

Final Results of Redetermination Pursuant to *Catfish Farmers of America et al. v. United States*, Consol. Court No. 12-00087, Slip Op. 14-146, (December 18, 2014)

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 No. 12-00087, Slip Op. 14-146 (CIT December 18, 2014) (“Remand Opinion and Order”). This remand redetermination addresses several issues in the seventh administrative review of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam (“Vietnam”).¹ The Court remanded the Department’s decision in the *AR7 Final* for further explanation and consideration.

In accordance with the Remand Opinion and Order, the Department reconsidered: 1) the significance of presumed qualifiable differences between farm-gate and wholesale prices with respect to whole live fish; 2) the reliability of the Bangladeshi Department of Agricultural Marketing (“DAM”) data with respect to whole live fish; 3) the fact that there are no quantities associated with the DAM data; 4) surrogate country selection in light of the totality of the available data, *i.e.*, including the non-fish factors of production (“FOPs”) surrogate values (“SVs”) following reconsideration of the whole live fish issues; and 5) the selection of the SVs for fish waste, fish oil, fresh broken meat and frozen broken fillets.

¹ See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results and Partial Rescission of the Seventh Antidumping Duty Administrative Review*, 77 FR 15039 (March 14, 2012), and accompanying Issues and Decision Memorandum (“*AR7 Final*”).

As described below, and after further evaluating the record evidence, the Department continues to determine that Bangladesh is the best option for the primary surrogate country. The Department also determines to select different SVs for fish waste, fresh broken meat, and frozen broken fillets. Additionally, for the fish oil SV, the Department will use the same SV as used in the *AR7 Final*, but will cap the price at the calculated value of the FOPs and surrogate financial ratios.²

Lastly, the Department addresses the issues raised by the Court, and accounts for all of the changes in the margin calculations pursuant to this remand redetermination and, in so doing, makes changes to the antidumping margins.

II. Analysis

A. Surrogate Country Selection

The CIT remanded certain issues regarding surrogate country selection to the Department.³ We observe that the Court's Remand Opinion and Order regarding our selection of a surrogate country does not specifically question our findings with regard to the other sources⁴ on the record,⁵ but centers on further explaining certain issues pertaining to the Bangladeshi DAM data that the Department used in the *AR7 Final*. Furthermore, our underlying determinations in the *AR7 Final* with respect to whether the three countries at issue (Bangladesh, the Philippines and Indonesia) are economically comparable and are significant producers of comparable merchandise⁶ are not at issue in this proceeding.⁷

² *Id.*, at Comment VII.B.

³ See Remand Opinion and Order at 8-18.

⁴ The other two sources are the U.N. Food and Agricultural Organization ("FAO") Fisheries Global Information System ("FIGIS") data for Indonesia and the Philippine Bureau of Aquaculture Statistics ("BAS") data.

⁵ See Remand Opinion and Order at 11-14.

⁶ See *AR7 Final*, and accompanying Issues and Decision Memorandum at Comments I.A. and I.B.

⁷ See, generally, Remand Opinion and Order.

With respect to the SV for the whole fish FOP, we continue to consider three sources of information for valuing the whole fish SV, which were issued by two governments and a well-respected international organization, and which represent the official statements of those entities as to the price of whole live fish relevant to our surrogate country selection. Section 773(c)(1) of the Tariff Act of 1930, as amended (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 period of review (“POR”); 3) representative of a broad market average; 4) chosen from an approved surrogate country; 5) 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

As an initial matter and for purposes of this remand, we note that the Department continues to find, and the Court did not reject, that all three sources¹¹ are publicly available,

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* at Comment 1.

¹¹ Bangladeshi DAM website data, Philippine BAS data, and FAO FIGIS data for Indonesia.

contemporaneous with the POR, from an approved surrogate country, and tax- and duty-exclusive.¹² Thus, these four SV criteria are not in dispute.

