2) demonstrates that the “cleaned/cut/otherwise not live” prices were actually included in the BAS data.

²⁸ See VASEP’s November 12, 2010, submission at Exhibit 7b.

²⁹ See Petitioners’ July 9, 2010, submission at Attachment 1

³⁰ See Vinh Hoan’s December 13, 2010, submission at Exhibit 1.

With regard to our finding that the BAS data contain information which suggests that the prices are not solely farm-gate prices, as stated in the *AR6 Final*, even though Affidavit 2 indicates that 10-15 percent of the fish in Region 2 (which accounted for about 67-81 percent of total production, depending on the year)³¹ was sold cleaned, cut, or otherwise not live or in whole form, there is no indication that this further processed fish was actually included in the BAS data. Although we give weight to Affidavit 2, as it is from a government official who would have first-hand knowledge of the largest *Pangasius* producing region in the Philippines, Affidavit 1 (from the person responsible for compiling the BAS data) stated that the prices are for whole live *Pangasius* produced and sold in the Philippines.³² We have two conflicting pieces of information on the record, and do not conclude in this remand redetermination that one outweighs the other. However, we no longer believe it is necessary to rely, in part, on Affidavit 2 in rendering our evaluation of the available data for the whole fish SV and, thus, surrogate country selection. Given that there is an incongruity on the record with respect to a subset of the data for Region 2 (*i.e.*, whether the data contain prices for further-processed fish instead of only whole live fish), and further uncertainty as to whether the data may have been included in the BAS statistics, the focus of our analysis shifts instead to those points on which we can make a determination (*i.e.*, the discussion regarding the broad market average criterion discussed above, and the further discussion about specificity/level of trade below).

Farm-Gate vs. Wholesale Prices

Regarding the evaluation of the data quality of the BAS data and the DAM data, the Court noted that the BAS data are at the “farm-gate” level (*i.e.*, the price sold by the fish farmer), whereas the DAM data are at the wholesale level, and thus potentially contain markups and other

³¹ See Petitioners’ April 12, 2011, submission at Exhibit 1 (summing the totals for the provinces encompassed by Region 2 shows that they accounted for these percentages of total national production).

³² See Petitioners’ July 9, 2010, submission at Attachment 1.

expenses. The Court stated that given our preference for farm-gate prices (citing to the *AR5 Final*³³), and given the relative importance of the level of trade, we did not adequately explain why a distinction between farm-gate and wholesale prices became irrelevant in the *AR6 Final*.

As an initial matter, in the *AR5 Final*, the Department did not express a preference in its decision discussing the selection of the SV for the whole fish input regarding farm-gate prices. In that review, the Department evaluated the SV options for whole, live *Pangasius* fish based on the evidence and arguments presented therein and determined that the source containing the farm-gate prices was the best available information relative to the other options on the record. The Department did not establish a general preference for farm-gate prices *per se*.

In the *AR5 Final*, Commerce was left with two main options for valuing the whole fish input, the *Pangas Thesis* and the *FAO Report*. In discussing the former, we stated:

With regard to being representative of a broad market average, we note that the *Pangas Thesis* entails data gathered from 100 fish farms. However, other information regarding this criterion is unclear. For example, the *Pangas Thesis* states that costs and returns of *Pangasius* fish farming were calculated by using “farm-gate price” {emphasis added}, while the *Pangas Thesis* also states that returns were calculated using “market prices” {emphasis added}. Thus, it is unclear whether the *Pangas Thesis*’ methodology relies on farm-gate prices or market prices, and if market prices, what movement or other expenses are included in those prices. In addition, while Respondents have reported a price of 35 takas per kilogram for *Pangas* fish, this price is never stated in the thesis, and rather, is derived from what appears to be the total value and production data in the thesis. While Respondents claim that the price was derived using pricing information in a table, they do not explain how exactly they calculated this price from the underlying data. Moreover, performing a pricing analysis (using either a weighted or simple average of the data in the individual tiers) does not reconcile with the figure obtained from the using the total value and production figure, thus questioning the reliability of this data source. Therefore, we consider the *Pangas Thesis* to not be a superior source with regard to this surrogate value criterion.

With respect to whether the price derived from the *Pangas Thesis* is tax and duty exclusive, based on the above, the information is unclear (i.e., as noted

³³ See *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) and accompanying issues and decision memorandum at Comment 2A.

previously, one cannot decipher if the prices are derived from farm-gate prices, and are therefore tax and duty exclusive, or from market prices). Thus, we consider the Pangas Thesis to not be dispositive with regard to this surrogate value criterion. {Footnotes omitted in quote }

In evaluating the *FAO Report* and stating our decision as to which source to select, we stated:

With respect to the FAO Report being publicly available, coming from an approved surrogate country, being specific to the input, and representing a broad market average, we note that no party challenged our evaluation of these criteria in the Preliminary Results, and thus, we continue to consider that the FAO Report satisfies them. With regard to the whole live fish prices in the FAO Report being tax and duty exclusive, while Petitioners contend that this criterion is unclear, they have not provided evidence that the farm-gate prices in the FAO Report contain taxes, much less duties, or any indication that taxes or duties are common with regard to farm-gate prices. With regard to being contemporaneous with the POR, we note that the FAO Report is not contemporaneous and, thus, does not satisfy this surrogate value criterion as well as other fully contemporaneous sources.

While the FAO Report is not contemporaneous with the POR, when considered in light of the other surrogate value criteria, we find that it is the best available information on the record. It is specific to the input, is publicly available, is from the primary surrogate country (Bangladesh), represents of a broad market average and is the most superior source on record in its reliability. Furthermore, unlike the Pangas Thesis, the exact farm-gate price of *Pangasius* fish is directly stated in the FAO Report and, as noted above, is clearly tax and duty exclusive. For these reasons, we will continue to use the FAO Report to value the fish input in the margin calculation for these final results. {Footnotes omitted in quote }

Thus, we did not state that we had a preference for farm-gate prices; rather, we rejected one data source (the *Pangas Thesis*) because it had an unreliable price that mingled farm-gate and market prices *without demonstrating that the market prices were tax- and duty-free*. We thus selected another data source (*FAO Report*) because the record demonstrated that its data, which happened to be farm-gate, were tax- and duty-exclusive, among other reasons.³⁴ Thus, contrary to Petitioners' claims, Commerce has not determined that it prefers farm-gate prices, only that as one of the factors considered for the SV, it seeks prices that are tax- and duty-exclusive. Accordingly, it is the extent to which any price, whether called "farm-gate" or

³⁴ *Id.*

“wholesale” includes taxes, duties or other expenses that the Department considers in comparing sources (if such a comparison is possible).

Analysis of the Level of Trade of the BAS Data and DAM Data

With regard to the level of trade for the whole fish prices in these two sources, a further analysis of the record information yields additional insight. In footnote 8 of its opinion, the Court found that:

BAS had also defined “traders” as “those who buy and sell goods or commodities” and “wholesalers” as “those who buy in bulk from farmers/raisers/fishermen and fellow traders.” The only reasonable interpretation of “aquafarm trader” in the affidavit is for obtaining his or her knowledge of “*production* of aquaculture in the locality” (including “price/value of the product per kilogram, volume of production, in metric ton and harvest area in terms of hectare”) and quotation of first-point-of-sale price, *i.e.*, the farm-gate price. Even construing, *arguendo*, “other respondent” in the affidavit to encompass a fellow-trader “wholesaler,” it is still plain that for purposes of FSD’s statistical information gathering any “prices quoted by” such wholesaler would still have to be first point-of-sale prices (*i.e.*, the farm-gate price) based upon such wholesaler’s knowledge of what he or she paid or would have paid to purchase product from an aquafarm farmer. That would be the only meaningful construction, because a price “quoted by” a wholesaler for a sale *from* that wholesaler, as defined by BAS, to another purchaser would not be a “first-point-of-sale” price, as defined by BAS.