1. Specificity/Farm-Gate vs. Wholesale Prices

In the context of this remand redetermination, the specificity of the species of whole, live fish in the data sources is not at issue. Instead, the Court, in the Remand Opinion and Order, states that the Department should provide further explanation to address Petitioners’¹³ concerns, namely that *qualifiable* distinctions should be presumed, *e.g.*, the condition of fish at wholesale (DAM data) versus farm-gate (BAS data), and not necessarily *quantifiable* differences (*i.e.*, differences in the prices of farm-gate vs. wholesale fish), in order to mirror more closely the respondents’ actual production experience and avoid introducing pricing distortions at the wholesale level, whether or not there is actual record evidence of *qualifiable* distinctions.¹⁴ In responding to Petitioners’ concerns on this issue as required by the Remand Opinion and Order, we first find that there are no established definitions for how the terms “farm-gate” and “wholesale” are used across different countries nor within the seafood industry generally, such that it is not possible to draw any meaningful conclusions from their significance in reference to various price data for whole, live fish. Furthermore, it is unclear which of these terms most closely matches the terms on which respondents make their purchases. For instance, whole fish purchase prices for Vinh Hoan Corporation (“Vinh Hoan”) are based on the condition of the fish

[

¹² *See, generally*, Remand Opinion and Order.

¹³ Catfish Farmers of America and the following individual U.S. catfish processors: America’s Catch, Consolidated Catfish Companies, LLC dba Country Select Catfish, Delta Pride Catfish, Inc., Harvest Select Catfish, Inc., Heartland Catfish Company, Pride of the Pond, and Simmons Farm Raised Catfish, Inc. (collectively, “Petitioners”).

¹⁴ *See* Remand Opinion and Order at 15-16.

].¹⁵ Thus, one could reasonably posit that Vinh Hoan’s purchases represent [] at the [], rather than []. QVD Food Company Ltd. (“QVD”), on the other hand, designates its purchase terms as [],¹⁶ and thus its purchase terms appear congruent with the term “farm-gate.” Thus, record evidence does not support Petitioners’ notion that farm-gate prices are a better match across the board to respondents’ purchasing patterns. Furthermore, the available record evidence does not indicate that a “farm-gate” versus “wholesale” distinction is a meaningful characteristic.

Second, the very nature of the product at issue and its production process serves to limit qualifiable distinctions between the condition of the fish sold at the farm-gate versus wholesale level because whole live fish are a perishable commodity. Whole live fish cannot be stored without incurring costs that would make storage economically infeasible. Once the fish are put into boats or trucks, they need to be transported in very short order to the processing facility. For both Vinh Hoan and QVD, and despite the fact that they have different purchase terms, any fish that die during transport or appear sluggish upon arrival to the processing plant cannot be used in the fillet production process, and their fish suppliers are not paid for any such fish.¹⁷ The remaining fish are immediately processed into fillets and frozen upon receipt by the processor. In other words, there is no meaningful difference in the condition of the fish, despite Vinh Hoan and QVD having different purchase terms.

Third, even if we were to find that the distinction between farm-gate and wholesale prices is an important consideration in determining the appropriate source of data, the record in the

¹⁵ See Vinh Hoan’s February 22, 2011, Section D response at Exhibit 9, Vinh Hoan’s May 6, 2011, supplemental Section D response at Exhibits 5 and 10, and Vinh Hoan’s July 13, 2011, second supplemental Section D response at 5.

¹⁶ See QVD’s February 25, 2011, Section D response at Exhibit 8.

¹⁷ See Vinh Hoan’s July 13, 2011, second supplemental Section D response at 5; see also QVD’s February 25, 2011, Section D response at 15.

underlying review simply does not contain the level of detail necessary to conclude whether any such distinctions would override the other criteria in the SV selection process favoring Bangladeshi DAM data over the other available data for whole live fish. As part of selecting the best SV possible, we do not duplicate the exact production experience of the NME producers at the expense of choosing an SV that most accurately represents the input in question.¹⁸

Thus, nothing in the record indicates a more accurate result would be achieved in this case by using prices identified as farm-gate (BAS data) instead of those which are wholesale (DAM data). Given all of the above, we do not agree with Petitioners' argument that there are presumed qualifiable differences that must be taken into account as a consideration in evaluating the data quality of competing SV data sources. Even assuming that Petitioners are correct that there are qualifiable differences in fish condition between the farm-gate and wholesale levels, there are many other factors that support, in the context of this segment of the proceeding, the Department's finding that the Bangladeshi DAM data are preferable to the Philippine BAS data. In sum, even assuming that qualifiable distinctions between fish sold at the farm-gate and wholesale levels of trade exist, the impact of any such distinctions is unclear based upon the underlying record because: 1) respondents' purchasing experiences differ; 2) any presumed difference between fish purchases at the farm-gate versus wholesale level would be minimized due to the nature of the product and its production process; and 3) the underlying record lacks the detail necessary to evaluate what the importance of any such consideration would be. Thus, for purposes of this remand, we find that any presumed qualifiable distinctions between whole, live

¹⁸ See *Nation Ford Chem. Co. v. United States*, 985 F. Supp. 133, 137 (Ct. Int'l Trade 1997) ("a surrogate value must be as representative of the situation in the NME country as is feasible...That does not mean, however, that Commerce must duplicate the exact production experience of the {NME} manufacturers at the expense of choosing a surrogate value that most accurately represents the fair market value of {the input}...").

fish sold at the farm-gate versus wholesale level has no bearing on our ultimate SV and surrogate country determinations.

2. Broad Market Average/Reliability

With regard to broad market average, we note that the Court did not specifically question our findings with respect to the BAS or FIGIS data, but rather asked us to further explain our findings with respect to the DAM data. Specifically, the Court questioned several of our findings and required responses on the following items: 1) the DAM data's reliability in light of the not insignificant percentage of data mismatches between the worksheets and the website; 2) the DAM's non-responsiveness to our requests for information thereto in determining the reliability of the DAM website data; and 3) whether the DAM data represent commercial quantities.¹⁹ Below, we discuss these issues.

With regard to the DAM's non-responsiveness to our requests for information in determining the reliability of the DAM website data, we first note that the questions we sent to the DAM were with respect to the worksheet data²⁰ and not the website information used in the *AR7 Final*.²¹ We sent questions to the DAM to ascertain the public availability of the worksheets, amongst other items.²² Even though the DAM did not respond to our requests for information with regard to the worksheets, after the preliminary results, respondents submitted publicly available website weekly wholesale price information.²³ Thus, our concerns regarding the public availability of the worksheets became moot with this new, unquestionably public

¹⁹ See Remand Opinion and Order at 11-14.

²⁰ See Letter to Fahmida Akhter, Deputy Director Department of Department of Agricultural Marketing from Matthew Renkey, Acting Program Manager: Questions for the Bangladeshi Department of Agricultural Marketing Regarding National Wholesale Price Data, dated June 23, 2011.

²¹ See VASEP submission dated December 22, 2011.

²² See *AR7 Final* at Comment 1.C. "DAM Data;" see also *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results and Partial Rescission of the Seventh Antidumping Duty Administrative Review*, 76 FR 55872 (September 9, 2011) ("*AR7 Prelim*") at 55876-7.

²³ See VASEP December 22, 2011, submission.

information. Moreover, as we did not have public availability concerns regarding this new website information, we did not consider it necessary to ask the DAM to reconcile the website data that we used in the *AR7 Final* to the worksheets whose public availability was uncertain.

With regard to the data mismatches between the worksheet data and the website data, in the *AR7 Final*, we stated that we had concerns about the public availability of the worksheets. Thus, we are not according weight to them as we now have on the record publicly available prices from the DAM website. Because we do not accord weight to the worksheets, differences between the worksheet data and the website are not informative. However, given the Court's Remand Opinion and Order, even if the Department were to accord some weight to the worksheets, in its evaluation of the data discrepancies for the POR, the Department notes that: 1) where both the worksheets and the website had corresponding data points, the data between them are exactly the same in 71.5 percent of the data cells; 2) the data for all months (five) for Mymensing, the largest *Pangasius*-producing district, match 100 percent; and 3) in the cells that do not have matching data, the discrepancy on average is about 3 percent, meaning that there is no meaningful difference when taken together as a whole.²⁴

Regarding whether the DAM data represent commercial quantities, we note that the DAM data demonstrated a certain decrease in coverage, particularly during the latter portion of the POR. However, 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 for this POR, taken together, these factors demonstrate that the DAM data do not represent insignificant quantities, but rather, indicate commercial quantities in this POR. Moreover, other information

²⁴ See Analysis of the DAM Data for the Draft Results of Redetermination, dated concurrently with these draft results.

on the record demonstrates that the *Pangasius* industry was significant (124,760 MTs)²⁵ in and around the POR (discussed, *infra*), a quantity sufficient to meet any respondent's production requirements. 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 drawn from the same source to provide useful, reliable, government-generated information. The lack of direct linkage is not surprising as the Government of Bangladesh collected the data 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 for this POR, and thus a broad market average, unlike the BAS data, is supported by the record.

The POR DAM data, taken together, represent national-level governmental-price monitoring and reporting, covering numerous commodities for the POR, one of which was the specific *Pangasius* fish species at issue. Moreover, Bangladeshi *Pangasius* production represents 10.94 percent of total national aquaculture production (fifth largest overall among all products).²⁶ Lastly, information on the record indicates that the *Pangasius* industry has been well established in Bangladesh since at least 1998.²⁷ Given the totality of the above evidence, the Department continues to find that the DAM data are reliable, and representative of a broad market average of a mature *Pangasius* industry.