Upon reexamination during remand of the BAS data on the record and the underlying documentation regarding its methodology, we find that the while the BAS data in final, published form appear to report a farm-gate price, the prices BAS gathers can initially come from other respondents besides aquafarmers, including, *inter alia*, traders (of which there are a few sub-types), distributors, and wholesalers.³⁵ In other words, many of the price sources from which the BAS may gather data would have no access to the initial farm-gate price (*e.g.*, a trader or wholesaler who purchased from another distributor.) To underscore this point, we draw

³⁵ See Petitioners’ December 13, 2010, submission at Exhibit 8, specifically, Chapter 2 of the Philippines Department of Agriculture’s statistical framework titled “Major Domains and Selected Indicators of Agricultural Statistics,” 2.2.4 “Prices,” 2.2.4.1 “Concepts, Definitions, and Classifications,” wherein several types and sub-types of prices and sources for prices are described.

attention to the fact that the BAS makes deductions to the prices it gathers from these various types of respondents for “freight charges/total transport cost” to estimate a farm-gate price.³⁶

The questionnaire sent to respondents has no provision or mention for transportation expenses, or any expenses for that matter.³⁷ Furthermore, and similar to the issues noted on pages 5-6 above, the record does not demonstrate how the BAS arrives at the *calculated* farm-gate price, *i.e.*, how it made deductions for transport costs to the raw price data, and whether those deductions were estimates or not.

Additionally, in reexamining the definitions of terms within the BAS methodology, wholesale prices can be either wholesale buying prices or wholesale selling prices, with a wholesale buying price representing “the price that traders pay for commodities they buy in bulk from farmers/raisers/fishermen and fellow traders.”³⁸ Based upon the BAS definition, a wholesale price can thus be the same as a farm-gate price if it is a wholesale buying price paid to a farmer/raiser. Further, while the DAM’s definitions of a “wholesaler” or “wholesale market price” are not explicitly defined, the DAM collects its data from aquafarmers, wholesale traders, and by market enquiry, and states that its wholesale price is the price of whole live fish sold into the marketplace.³⁹ Thus, the DAM data would in large part consist of prices equivalent to the BAS farm-gate price/wholesale buying prices (*i.e.*, aquafarmers reporting prices at which they sold to wholesalers, and wholesalers reporting the prices at which they bought from aquafarmers).

³⁶ See Petitioners’ December 13, 2010, submission at Exhibit 8 (2.2.4.3.A Estimation and/or Compilation Procedure: Provincial Farm Gate Price), where the equation for calculating a net provincial farm-gate price (*i.e.*, one which has freight charges and total transport costs subtracted out) is provided in the middle of the first page of this subsection.

³⁷ See VASEP’s November 12, 2010, submission at Exhibit 1C.

³⁸ See Petitioners’ December 13, 2010, submission at Exhibit 8, specifically, Chapter 2 of the Philippines Department of Agriculture’s statistical framework titled “Major Domains and Selected Indicators of Agricultural Statistics,” 2.2.4 “Prices,” 2.2.4.1 “Concepts, Definitions, and Classifications.”

³⁹ See VASEP’s November 12, 2010, submission at Exhibit 7A.

In sum, none of the above indicates a more accurate result would be achieved in this case by the use of prices identified as farm-gate (BAS data) versus wholesale (DAM data), much less that we have an automatic preference for farm-gate prices as opposed to wholesale prices. Even if we were to evaluate level of trade as an important consideration in determining the appropriate source of data, the record simply does not contain the level of detail necessary to discern if, as Petitioners contend, the DAM data include any wholesale prices at a more advanced level of trade (*i.e.*, equivalent to the BAS wholesale selling price). In any case, even if we were to assume that the DAM data are at a more advanced level of trade and already include some transport charges (and no record evidence indicates they do), the way to account for that in the margin calculation would be not to add surrogate freight charges to the total input cost for whole fish as we currently do. Not including such charges would only have the effect of lowering Respondents' NV.⁴⁰

3. Other Considerations

Another issue raised in addition to the broad market average and specificity/level of trade criteria is price volatility, which was observed in both the BAS and DAM data. In the DAM data, Petitioners point to prices in one region and compare them to prices in another (same time period, different place), while the BAS volatility is for the same region in different years (same place, different time period), thus leading to an apple-to-oranges comparison. The volatility in the BAS data is thus constant in that the anomalous figures are from the same region over different years. In contrast, the variability of prices in the DAM data is for different regions and at various times throughout the POR. Notwithstanding the other flaws with the BAS data noted above, the fact remains that given the huge degree of difference in the scope and coverage of the

⁴⁰ The Department notes that such freight charges have an extremely minimal impact on the overall calculation. See the Draft Results BPI Memo.

BAS data versus the DAM data, any inherent volatility in the BAS data will not be as normalized given its limited coverage (*i.e.*, the volatile data points will have a greater impact on the final number), in comparison with the DAM data, which comprise a much larger data set.

Lastly, in the course of re-evaluating the record evidence, we observed that the 2008 figures in the BAS publication itself do not reconcile to the total figures for that same year in the letter provided by the BAS official.⁴¹ Thus, there is a conflict on the record as to the accuracy of the figures provided, further casting additional doubt as to the BAS data's suitability for valuing the primary input.

4. Surrogate Country Conclusion

We have reconsidered our surrogate country determination, and in doing so have demonstrated that which country has the best source for valuing the whole fish input remains the determining factor. We have demonstrated based on clear record evidence that the DAM data represent a much broader market average based on both industry size in the respective countries, as well as the scope and coverage of the data sources themselves. We have also shown that a meaningful distinction regarding the level of trade cannot be made between the BAS data and the DAM data based on record evidence. The other remaining considerations also support choosing the DAM data over the BAS data. Even assuming for the sake of argument that the DAM data are at a more advanced level of trade than the BAS data, their superiority in terms of the broad market average criterion and the other considerations noted above would still outweigh any consideration made for the level of trade. Based on all of the above, the record supports selecting Bangladesh as the primary surrogate determination because its SV data for the whole fish input represent the best selection between the competing options.

⁴¹ Compare Petitioners' July 9, 2010, submission at Attachment 1, which shows a total quantity and value of 12.176 MTs and 1,371.680 (thousands of pesos), with Petitioners' November 12, 2010 submission at Exhibit 1, which shows a total quantity and value of 12.800 MTs and 1,433.380 (thousands of pesos).

C. SVs for Fish Waste, Broken Meat, and Fish Skin

In the underlying review, we selected Philippine HTS category 0304.90 (other fish meat of marine fish) to value the fish waste, broken meat and fish skin by-products and rejected the Philippine and Indian price quotes submitted by Petitioners. We requested a voluntary remand regarding the SV for fish waste. The Court noted that the SV selection for broken meat and fish skin would be intertwined with that of fish waste (given that Petitioners proffered the same alternative source for them), and remanded the selection of SVs for those by-products as well.⁴²

In endeavoring to find appropriate SVs for by-products, we attempt to find identical items to those produced by respondents. In this case, the closest import statistics in terms of HTS classification on the record are a basket category, containing many other things besides waste, broken meat, and fish skin. In contrast, the Vitarich Philippine price quote is for a variety of *Pangasius* fish waste products, including head and belly waste, fat and intestines, bone and tails waste, and skin and trimmings (thus encompassing the three by-products at issue here).⁴³ After reviewing the information on the record, and considering the approach we have adopted in recent determinations in this and other aquaculture cases, we find that seafood by-products are generally not internationally traded commodities which would be reflected in import statistics.⁴⁴ Moreover, the HTS description in question indicates it is for fish *meat*, rather than *by-products*. We find specificity of the price quote to be an important factor in valuing these by-products.

⁴² The Court stated that because Commerce's reasoning for these two by-products "... appears intertwined with its rejection of the Vitarich price quote in the context of valuing fish waste, it is appropriate that Commerce reconsider the broken meat and fish skin valuations from a clean slate, alongside its reconsideration of the proper valuation of fish waste, *supra*. *Catfish Farmers* at 7.

⁴³ See Petitioners' April 8, 2010, submission at Exhibit 16.

⁴⁴ See, e.g., *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results, Partial Rescission, and Request for Revocation, In Part, of the Fifth Administrative Review*, 76 FR 12054 (March 4, 2011), unchanged in *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 56158, 56165 (September 12, 2011), where the Department has consistently used an Indonesian price quote to value a by-product in that case.

Further, upon reconsideration, we find that valuing fish waste using import statistics results in a fish waste SV which is higher than that of the whole fish. Consequently, the use of import statistics to value fish waste would distort the NV calculation. The Vitarich price quote satisfies our criteria of whether the SV data is publicly available, includes terms of payment, and is tax and duty exclusive.⁴⁵ While a price quote from one company may not reflect a broad market average, this concern is outweighed by its far superior specificity and the fact that it meets the other SV selection criteria. Moreover, it is dated April 2010, which is not so far outside the POR as to be unusable,⁴⁶ and in any case we have deflated these SVs to make them contemporaneous with the POR.

Lastly, there is also an Indian price quote on the record, but it only pertains to one by-product (fish waste), and while it is dated closer to the POR, it is unclear if the price is tax/duty exclusive. Therefore, we have decided to use the Vitarich price quote to value these three by-products as it represents the best information on the record.

D. Alleged Subsidy in Gemini's Financial Statements

In the AR6 *Final Results*, we did not address Petitioners' argument that evidence on the record indicated that Gemini received a potentially countervailable subsidy. The Court granted our request for a voluntary remand to consider this issue. A close examination of each of the arguments raised by Petitioners shows that they are either missing key supporting data on the record or are out of date.

⁴⁵ *Id.*

⁴⁶ See *Hebei Metals & Minerals Import & Export Corporation and Hebei Wuxin Metals & Minerals Trading Co., Ltd. v. United States*, 366 F.Supp.2d 1264,1275 (CIT March 10, 2005) ("*Hebei*"), where the Court held that contemporaneity is not a compelling factor where the alternative data is only a year-and-a-half distant from the POR.

Bank Circular

The line item in Gemini's financial statements at issue (describing a 10 percent cash subsidy per Bangladesh Bank Circular No. FE-23, dated December 12, 2003), does not list a subsidy program that the Department has found to be countervailable. While Petitioners did submit record evidence purporting to show that this subsidy is actionable and would affect Gemini's ratios, a close examination of the evidence indicates that this is not the case. First, the bank circular in question that Petitioners cite as evidence of an actionable subsidy is missing from the record. The line item in question from Gemini's financial statements that references the circular reads "As per Bangladesh Bank circular no. FE-23 dated 12-12-2003 total cash subsidy assessed against export for the year is Tk. 9,99,79,199.00."⁴⁷ We note that the Bangladesh Bank FE Circular no.: 23 Petitioners placed on the record is dated 12-12-2002 rather than 12-12-2003, as listed in Gemini's financial statements.⁴⁸ Thus, it is from the wrong year. Additionally, we note that the terms of the circular Petitioners did submit provide a "cash advance {that} will be available for ready shipment from 01-JUL-2002 for three consecutive financial years that is till 30-JUN-2005," thus ending well before the POR and not relevant to this time period.⁴⁹ Accordingly, the record does not contain a document that substantiates or explains the source of the line item at issue.

WTO Trade Policy Review on Bangladesh

Petitioners also refer to the above document in attempting to show that Gemini received an actionable subsidy. However, with respect to the WTO Trade Policy Review on Bangladesh,

⁴⁷ See Vasep's April 8, 2010, submission at Exhibit 12B.

⁴⁸ See Petitioners' December 13, 2010, submission at Exhibit 26.

⁴⁹ *Id.*

we note that it is dated November 15, 2006, and its table listing cash incentives for exports was for the years 2000-2005,⁵⁰ again ending well before the POR.

Other Arguments

Regarding the tax holiday reserve program referenced in a general manner by Petitioner to impugn Gemini's financial statements, the record shows this expired in 1993, and Gemini's financial statements plainly state that "No tax holiday reserve has been made during the year."⁵¹ In its underlying case brief, Petitioner also mentions in passing several other subsidy programs allegedly available, but there is no evidence that any of these programs are actionable, and no evidence at all that Gemini received benefits from any of these programs in 2008-2009, or any other period, as there is absolutely no reference to any of them anywhere in its financial statements.

Therefore, upon reconsideration, we find that the evidence submitted by Petitioners does not provide a sufficient basis for the Department to have reason to believe or suspect that Gemini received an actionable subsidy during the POR because the documents provided to explain the line item refer to earlier time periods than the POR. Thus, we conclude that Gemini's financial statements remain an appropriate source for calculating the surrogate financial ratios.

E. Ministerial Error Allegations and Effect on Margins

The Court referenced four issues with respect to our calculations involving the categorization of certain items in the financial ratio calculations for Apex, Gemini, and Fine Foods and requests that we consider the impact of any corrections (along with calculation changes for the other issues): (1) address not accounting for Apex and Gemini's changes in finished goods inventory as we did not issue an amended final results; (2) explain the effect

⁵⁰ See Petitioners' November 12, 2010, submission at Exhibit 4.

⁵¹ See Vasep's April 8, 2010, submission at Exhibit 12B.

Apex's and Gemini's corrections (in addition to the Vinh Hoan specific corrections) would have on the margins as they are close to *de minimis*, and the Court believes the corrections may be material; (3) address why for Fine Foods we found the nature of the allegation to be methodological, when we put Fine Foods' ratio calculation on the record in the *AR6 Final* and parties' apparent avenue to raise this claim was through the ministerial error process; and (4) with respect to Fine Foods, the record lacked sufficient detail on how to classify its changes in inventories; however, we should explain why we are not using facts available ("FA") as we clearly have to account for these changes in inventory somehow, or at a minimum, to address any viable substitute(s) (or lack thereof) for our financial ratio calculations, and more clearly explain our reasoning.⁵²

With regard to not accounting for Apex and Gemini's changes in finished goods inventory, or correcting the Vinh Hoan specific error,⁵³ we note that we made corrections in the computer program with respect to Apex and Gemini's ratio calculations, in addition to correcting the Vinh Hoan specific ministerial allegation, and issued the revised program and calculations pursuant to our memorandum addressing the error allegations.⁵⁴ However, neither the margins nor the assessment rates for any company changed. Accordingly, the Department did not publish an amendment to the *AR6 Final*. These corrections are reflected in the programs used in these remand results.

Regarding the appropriate time at which to raise arguments regarding the changes in inventory for Fine Foods, we note that even though parties submitted these financial statements

⁵² See *Catfish Farmers* at 41.

⁵³ In the *AR6 Final*, the Department inadvertently failed to value the electricity and coal used to generate Vinh Hoan's by-products.

⁵⁴ See Ministerial Allegations Memorandum, dated April 13, 2011 ("Ministerial Allegations Memorandum"); see also Memorandum to the File: Vinh Hoan Ministerial Analysis, dated April 13, 2011, and Memorandum to the File: Vinh Quang Ministerial Analysis, dated April 13, 2011.

intending them to be used for valuing whole live fish, they were placed on the record well before the preliminary results.⁵⁵ Moreover, the company was identified as a fish processor in the financial statements,⁵⁶ thus alerting parties that they could be used for surrogate ratio valuation purposes. Thus, parties had ample time to comment on the classification of any line items. Irrespective of the timing of when to raise arguments, we note that we did address the parties' arguments regarding Fine Food's changes in inventory, stating that "Fine Foods' financial statements lack sufficient detail to determine the proper treatment of the changes in inventory."⁵⁷ We continue to address this issue further below.

With regard to Fine Foods' line items "Opening Stock/Inventories" and "Closing Stock/Inventories," after further review, we find that the financial statements do in fact contain the detail necessary to account for change in inventory, as discussed below in response to Petitioners' comments on the Draft Results.