Finally, while we typically rely on data that contain volume and value information, we note that in other cases, we have relied on sources for major inputs that do not contain specific volume or value data used to generate the prices. For example, in *Hangers* and *Nails*, where wire rod was the main input used to produce the subject merchandise (steel wire garment hangers

²⁵ See VASEP's November 15, 2011, submission at Exhibit 5D (Table 18).

²⁶ *Id.*

²⁷ See VASEP's May 10, 2011, submission at Exhibit 21.

and steel nails), the Department relied on a source that did not contain volume data.²⁸ Both of these cases, in turn, cited to other cases involving similar fact patterns, *e.g.*, one relied on a publication the Department uses in cases involving chemical inputs and another involved frozen shrimp where the SV for the main input, raw shrimp, is derived from a source without quantity data.²⁹ In other words, all other factors being equal, we found these data sources to be the best available information with which to value the major inputs, even in the absence of volume information. In the instant case, and 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 *Pangasius* species at issue, and are collected by a government agency and maintained on a regular basis.

3. Totality of the Available Information/Contribution of Different FOPs to the Margin Calculation

As stated in the underlying administrative review, the SV for whole fish represents a predominant share of the cost of manufacturing (“COM”) and normal value (“NV”), and is therefore a critical element in the selection of the primary surrogate country.³⁰ 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

²⁸ 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, (“*Nails*”) at Comment 10; 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, (“*Hangers*”) at Comment 4.

²⁹ See *Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People’s Republic of China*, 72 FR 9508 (March 2, 2007) and accompanying Issues and Decision Memorandum, at Comment 18; see also *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review*, 72 FR 52052 (September 12, 2007) and accompanying Issues and Decision Memorandum, at Comment 1.

³⁰ See the memorandum “Business Proprietary Information Referenced in the Draft Remand,” dated concurrently with these draft remand results (“BPI Memo”), for the precise percentages of COM and NV accounted for by the whole fish input.

FOPs, the surrogate financial ratios are generally a more important component of the margin calculation.³¹

For the reasons explained in the *AR7 Final* (and not in dispute here), the Department generally prefers to average multiple usable financial statements where available, and Bangladesh and the Philippines have three usable financial statements, as opposed to none for Indonesia. In addition, as none of the companies on the record is a producer of identical merchandise, we find it more reasonable to find that the companies whose financial statements are usable, are producers of comparable merchandise with similar production processes. Thus, while the SV data for some secondary FOPs are more contemporaneous in the Philippines and Indonesia than the corresponding Bangladeshi data, we do not place significant weight on that fact when rendering our overall decision on the surrogate country, particularly 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, overall, contribute minimally to the overall NV in this POR.³²

4. Surrogate Country Conclusion

We reconsidered our surrogate country determination in accordance with the Court's Remand Opinion and Order, and, in doing so, demonstrate that the best source for valuing the whole fish input remains the determining factor of surrogate country selection in this POR. We also demonstrate, based on record evidence in the *AR7 Final* and in this redetermination, 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. Moreover, we also

³¹ *Id.*

³² *Id.* (showing low percentage of COM and NV accounted for by all of the combined secondary FOPs.)

show that a meaningful distinction regarding farm-gate and wholesale prices cannot be made between the BAS data and the DAM data based on record evidence. Even assuming that there are qualifiable differences regarding farm-gate and wholesale prices, the DAM data's superiority in terms of the broad market average criterion and specificity would still outweigh any consideration made for qualifiable differences. Based on all of the above, we find that the record supports selecting Bangladesh as the primary surrogate country because its SV data for the whole fish input represent the best selection among the competing options.

C. SVs for Fish Waste, Fresh Broken Meat, Fish Oil, and Frozen Broken Fillets

The Court questions several of our findings with respect to the by-product SVs we selected in the underlying *AR7 Final* and remands for further explanation and/or reconsideration our valuation of the fish waste, fresh broken meat, fish oil, and frozen broken fillet by-products.³³ As explained in further detail below, on remand, we select different SVs for three of the four by-products; for fish oil, we continue to use the same SV source, but as we discuss below, are capping the SV.

1. Fish Waste

In the underlying review, we valued this by-product using Indonesian GTA data for HTS 0511.91.90.00 "Animal Products Nesoi; Dead Animals (Of Ch. 3), Unfit For Human Consumption, Other Products Of Fish Or Crustaceans, Molluscs Or Other Aquatic Invertebrates."³⁴ In revisiting the valuation of this by-product, we find that this HTS category lacks specificity to the actual fish waste produced by respondents. After reviewing the information on the record, we find that fish waste products generally are not internationally traded commodities which would be reflected in import statistics. In other aquaculture cases, for

³³ See *Opinion and Order* at 18-28.

³⁴ See *Issues and Decision Memorandum* at 20.

example, in *Vietnam Shrimp 5th AR*,³⁵ the Department consistently has valued the waste product using an Indonesian price quote. As a result, we find specificity to be the most important factor in valuing this by-product. Valuing fish waste using import statistics illogically results in a fish waste SV which is a significant percentage of the whole fish value. Consequently, the use of import statistics to value fish waste would distort the NV calculation.

In contrast, the Vitarich Philippine price quote is for *Pangasius* fish waste products that includes head and belly waste, fat and intestines, bone and tails waste, and skin and trimmings.³⁶ This is specific to the fish waste by-products reported by the respondents. The Vitarich quote is also from April 2010, and is thus contemporaneous with the POR.³⁷

Moreover, the Vitarich price quote satisfies the Department's criteria of whether the SV data is publicly available, includes terms of payment, and is tax and duty exclusive. 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. The affidavit accompanying the price quote explains that the price quote was obtained as publically available information pertaining to the production and sales of *Pangasius* fish in the Philippines.³⁸ The affidavit also details the payment terms, the party offering the price, and the manner in which the price quote was obtained.³⁹ The affidavit also states that the price quotes were requested on an ex-factory and tax- and duty-exclusive basis.⁴⁰ The other price quotes on

³⁵ 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 (September 12, 2011).

³⁶ See Petitioners' May 10, 2011, SV submission at Exhibit 16.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

the record are either not contemporaneous or from countries that are not economically comparable to Vietnam.

2. Fresh Broken Meat

In the underlying review, we valued this by-product using Indonesian GTA data for HTS 0304.19.00.00 “Fish Fillets And Other Fish Meat (Whether Or Not Minced), Fresh, Chilled Or Frozen, Fresh Or Chilled, Other.”⁴¹ As the Court notes in the Remand Opinion and Order, “[t]hose data produced a value of \$2.89/kg value for the broken fillets. But, because ‘{b}roken fillets are not value added by-products, they are simply meat from the fish that is broken or torn,’ Commerce ‘capped’ the fresh broken fillets at the value for whole live fish of \$0.98/kg, reasoning that it is illogical to generate a deduction from normal value that is higher than the value of the whole live fish input.”⁴²

Our analytical framework closely mirrors that expressed above for the fish waste by-product. Upon further consideration, Indonesian HTS 0304.19.00.00 is not specific to the fresh broken meat by-product reported by the respondents because this category includes whole unbroken fresh fish fillets.⁴³ In contrast, the price quote from the Philippine producer Vitarich is more specific because it covers the exact by-product of fresh broken fillets produced by the respondents.⁴⁴ Additionally, and as we note above, the Vitarich price quote satisfies the Department’s criteria of whether the SV data is publicly available, contemporaneous, includes terms of payment, and is tax and duty exclusive.

⁴¹ See *Issues and Decision Memorandum* at 20.

⁴² See Remand Opinion and Order at 26, quoting *Issues and Decision Memorandum* at 20.

⁴³ See Vinh Hoan, *et al.*’s November 15, 2011, SV submission at Exhibit 8.

⁴⁴ See Vinh Hoan’s February 22, 2011, Section D Response at 37; see also QVD’s February 25, 2011, Section D Response at Exhibit 6.

3. Fish Oil

In the underlying review, we valued this by-product using Indonesian GTA data for HTS 1504.20.90.00 “Fish Fats & Oils & Their Fractions Exc Liver, Refined Or Not, Not Chemically Mod, Solid Fractions, Not Chemically Modified, Other.” After reviewing the price quote proffered by Petitioners from the Indonesian supplier, Yahdi, we determine that it is not a reliable source for valuing fish oil.⁴⁵ The Yahdi price quote is from Agromaret, which appears to be an online agricultural commodities search engine site, instead of an official price quote issued directly by the company with a signed affidavit. No record information indicates how this price is sourced, constructed or whether it reflects a market price. Moreover, the Yahdi price quote is not contemporaneous with the POR unlike other data for this input.