IV. Comments from Interested Parties

The Department released its Draft Results on November 15, 2013. Interested parties submitted comments on November 27, 2013. On December 11, 2013, the Department rejected certain untimely and unsolicited new factual information contained in Petitioners' comments. Petitioners refiled their comments on December 12, 2013.

A. The Department's Consideration of the BAS Data as Compared to the DAM Data Petitioners' Comments

- The Department repeatedly drew favorable assumptions about the DAM data while drawing negative inferences about the BAS data.

⁵⁵ See Petitioners' April 8, 2010, submission at Exhibit 20.

⁵⁶ *Id.*, at Note 1.3.

⁵⁷ See Ministerial Allegations Memorandum at 3.

Vinh Hoan's Comments⁵⁸

- The Department conducted a careful review and analysis of the record evidence pursuant to the Court's remand order and demonstrated that the DAM data represent a superior selection for the SV of the whole live fish input.

Department's Position: We disagree with Petitioners' argument that we have unfairly evaluated the BAS data *vis-à-vis* the DAM data. Petitioners submitted the BAS data and the associated information regarding its methodology. Petitioners argue that we repeatedly drew negative inferences and conclusions regarding the detailed information they submitted regarding the BAS data, while at the same time treating the DAM data in a favorable light, despite the fact that the record did not contain a similar level of detailed background information about the DAM data. Petitioners have miscast the Department's approach. We recognize that the record contains a greater level of detail about the methodology surrounding the BAS data than it does the DAM data. That is not, however, an indicator in and of itself that the BAS data are a superior SV source. The fact that certain points within the background information undermine Petitioners' preferred SV source, while being inconvenient for Petitioners given that they submitted the information, is explained in a factual manner both on the preceding pages and below in our responses to parties' comments. Moreover, while less background information about the DAM data has been submitted on the record, the available record information about it indicates it is an appropriate and superior SV source, and the Department evaluated the facts in response to the Court's remand order and parties' comments. In sum, our conclusion in the Draft Results that the BAS data are not the best information available to value the whole live fish input based upon our SV selection criteria, and that the DAM data represent a broad market average

⁵⁸ We note that Vinh Hoan did not provide further comments relating to the selection of surrogate country and the SV for the *Pangasius* fish input.

based upon a mature, established *Pangasius* industry, and are reliable in other aspects, was based upon a careful reevaluation of the record evidence.

B. Surrogate Country Selection Premise and Relative Importance of Different FOPs

Petitioners' Comments

- Regarding the importance of secondary FOPs, the Department compared non-fish FOPs to NV calculated after deducting byproducts and should, instead, aggregate the secondary FOPs and by-products.
- In addition, the Philippine ratio companies are more specific with a more similar production process than the less comparable Bangladeshi shrimp producers.

Department's Position: The largest percentage of NV, by far, is the value of the whole live fish. The second largest values by some distance from the whole live fish value are represented by the SV ratios from surrogate financial statements. The remaining non-fish FOPs represent a small percentage of NV. Because the DAM data are the best available information on the record to value the whole live fish, and we have three usable financial statements from Bangladesh, we continue to find that Bangladesh is the best choice for the primary surrogate country.

As explained above, the most important factor is the value of the whole live fish followed by the financial ratios. The record demonstrates that the secondary non-fish FOP values are a very small percentage of the NV. In the Draft Results we noted the preeminent importance of the whole fish input as it relates to the selection of the surrogate country, and have maintained that stance for these final results (*see* page 3 above). Petitioners argue in making the comparison of the non-fish secondary FOPs with the NV to determine the percentage of these secondary FOPs of the NV, the Department should have added the value of the by-products to the secondary FOPs before making the comparison. Such an addition would artificially skew the

percentage of the secondary FOPs upward, because the NV does not add the by-product values. The effect of the by-product adjustment is to reduce the constructed values (based on FOP usage rates and SVs) generated from the production of the subject merchandise by the value of the by-products, which are non-subject merchandise and for which the company received revenue. This is appropriate because the FOP calculations should only include the FOPs and values that are attributable to the subject merchandise, and not to non-subject by-products, as long as the record contains the information to make such an adjustment. So, in fact, contrary to Petitioners' argument, their proposed comparison would be incorrect. The calculated NV has already been reduced by the amount of the by-product offset, so adding the by-product value back into the final comparison would actually result in an inaccurate doubling of the amount of the by-product value in relation to other components of the calculation. Petitioners' suggested artificial inflation and double counting of the by-product value is thus inappropriate. Furthermore, in addition to comparing the contribution of the whole fish input and secondary materials to NV, we also compared them to COM.⁵⁹ In comparing these to COM, again we saw an overwhelming contribution by the fish input.⁶⁰ With regard to Petitioners' argument that the Philippine ratio companies are more similar to respondents than the Bangladeshi companies, as neither the Philippine nor Bangladeshi companies are predominantly producers of identical merchandise (*Pangasius* fish fillets), we find it more reasonable to find that all the companies are producers of comparable merchandise. While Petitioners attempt to draw contrasts between the production processes for fish fillets versus frozen shrimp, the production steps they list are in fact quite

⁵⁹ See the Draft Results BPI Memo.

⁶⁰ Petitioners provided no comments regarding whole fish value as compared to COM.

similar.⁶¹ Lastly, there are still more Bangladeshi than Philippine companies (three versus two) that are suitable for surrogate valuation purposes.

C. SV Selection Criteria as Applied to the BAS Data and DAM Data

1. Public Availability

Petitioners' Comments

- Petitioners contend that the public availability criterion is extremely important and that the Department erred in determining that the DAM data were publicly available.

Department's Position: We agree with Petitioners that public availability is a key consideration in the SV selection process. We disagree, however, with the notion that the DAM data are not publicly available. As noted in the *AR6 Final*, the underlying record contains an official letter from a senior Bangladeshi government official attesting to their availability to the general public.⁶² Nothing on the record of the underlying review undermines their public availability; moreover, each segment of an antidumping duty case contains its own independent record and is considered a separate and distinct proceeding.⁶³ Findings in subsequent reviews are based on different administrative records, arguments, and time periods, and absent the possibility of fraud, are not bases to reopen prior completed administrative reviews.⁶⁴ We therefore continue to find that the DAM data satisfy the public availability criterion.

2. Broad Market Average

Petitioners' Comments

- The Department improperly substituted a “fullness” test in lieu of its established broad market average criterion.

⁶¹ See Petitioners' comments on the Draft Results at 80.

⁶² See VASEP's November 21, 2009, SV Submission at Exhibit 7A.

⁶³ See *Shandong Huarong Mach. Co. v. United States*, 29 CIT 484, 491 (2005).

⁶⁴ See *Essar Steel Ltd. v. United States*, 678 F.3d 1268, 1277-78 (Fed. Cir. 2012).

- Regarding reliance on data without quantity information, unlike in *Nails* and *Hangars*, there is no evidence that the DAM collects data in any “systematic” manner nor is it a “national-level” price monitoring like the JPC data. Moreover, an affidavit on the record states that a DAM official clarified that the DAM does not undertake any process to validate prices.
- The size of Bangladesh’s *Pangasius* industry says nothing about the coverage of the DAM data much less whether the DAM data is greater or more “full” than the BAS data. In addition, we still do not know if the DAM data represent sales of commercial quantities.
- As to the number of data points, in *Laizhou Auto*,⁶⁵ the Department rejected, and the Court upheld, the notion that a larger data set constitutes, *per se*, a more accurate SV source. Likewise, in *Jinan Yipin*⁶⁶ the Court rejected the Department’s selection of an SV because it contained more “price points” rather than more specific sources.
- Regarding BAS’s reported production as compared to Vinh Hoan’s, the Department does not explain how this is relevant to a broad market average analysis. In addition, Vietnam accounted for more than 90 percent of global *Pangasius* production, and any comparisons to any other countries is like comparing a pond to an ocean.
- Similarly, the Philippines is one of the largest aquaculture producers in the world and has commercial production of *Pangasius*. The size or newness of the Philippine *Pangasius* industry relative to the Vietnamese industry does not affect the validity/reliability of the Philippine prices.
- Furthermore, the letter from the Philippine Secretary of Agriculture has no probative value as: (1) there is no evidence that the BAS *Pangasius* industry has received countervailable subsidies or provided support that distorts prices; (2) the comparison of costs/prices in the

⁶⁵ See *Laizhou Auto Brake Equip. Co. v. United States*, 32 Ct. Int’l Trade 711, 715-718. (“*Laizhou Auto*”)

⁶⁶ See *Jinan Yipin Com. Ltd. v. United States*, 80 F. Supp. 2d 1226, 1255-69 (Ct. Int’l Trade 2011). (“*Jinan Yipin*”)

Philippines to those in Vietnam is not probative because Vietnam's costs/prices are deemed unreliable given its non-market economy ("NME") status; and (3) the Philippines has a well-established aquaculture industry and has the means and experience to produce fish products efficiently through aquaculture.