We continue to find the above HTS category to be an appropriate match for the fish oil by-product produced by Vinh Hoan. However, in order to address the Court’s concerns about possible overvaluation of this by-product,⁴⁶ we will cap the price of HTS 1504.20.9000 at the calculated value of the FOPs and ratios used by Vinh Hoan to make fish oil, *i.e.*, fish waste, labor and energy, plus surrogate ratios, to ensure that it is a fully-loaded fish oil value.

4. Frozen Broken Fillets

In the underlying review, we valued this by-product using Indonesian GTA data for HTS 0304.29.00.00 “Fish Fillets And Other Fish Meat (Whether Or Not Minced), Fresh, Chilled Or Frozen, Fresh Or Chilled, Frozen Fillets, Other.”⁴⁷ Upon remand, we find that this category is not specific to the respondents’ by-product of frozen broken fillets because it includes unbroken whole frozen fish fillets.⁴⁸ Indonesia GTA data under subheading HTS 0304.99.0000 “Other

⁴⁵ See Petitioners’ December 9, 2011, Rebuttal SV submission at Exhibit 1.

⁴⁶ See Remand Opinion and Order at 25-26.

⁴⁷ See *Issues and Decision Memorandum* at 20.

⁴⁸ See Vinh Hoan, *et al.*’s November 15, 2011, SV submission at Exhibit 9.

Fish Meat (Whether Or Not Minced) Frozen” is more specific because it includes all frozen fish meat products of other types and is more representative of the frozen broken fillet by-product input reported by the respondents. Moreover, as stated above, the Department regards GTA data as representative of broad market averages, publicly available, and free of taxes and duties.⁴⁹ Therefore, we will value frozen broken fillets with Indonesian HTS 0304.99.0000 for these draft remand results. We note that while the Vitarich quote is appropriate to value *fresh* broken meat, it is not appropriate to use as a value for a frozen, value-added by-product because the affidavit accompanying the price quote states that the by-products therein are unprocessed.

III. Comments from Interested Parties

The Department released its Draft Results on April 24, 2015. Interested parties submitted comments on May 8, 2015.

A. Farm-gate vs. Wholesale Prices for the SV of the Fish Input

Petitioners

- Contrary to the Department’s assertion, the record provides clear delineations between the terms “farm-gate” and “wholesale.”
- Petitioners argue that because the DAM separately identifies price data at the grower (*i.e.*, farm-gate) level and wholesale level, this is evidence of a clear distinction that is significant and understood in the aquaculture industry.
- The record clearly establishes that Respondents purchased fish directly from aquaculture farms during the POR.
- The DAM data are not specific to the input because they include values for dead and sluggish fish, which cannot be used in fillet production.

⁴⁹ See, e.g., *Mushrooms*, 77 FR 55808 and accompanying Issues and Decision Memorandum at Comment 3.

- The Department has previously gone to great lengths to note the difference between farm-gate and wholesale prices, and has preferred the former.

Vinh Hoan

- In the Draft Results, the Department examined the issue of specificity, and the importance of farm-gate vs. wholesale prices, as directed by the Court, and continued to find that Bangladesh was the best choice as surrogate country.

Department’s Position:

We continue to find that, even allowing for the presumption that there are qualifiable distinctions between fish sold at the farm-gate and wholesale levels of trade, the impact of any such distinctions is unclear and would, in fact, not be determinative in our selection of the SV for the whole, live *Pangasius* fish input (the SV for which greatly informs our surrogate country selection).

Petitioners first dispute our finding that “. . . there are no established definitions for how the terms “farm-gate” and “wholesale” are used across different countries nor within the seafood industry generally, such that it is not possible to draw any meaningful conclusions from their significance in reference to various price data for whole, live fish.”⁵⁰ Petitioners, citing to record information, contend that “farm-gate” and “wholesale” are common commercial terms that have distinct, well-defined meanings across countries.⁵¹ We do not disagree that both the BAS and DAM have provided definitions for these two terms. Nonetheless, our key finding in the Draft Results was that such definitions do not further inform our SV analysis.

⁵⁰ See Draft Results at 4.

⁵¹ See Petitioners’ Comments on the Draft Results at 4.