- Moreover, the Department has used (and found to be a broad market average) values associated with similar (and sometimes smaller) volumes and single districts or a single company.
- Concerning the BAS survey form, data collection is done through personal interviews using structured questionnaires by trained data collectors to ensure that the questionnaires cover all species and not a situation in which the farmers themselves are left to fill out the forms.
- Regarding the BAS sample size, whether "large" or "small" is irrelevant because a statistically valid methodology would rely on a statistically valid sample size, and there is no evidence that the BAS sample size used was not statistically valid.
- The Department incorrectly interpreted the BAS statistical methodology to infer that each year's production amounts were based on inflating the previous year's data.
- Moreover, the record contains no information about the methodology the DAM used and whether it was statistically valid.

Department's Position: We disagree with Petitioners and continue to find that the DAM data satisfy the broad market average criterion whereas the BAS data fail in this regard. At the outset, Petitioners are incorrect in arguing that we did not consider the broad market average criterion and instead substituted a so-called "fullness" test. Petitioners cite to a dictionary definition of the word "full" and attempt to differentiate it from "broad market average." As was abundantly clear in the Draft Results (which are re-stated herein on pages 2-25), we carefully evaluated both

the BAS data and the DAM data within the context of a broad market average. Moreover, “full” and “broad” in fact overlap in meaning, especially within the context of this particular SV selection criterion.⁶⁷

With regard to reliance on data without quantity information, information on the record establishes that the DAM does collect information in a systematic manner. A letter from a DAM official states that:

The price data was collected using a scientific method by the District Marketing Officers (DMO) posted in all the districts. The DMO’s collect the raw price data from each upzila (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 inquiry by visiting the mandi (marketplace). These data are being collected each week, and the monthly average price is based on such weekly data points. The enclosed price data is being maintained by the office of DAM and can be provided to any member of the public upon request, free of cost.⁶⁸

Also, the wholesale price of *Pangas* in this country-wide database is with reference to the price of whole live unprocessed Pangas, sold into the marketplace.⁶⁹

Thus, these data are collected routinely and in a systematic manner contrary to Petitioner’s assertions. Furthermore, these data, as has been pointed out, do encompass “national level” price monitoring as data are collected from each sub-district, within each district on a weekly basis by direct market inquiry for the subject species *Pangasius hypophthalmus*. Thus, *Pangasius* is an important and large⁷⁰ national level commodity because it is one of many specifically monitored by DAM. Moreover, given the record evidence above, the Department finds Petitioners’ claims contradictory: Petitioners contend that the DAM data were not gathered

⁶⁷ According to the Encarta English Dictionary included with Microsoft Word, the first five definitions of “broad” are: 1) wide; 2) large and spacious; 3) measured across; 4) full and clear; and 5) covering wide range. Similarly, for “full,” they are: 1) filled to capacity; 2) with much or many; 3) greatest in extent; 4) with nothing missing; and 5) completely developed (emphasis added).

⁶⁸ See VASEP’s November 12, 2010, submission at Exhibit 7A.

⁶⁹ See VASEP’s November 12, 2010, submission at Exhibit 7B.

⁷⁰ *Pangasius* ranks fifth out of 20 products for total cultured production. See Vinh Hoan’s November 12, 2010, submission at Exhibit 21 (*Fisheries Statistical Yearbook of Bangladesh*).

systematically, while at the same time overlooking the fact that the BAS did not “systematically” gather *Pangasius* price information because *Pangasius* was not even an option on the BAS survey form.

In addition, and as with other broad-based price survey information, the nature of the DAM data gathering is such that the absence of volume information does not undermine the representativeness of the prices, as the market can sell 1,000 kilograms, 10,000 kilograms, 100,000 kilograms, *etc.* at that price. Furthermore, the DAM prices that are gathered for *Pangasius* are prices per quintal (100 kilograms),⁷¹ establishing that the price data consist of bulk business-to-business lots/transactions prices, and the logical conclusion therefore being that the DAM data consist in their entirety of nothing but prices that are representative of a broad market average.

Concerning Petitioners’ submitted affidavit claiming that the DAM does not validate prices, as we stated in the Draft Results, there are two competing documents (a letter from a DAM official on government letterhead, and an affidavit from Petitioners’ Bangladeshi co-counsel) with each stating something slightly different. In any event, the statements from the DAM officials indicate that the prices are gathered directly from markets in each sub-district in each district without relying on sampling. It is not clear how Petitioners claim to have a statement that the DAM prices are not validated when the prices were directly gathered and, thus validated at the time of gathering. Furthermore, without knowing the direct question that was asked at the time to the DAM official by the Bangladeshi attorney retained by the Petitioners with regard to price checking, it is not possible to fully analyze Petitioners’ claim, further undermining the weight attributed to this affidavit.

As to the number of data points being an issue, the key factor here is not merely about the

⁷¹ See VASEP’s November 12, 2010, submission at 7B.

total number of data points/price observations. Rather, it is about what each data point represents individually (*i.e.*, weekly commercial quantities from 64 of 67 districts of a species specific to the input). Further, these data points comprise a data set that is indisputably a broad market average from one of a select few other countries other than Vietnam that has a commercially large and economically significant *Pangasius* industry that would provide an overall price representative of a broad market average.

Key points differentiate this case from both *Laizhou Auto* and *Jinan Yipin*. The alternative data disputed in *Laizhou Auto* were from only four Indian companies and likely included non- arms-length transaction prices,⁷² whereas the DAM data here represent country-wide data collected by a government agency in the course of monitoring a variety of commodity prices. As to *Jinan Yipin*, in that decision the Court stated that the 198 price points “correlate only to offer prices. As such, the number of “points of data” whether 198 or even 199,888 — says nothing whatsoever about how many (if any) sales of “A”- and “S.A.”-grade garlic were actually made during the two-and-one-half month period, or the prices actually paid in any such sales.”⁷³ In contrast, the DAM data consist of actual price data, gathered by a government agency as part of a country-wide survey, for whole, live *Pangasius* fish, and not merely price offers.⁷⁴

With regard to BAS’ total reported *Pangasius* production quantity as compared to Vietnam’s (or even Vinh Hoan’s individual usage amount of *Pangasius* fish), no one disputes that Vietnam is the global leader in *Pangasius* production. However, the comparison the Department is making is just how small a quantity is represented by the BAS data, belying how small the Philippine *Pangasius* industry is, as compared to even one respondent’s consumption

⁷² See *Laizhou Auto*, 32 Ct. Int’l Trade at 715-716.

⁷³ See *Jinan Yipin*, 80 F. Supp. 2d at 1251.

⁷⁴ See VASEP’s November 12, 2010, submission at Exhibits 7a-b.

of the fish input. Petitioners' draw attention to just how small a quantity the BAS data encompass by arguing that any other country's *Pangasius* industry would be small compared to Vietnam's. This simply underscores the point that it is important to rely instead on data from one of the few other countries (Bangladesh) that: 1) has an established *Pangasius* industry; 2) that produces *Pangasius* in commercial quantities; and 3) for which commodity price data are specifically collected on a regular basis.

Furthermore, the fact that the Philippines is one of the largest aquaculture producers is not responsive to the issue of whether the Philippine *Pangasius* production in the BAS data are broad-based. As to the newness and size of the Philippines *Pangasius* industry (and the letter from the Philippines Secretary of Agriculture), we note that Petitioners agree that the industry is nascent. However, Petitioners do not address the issue of how a nascent *Pangasius* industry would have similar economies of scale within the *Pangasius* industry to that of other well established and mature Philippine aquaculture industries. Petitioners' generalization does not take into consideration the differences in materials that may be used, the experience of the farmers/laborers in dealing with a new species, the idiosyncrasies of *Pangasius* farming, the large initial overhead associated with establishing any type of industry, and the experience salespeople have in trying to market and sell this comparatively new species. Thus, we need not even reach a comparison of the relative costs of producing *Pangasius* in the Philippines to Vietnam. Ultimately, the letter from the Philippines Secretary of Agriculture represents yet another indication that the BAS data for *Pangasius* are not reflective of a broad market average, because the underlying market they sampled was itself not broadly established.

With regard to the Department (in previous segments) using values associated with similar and, sometimes, smaller volumes, we do not dispute that observation. However, as noted

above on page 28, every case segment is distinct, and the available SV sources on the record are similarly distinct, just as they are here. In those segments, the Department relied on the particular source that represented the best available information, taking into consideration the SV selection criteria. Moreover, and as stated above, the Department has relied on sources without associated volume data. Therefore, just because a source (the BAS data in this instance) has a volume with similar or greater volumes to ones used previously does not automatically render it a superior or similar source without comparing it to the other SV sources on the same case record utilizing the SV selection criteria.

Regarding the BAS survey form/data collection, initially, we agree with Petitioner that the fact that *Pangasius* is one of the less significant species produced in the Philippines, is the reason that the BAS's form does not list it separately. In addition, because it is not on the survey form, and unlike the DAM data, it is not a species for which data are specifically obtained. Furthermore, lacking a listed species on the questionnaire form questions the systematic nature of the collection system, as there no assurances that *Pangasius* production information was specifically requested.

Regarding the BAS sample size, again, we are not claiming that the BAS' overall methodology is unsound, especially when applied to a mature, well-established industry. We do however note that there are gaps in the data that are not explained, especially given the methodology's reliance (in part) on the previous year's estimates, to calculate the current year's estimates. Furthermore, we are not confident that the estimated figures are reliable given these gaps, in addition to the very low response rate from the districts, even if the response rate were statistically valid. Additionally, nowhere did we state or imply that the BAS does not gather new data and simply inflates a previous year's. Rather, we highlighted that the Quarterly Aquaculture

Survey (“QAS”) methodology relied on the previous year’s estimated total production amounts to inflate the new sample amounts it gathers each year in order to then arrive at the new total production amount.⁷⁵ Petitioners refer to the very first equation in the section cited in footnote 81, but it does not pertain to the QAS, but rather to a different survey form, the Aquaculture Production Survey, which has not been referenced or discussed with respect to the BAS data; only the QAS have been referenced as being the source of the *Pangasius* prices in the BAS data. Lastly, while the same level of background information about the DAM data is not available, the Department cannot simply draw a negative inference about that fact, given that Bangladeshi officials have attested to its completeness and reliability.

3. Specificity (Level of Trade)

Petitioners’ Comments

- The Department cannot credibly claim that it does not prefer farm-gate prices given the farm-gate related language it used in previous determinations.
- The Department must rely on prices that are specific to respondents’ inputs, and farm-gate prices are superior to any wholesale prices.
- The Department improperly dismissed affidavits that contained evidence the DAM data do not reflect farm-gate prices.
- The BAS reported *Pangasius* fish prices from aquafarmers at the farm level, and these were actual, not calculated farm-gate prices.
- The Department unreasonably disregarded evidence in Affidavit 1 that the BAS report includes farm-gate prices.

⁷⁵ See Petitioners’ December 13, 2010, submission at Exhibit 8 (2.2.1.3.C Aquaculture Production: Estimation and/or Compilation Procedure).

- The farm-gate prices in the Philippines BAS data are not the same as wholesale prices, and the DAM data contain prices at a different level of trade than the BAS data.

Department’s Position: We disagree with Petitioners. As an initial matter, we highlight the fact that the process of constructing NV for a producer in an NME country using SVs is difficult and necessarily imprecise.⁷⁶ Moreover, while we strive to select the best SV possible, we must not necessarily duplicate the exact production experience of the NME producers at the expense of choosing an SV that most accurately represents the input in question.⁷⁷

As to Petitioners’ points, respectfully, the Department is in the best position to know what it meant with regard to the language about farm-gate prices in prior reviews. Petitioners rely on the Department’s use and placement of the conjunction “and” in the following sentence from the *AR5 Final*: “Furthermore, unlike the Pangas Thesis, the exact farm-gate price of *Pangasius* fish is directly stated in the FAO Report **and**, as noted above, is clearly tax and duty exclusive.” Petitioners interpret this to mean that both the fact that it was a farm-gate price, and tax and duty exclusive, informed our decision. Instead, we were pointing out that the *Pangasius* fish price in the FAO Report was directly stated, rather than having to be derived from various information contained therein, as was the case with the price from the Pangas Thesis. Petitioners also cite other general language where we have referenced fish farming and production.⁷⁸ Again, Petitioners have miscast the Department’s language to draw conclusions that are absent in the language itself. The Department made no statements about a preference for farm-gate prices (and again noted in the language quoted by Petitioners the importance of a price being exclusive of taxes and duties), and the references to *Pangasius* production and farming do not discuss farm-gate prices, but rather refer to the fact that such production and farming would be

⁷⁶ See *Nation Ford Chem. Co. v. United States*, 166 F.3d. 1373, 1377 (Fed. Cir. 1999).

⁷⁷ See *Nation Ford Chem. Co. v. United States*, 985 F. Supp. 133 (Ct. Int’l Trade 1997).

⁷⁸ See Petitioners’ comments on the Draft Results at 15-16.

indications that the *Pangasius* industry in a particular area (be it a region or country) was economically significant, and could thus be a source of quality SV data for the *Pangasius* fish input.

Petitioners have also stated that wholesale prices would be downstream prices (at a more advanced level of trade) and perhaps include markups in addition to transportation charges, or could perhaps be at a lower price level if the fish are not as fresh (or dead). However, such inferences as to the degree of freshness and to any possible price differentials between a “farm-gate” versus a “wholesale” price are based mostly on speculation instead of record evidence. The only record evidence showing that farm-gate prices during the POR might ever be higher to any meaningful degree is in Petitioners’ first affidavit from a single Bangladeshi *Pangasius* farmer, and the price lists accompanying the affidavit are not supported by any documentation.⁷⁹ The prices within the POR in the second affidavit from another Bangladeshi *Pangasius* farmer in fact overlap to a great extent with those in the DAM data (which are purportedly at a meaningfully different level of trade).⁸⁰ Other record evidence indicates that Bangladeshi farm-gate prices are either comparable to, or lower than, the prices in the DAM data.⁸¹

Additionally, our consideration of the affidavits submitted by Petitioners in the Draft Results was appropriate. The affidavits attempted to undermine the reliability of the DAM data for the purpose of surrogate valuation,⁸² and we instead opted to give greater weight to the statement on government letterhead from a Bangladeshi government official. Regardless,

⁷⁹ See Petitioners’ December 13, 2010, submission at Exhibit 14.

⁸⁰ *Id.* at Exhibit 15.

⁸¹ See VASEP’s January 7, 2011, case brief at 3 and Vinh Hoan’s January 7, 2011, case brief at 89.