Petitioners contend that information from the DAM supports their point:

the. . . ‘Department of Agricultural Marketing (‘DAM’) stated that ‘farm-gate’ refers to “prices of pangas at the grower ... level,’ whereas wholesale prices reflect prices from ‘wholesale markets.’ Furthermore, the fact that the DAM specifically stated that it ‘does not typically collect prices of pangas at the grower (farm-gate) level,’ but instead collects wholesale pangas prices, shows that there are clear distinctions between ‘farm-gate’ and ‘wholesale’ prices that are significant and understood in the aquaculture industry. {citations omitted}⁵²

Petitioners’ argument relies on an affidavit from their Bangladeshi co-counsel procured for the specific purpose of being used in an antidumping duty proceeding, and which recounts a conversation he had with two senior DAM officials.⁵³ Elsewhere on the record, DAM officials have directly stated that the DAM collects its data from aquafarmers, wholesale traders, and by market enquiry.⁵⁴ We do not dispute that the DAM recognizes that there are grower (*i.e.* farm-gate) prices, as well as wholesale prices. While the fact that the DAM distinguishes between the two terms is clear, Petitioners’ speculation that this is because there are significant price differences between the two is not supported by the record. What is clear from the record is that the DAM regularly monitors both wholesale and retail prices,⁵⁵ while only sporadically collecting grower prices.⁵⁶ Thus, the DAM sees enough of a difference between wholesale and retail prices to gather such data on a regular basis. The fact that it does not regularly collect grower price data could very well mean, contrary to Petitioners’ claim, that it does not see a meaningful distinction between grower and wholesale prices.

Furthermore, we do not dispute with Petitioners that Respondents *procure* their fish input directly from fish farms; rather, we dispute Petitioners’ contention that prices labeled as being at the farm-gate level, and thus exclusive of any additional transport costs, are comprehensively

⁵² See Petitioners’ Comments on the Draft Results at 4.

⁵³ See Petitioners’ July 25, 2011, Rebuttal SV Information Submission at Exhibit I.

⁵⁴ See VASEP’s May 10, 2011, submission at Exhibits 13A, 13B, and 13C.

⁵⁵ See VASEP’s December 22, 2011, submission at Exhibits 2-12.

⁵⁶ *Id.*, at Exhibit 1.

superior to other SV data. We demonstrated in the Draft Results that Respondents' *purchase* terms can vary, such that one Respondent's purchase terms were "delivered" (*i.e.*, represented a price not directly from the farm-gate).⁵⁷

Petitioners further argue that the DAM data contain prices for dead *Pangasius* fish, which would not be appropriate to value a whole, live fish input.⁵⁸ As discussed above, the sole piece of record evidence that the DAM wholesale price data do not represent prices of whole, live fish is an affidavit from Petitioners' Bangladeshi co-counsel, recounting a conversation he had with two senior DAM officials.⁵⁹ In contrast, a letter directly from a DAM official and on official letterhead indicates that these data are for whole, live fish.⁶⁰ Even according weight to the affidavit submitted by Petitioners, we are left with conflicting evidence on the record. We determine that the letter from a Bangladeshi official, appearing on official letterhead and given as part of performing in her official capacity, is more reliable than an affidavit procured for the specific purpose of being used in an antidumping duty proceeding.

Lastly, Petitioners contend that in prior reviews, the Department considered the farm-gate versus wholesale distinction to be a key point.⁶¹ The Department has previously explained that such a distinction, in and of itself, does not inform our selection of the best available information to value to the whole, live *Pangasius* fish input.⁶² Were there a qualitative distinction between the prices of the fish input at the farm-gate and wholesale levels that was supported by substantial record evidence, the Department would then take that into consideration when

⁵⁷ See Draft Results at 4-5.

⁵⁸ See Petitioners' Comments on the Draft Results at 7-9.

⁵⁹ See Petitioners' July 25, 2011, Rebuttal SV Information Submission at Exhibit I.

⁶⁰ See VASEP's May 10, 2011, submission at Exhibit 13B.

⁶¹ See Petitioners' Comments on the Draft Results at 4-5.

⁶² See 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) at 36-40, available online at <http://enforcement.trade.gov/remands/13-63&64.pdf>.

selecting the appropriate SV. As explained herein, the record of this administrative review does not occasion such a consideration.

B. Reliability of the DAM Data

1. Request for Information Regarding the DAM Data

Petitioners

- The Department has not addressed the fact that its two inquiries related not only to the public availability of the data, but also to other factors. In addition, the individual questions in the inquiries were broadly worded to relate to the DAM's data collection process and, so, were not limited to the DAM's internal worksheet prices.
- Had the DAM relied on its internal worksheets to derive the wholesale prices published online, then the absence of explanations regarding the manner in which the DAM collected and analyzed the *Pangasius* prices listed in its worksheets must necessarily be imputed to the DAM's website prices.