⁸² As a side note, we observe that while Petitioners submitted these affidavits in an attempt to undermine the DAM data, they also undermine the reliability of the BAS data for surrogate valuation purposes. If they were to be relied upon, the production quantities from a mere two Bangladeshi *Pangasius* farmers for one calendar year dwarf the total *Pangasius* production amount for two full years in the BAS data. This point further highlights the fact that the *Pangasius* industry in the Philippines is not economically significant enough to produce price data that represent a broad market average, even if such price data were collected by a government agency using a statistically sound methodology.

drawing a summary conclusion, as Petitioners do, that the price information from only two farmers demonstrates that the DAM data contain unreliable prices at a meaningfully different level of trade is spurious and not well supported by the totality of the record evidence.

Moreover, in relation to another issue discussed below on pages 42-43, Petitioners assert that a difference of about \$0.01 per kilogram in the SV for the primary material input would have no meaningful effect on our margin calculations. Keeping in mind this point, the Department in the Draft Results showed that in this instance, the purported difference in the level of trade also did not result in a meaningful difference. As a proxy for the actual Bangladeshi distance between farms and wholesale markets, we used the distance from the fish farms where Respondents sourced their fish input to their processing facilities, along with the Bangladeshi freight SV, to point out that the transportation charges associated were miniscule.⁸³ A \$0.01 per kilogram difference⁸⁴ is in fact far greater than the miniscule amount of the transportation costs associated with the whole live fish input. In their comments, Petitioners aver that transportation charges are not the only difference between farm-gate and wholesale prices. While that may be true, they have failed to define or specify any others, and have also at the same time posited that farm-gate prices can be either higher or lower, so any other difference could be positive or negative, with transportation being the only constant difference. By dismissing a \$0.01 per kilogram difference as being immaterial, Petitioners are in fact also conceding that the potential difference in a price between the wholesale and farm-gate levels that can be approximated using record evidence is even more immaterial, as the available record evidence shows that it does not lead to any meaningful difference in the SV of the primary input, and by extension, the overall margin calculation.

⁸³ See pages 16-17 *supra* and the Draft Results BPI Memo.

⁸⁴ We note that SV for the *Pangasius* fish input is multiplied by each respondent's FOP usage rate, so the difference would be even greater than \$0.01 per kilogram.

Petitioners maintain that despite the evidence to the contrary outlined in the Draft Results, the BAS data include only original farm-gate prices because they use the QAS which is not part of the Farm Price Survey. Petitioners also claim that the various levels of price reporting noted by the Department can only pertain to other commodities, and not *Pangasius*. Petitioners are simply mistaken. The QAS falls within the purview of the Farm Price Survey,⁸⁵ whose methodology clearly includes a provision for netting out transportation costs, indicating that other price levels besides farm-gate can be collected.⁸⁶ We do not dispute what is stated in Affidavit 1 “The prices quoted by the aquafarm farmers/operators (or other respondents, as the case may be) are also referred to as first-point-of-sale-price or farm-gate price.”⁸⁷ This statement is not incongruous with our observation that the prices in the BAS data likely contain price information from sources beyond the farm-gate. Rather, a reasonable conclusion would be that the prices in the BAS data can be referred to as farm-gate prices because any prices that were not originally at the farm-gate level have been adjusted (per BAS methodology) to render them at a level equivalent to farm-gate.

Contrary to Petitioners’ assertion (relayed on pages 54-57 of their comments), we have not disregarded the evidence in Affidavit 1. In fact, in the very language about which Petitioners object, we stated that the BAS data possibly contain some value-added *Pangasius* fish products (stemming from Affidavit 2) and stated that we would no longer rely on that as part of our analysis.

⁸⁵ See Petitioners’ December 13, 2010, submission at Exhibit 8, specifically, Chapter 2 of the Philippines Department of Agriculture’s statistical framework titled “Major Domains and Selected Indicators of Agricultural Statistics,” 2.2.1 “Production,” 2.2.1.2 “Coverage, Availability, Data Resources and Responsible Agencies,” wherein the aquaculture production is identified as part of the farm prices survey (page 3 of 3, directly above the section titled “Macroeconomic Indicators”).

⁸⁶ See Petitioners’ December 13, 2010, submission at Exhibit 8 (2.2.4.3.A Estimation and/or Compilation Procedure: Provincial Farm Gate Price), where the equation for calculating a net provincial farm-gate price (*i.e.*, one which has freight charges and total transport costs subtracted out) is provided in the middle of the first page of this subsection.

⁸⁷ See Petitioners’ July 9, 2010, submission at Attachment 1

Lastly, Petitioners take issue with the Department's plain reading of various price definitions contained within the description of the BAS methodology. Petitioners attempt to downplay record evidence that they themselves submitted, and which inconveniently runs contrary to their line of reasoning. Our explanation and reasoning on pages 15-16 above need not be repeated again here. Additionally, Petitioners make an assertion that the DAM data only consist of wholesale selling prices, supported only by an affidavit from their Bangladeshi co-counsel. In contrast, DAM officials have stated that its personnel interact with and obtain price information from both aquafarmers and wholesale traders.⁸⁸

D. Other Whole Fish SV Considerations

1. Volatility

Petitioners' Comments

- The Department overlooked evidence of significant price volatility in the DAM data.
- As a matter of course, the Department should not be concerned with "volatility," as variations in price within an area over a year, or variations among areas, should not be surprising.
- The Department could opt to remove the alleged "volatile" data from the BAS data or simply use only the 2009 BAS data.

Department's Position: After further considering the issue subsequent to issuing the Draft Results and after reviewing parties' comments, we agree with Petitioners and find that volatility is not a revealing consideration with respect to the SV data on the record. Fluctuations in the prices within a given dataset, in and of themselves, are not something typically contemplated in NME antidumping duty cases.

⁸⁸ See VASEP's November 12, 2010, submission at Exhibit 7A.

2. Difference in Reported BAS Figures

Petitioners' Comments

- Regarding discrepancies between the BAS data and the Director's letter: 1) it is routine for a government to revise statistical data in official publications on continuing review; 2) the BAS data include *Pangasius* data for an additional province; and 3) the quantity and value difference is immaterial, as the average unit value differs by only 0.67 pesos per kilogram (about \$0.01 per kilogram) and would have no meaningful effect on the Department's calculations.

Department's Position: As part of the Draft Results, and consistent with the Court's remand order to revisit the issue of surrogate country selection, we carefully reviewed the available record information, and in the process, noted the aforementioned difference in the quantity and value totals in the BAS' 2008 data. In this instance a whole province, one of the very few reporting any *Pangasius* production data in 2008, was missing and not reported in the previous year's publication. Moreover, this was despite the fact that the BAS officials stated that the 2008 data were "complete and final," "the data contained in this schedule is final" and "these data sets are correct and official."⁸⁹ Nonetheless, Petitioners' explanation for the difference, that an additional province's data was added in the interim, and then included when the BAS data were published in official form later that same year, appears correct. Therefore, we no longer find the observed difference in the price between the data sources to be meaningful.

E. SVs for Fish Waste, Broken Meat, and Fish Skin

Vinh Hoan's Comments

- Our determination in the draft remand that the Vitarich price quotes represent the best information available for SV purposes was incorrect and not based on substantial evidence.

⁸⁹ See Petitioner's July 9, 2010, submission at Attachment 1.

Neither the quote itself nor the accompanying affidavit shows that the prices therein reflect an actual transaction, are tax-exclusive, or otherwise reliable.

- Vinh Hoan questions the supposedly superior specificity of the price quote, and also notes that our conclusion that seafood by-products are not generally internationally trade is belied by the fact that Vinh Hoan sold some its by-products for export during the POR.

Petitioners did not comment on this issue.

Department’s Position: As in the Draft Results, we continue to find that the Vitarich price quotes represent the best available information for valuing the three by-products at issue. Below we address the specific factual issues raised by Vinh Hoan.

The affidavit accompanying the price quotes explains that the price quotes were obtained as publicly available information pertaining to the production and sales of *Pangasius* fish in the Philippines.⁹⁰ The affidavit also details the sales terms,⁹¹ the party offering the price, and the manner in which the price quote was obtained.⁹² The affidavit also states that the price quotes were requested on an ex-factory and tax-exclusive basis.⁹³ We dispute Vinh Hoan’s arguments that the Vitarich price quote is unreliable because it is neither signed nor shows the name of the individual or company official who issued the quote. After all, the price quotes were on Vitarich’s company letterhead, and were accompanied by the business card of Imee U. Chun, the Sales and Marketing Director of Vitarich. Vinh Hoan’s questions regarding the timing of obtaining the price quotes (*i.e.*, several days after they were requested) are merely speculative and do not undercut the reliability of the prices quoted therein. As to Vinh Hoan’s contentions

⁹⁰ See Petitioners’ April 8, 2010, submission at Exhibit 16.

⁹¹ Vinh Hoan attempts to undermine the fact that the price quotes are on an ex-factory basis by noting that the term “pickup price” pertains to only those by-products identified as “waste.” However, the affidavit accompanying the quotes makes plain that all of the requested prices were on an ex-factory basis.

⁹² *Id.*

⁹³ *Id.*

regarding specificity, we note that the primary issue here is not to what species the by-product prices pertain to, but what by-products the prices actually represent. The alternative HTS category proffered by Vinh Hoan for fish waste, as noted above on page 18, pertains to the fish meat of marine fish, which is a broad category that upon further review would appear not even to pertain to fish waste, and given the fact that the record contains a much more specific alternative, would be an inappropriate selection. Similarly, the fish skin price quote from Vitarich is a far better match for the fish skin by-product than the Bangladeshi HTS category used in the *AR6 Final*, which pertained to “Flours, Meals and Pellets, of Fish or of Crustaceans.”⁹⁴

Additionally, Vinh Hoan tries to cast doubt as to whether the “trimmings” in the Vitarich price quote are the same as broken meat (claiming that trimmings are not defined on the record). In fact, Vinh Hoan itself defines broken meat as being a result of the trimming process, one of the production steps clearly identified in its production process.⁹⁵ Thus, trimmings are simply another term for broken meat. Lastly, Vinh Hoan rebuts the Department’s observation that seafood by-products are not generally internationally traded and thus not reflected in import statistics, noting that it sold several of its by-products internationally during the POR. We acknowledge that the record shows that Vinh Hoan sold some of its by-products to international customers. However, as conveyed in our observation about seafood by-products not being internationally traded, we noted that that was generally the case, and this was due to the difficulty in locating appropriate HTS categories in the surrogate countries that closely match respondents’ by-products in this and other antidumping proceedings. This is especially true of non- value-added by-products that have not undergone some degree of additional processing (*e.g.*, fish waste). In any event, that observation is not central to our overall conclusion here,

⁹⁴ See the Department’s March 14, 2011, final SV memorandum at 5.

⁹⁵ See Vinh Hoan’s January 6, 2010, Section D response at 28 and Exhibit 6.

which is that the Vitarich price quotes, for the reasons stated immediately above and on pages 18-20 *supra*, are the best choice for valuing the by-products at issue in this remand.

F. Alleged Subsidy in Gemini's Financial Statements

Petitioners' Comments

- The continued use of Gemini's financial statements in the ratio calculations is not supported by record evidence and is contrary to law.
- Record evidence must not perfectly tie to the relevant line item on Gemini's financial statement, but instead must only show that the Department has a reasonable basis to believe or suspect that Gemini may have received subsidies during the fiscal year.
- The Department should re-open the record to gather additional information to render a fully-informed decision.

Vinh Hoan's Comments

- The Department addressed this allegation with citation to record evidence and properly concluded that it could continue to use Gemini's financial statements.

Department's Position: We continue to find that Gemini's financial statement remains suitable to use, despite Petitioners' arguments to the contrary. First, we note that Petitioners have abandoned all lines of argument except for that pertaining to the Bangladesh Bank Circular. Furthermore, we find that mere mention of a subsidy in a financial statement, without further information as to the specific nature of the subsidy, is not enough for Commerce to exclude the statement under the "reason to believe or suspect" standard. Our analysis in the Draft Results contained a point-by-point analysis of the objections raised by Petitioners (*see* pages 20-21 *supra*), and found their evidence to be lacking. In sum, none of their evidence or arguments

reaches the standard expressed in the *Catfish Farmers 2009*⁹⁶ or *Clearon*⁹⁷ decisions. Moreover, we emphasize again that what evidence Petitioners did submit about the terms of the subsidy indicate that it ended before the POR.⁹⁸ In sum, Petitioners identified a subsidy but failed to submit substantiating evidence of countervailability in the underlying review.

G. Ministerial Error Allegations and Effect on Margins

No party commented on any item herein except for the classification of inventory changes in Fine Foods' financial statement, which is thus the only item that remains to be addressed for the final remand redetermination.

Petitioners' Comments

- The changes in inventory can only be either work-in-progress (affecting overhead, selling, general, and administrative expenses ("SG&A"), and profit) or finished goods (affecting SG&A and profit). By not making any adjustment, the Department significantly overstated the denominator in the financial ratio calculations. At a minimum, the Department should make an adjustment to the SG&A and profit denominators.

Vinh Hoan's Comments

- Vinh Hoan stated that it takes no position on the Department's analysis of the ministerial error allegations and the effect on margins.

Department's Position: After further review, we now find that the record information does contain the detail necessary to account for Fine Foods' changes in inventory in the financial ratio calculations. In Fine Foods' financial statement, the total inventory values identified as either related to fish or fingerlings in the Inventory section of Fine Foods financial statement tie to the inventories in the cost of goods sold. As the underlying record makes clear, Fine Foods both

⁹⁶ *Catfish Farmers of Am. v. United States*, 641 F. Supp. 2d 1362, 1379-80 (Ct. Int'l Trade 2009).

⁹⁷ *Clearon Corp. v. United States*, 800 F. Supp. 2d 1355, 1358-59 (Ct. Int'l Trade 2011).

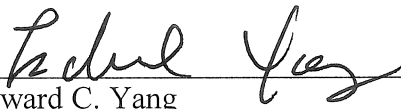
⁹⁸ See Petitioners' December 13, 2010, submission at Exhibit 26.

farms fish and engages in processing. Along with processed fillets, both fish and fingerlings can be sold in their own right as finished products. Therefore, we determine that the inventory changes presented in Fine Foods' financial statement should be considered as changes in the finished goods inventory and have revised the calculation of its financial ratios to reflect this.

VI. Conclusion

Pursuant to the Court's order, and based on the analysis of the four issues the Department was instructed to reconsider as well as interested parties' comments thereto, the Department has maintained its selection of Bangladesh as the primary country. Additionally, the Department has selected different SVs for the fish waste, broken meat, and fish skin by-products using information from the Vitarich price quote. Moreover, the Department has continued to use Gemini's financial statements to calculate the surrogate financial ratios because the record does not contain evidence to provide a reason to believe or suspect that it received a countervailable subsidy during the relevant financial period. Lastly, we have accounted for all calculation changes as a result of the original ministerial error allegations and have addressed the issues raised by the Court regarding Fine Foods' financial statements. As a result, there are calculation changes due to selecting different by-product SVs and making an adjustment for the inventory changes in Fine Foods' financial statements. As noted on page one *supra*, after accounting for all such changes and issues, the resulting antidumping margin for respondent Vinh Hoan is *\$0.06 per kilogram*. The margins for the voluntary respondent Vinh Quang and the new shipper review respondent CL-Fish did not change from the Draft Results and remain *de minimis*. Because Vinh Hoan's margin is now above *de minimis*, it would also become the margin for those

companies not individually examined but receiving a separate rate in the event the Court sustains these final remand results.



Edward C. Yang
Director, Office VII
Antidumping and Countervailing Duty Operations

1/17/2014
Date

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