Department's Position:

With regard to the questions we sent to the DAM, we agree with Petitioners that the questions we asked did not only pertain to public availability. However, a significant reason for sending our requests for information was to ascertain the public availability of the worksheets.⁶³ Moreover, the primary reason we did not use the DAM worksheets is because we found them to be not publicly available:

In the *Preliminary Results*, we found that such serious concern existed as to the public availability of the DAM data printouts on the record that we concluded such data were not in fact publicly available. As a result, we did not further consider the DAM data printouts for use in the *Preliminary Results*. The primary reason for this concern was that DAM did not respond to the Department's repeated requests for information regarding how the DAM data is made available to the public... After evaluating the record, we do not consider that our concern

⁶³ See *Preliminary Results* at 55876.

on the public availability of the Bangladeshi DAM data printouts has been satisfactorily resolved.⁶⁴

Although we did ask DAM other questions, these were secondary/informative in purpose and did not then and do not now form the basis for our reasoning in rejecting the DAM worksheets.⁶⁵

With regard to the questions being broadly worded, we disagree that the questions were so broadly worded as to also pertain to the DAM website data we used in the *Final Results*. This is because in our request for information we state that certain DAM data was placed on the record, “See Attachment,” and that we have questions relating to this data.⁶⁶ Furthermore, we stated that “We are interested in the National Wholesale Price Data,” which is the title in the headers of the worksheets. These attachments did not contain any wholesale price data as found on DAM’s website. In addition, as explained herein, after the preliminary results, respondents submitted publicly available website weekly wholesale price information; thus, our concerns regarding the public availability of the worksheets became moot with this new, unquestionably public information. Moreover, as we did not have public availability concerns regarding this new website information, we neither found it necessary to ask the DAM to reconcile the website wholesale price data to the worksheets, nor to issue them a third request for information regarding those secondary/informative questions.

Finally, we note that the questions we asked in our request for information could not have applied to the DAM wholesale price data as this data was placed on the record three months after our last request for information.

⁶⁴ See *Final Results* at Comment I.C.

⁶⁵ *Id.*

⁶⁶ See Letters to the DAM dated June 23, 2011, and September 13, 2011.

2. Difference between the DAM Website Data and DAM Worksheets

Petitioners

- The Department has not undertaken a thorough examination of the magnitude of the discrepancies between the DAM worksheet and website data as instructed by the Court.
- The Department did not explain how focusing only on instances where the website data matched the worksheets (while ignoring the substantial number of discrepancies) could reasonably lead to the conclusion that the website data are reliable.
- The Department has no basis to conclude that the DAM website prices are corroborated by the DAM's worksheets. For example, the Department has not addressed the magnitude of the three types of discrepancies: 1) the number of website observations not in the worksheets; 2) the number of worksheet observations not in the website data; and 3) prices where prices are listed in both sources, but that have different values.
- The significant number of discrepancies between the DAM website and worksheet prices undermined the Department's reliability determination with respect to the DAM website data.

Department's Position:

With regard to the types of discrepancies and magnitude therein, we agree with Petitioners that they exist. However, to the extent that we have explained these differences, and because the DAM is not a respondent, we cannot resolve the differences based on the information on the record. In addition, we note that the exercise the Department undertook regarding the data differences was not done as a corroborative exercise, as Petitioners claim, but rather was done to show any differences as instructed by the Court. Moreover, because we are not according weight to the worksheets, the public availability of which is in question, we

continue to find that differences between the worksheet and website data are not informative. As such, we continue to find that the DAM website *Pangasius* wholesale prices are reliable and, taken together with the other factors, is still the best information on the record for the valuation of the whole live fish, especially given the concerns with the other sources.

C. Commercial Quantities in the DAM Website Data

Petitioners

- The Department points to several factors in support of its argument that the DAM data represent commercial quantities: 1) the scope, coverage, and frequency of collection of the DAM data; 2) the fragility of the *Pangasius* fish; 3) the quantity of an input a respondent would use to produce subject merchandise. However, these say nothing about whether the individual price observations on the DAM website represent commercial quantities.
- The volume of *Pangasius* fish reported in the *Statistical Yearbook of Bangladesh* (124,764 MT) is by no means a proxy for the volume of fish represented on the DAM website.
- Based on the DAM's reporting (Takas/quintal, *i.e.*, 100 kilograms), the DAM's 766 website price observations could, at most, account for 76.6 metric tons of fish during the POR. This quantity represents approximately 0.06 percent of Bangladesh's total 124,764 MT of *Pangasius* production.

Department's Position:

With regard to the quantities in the *Statistical Yearbook of Bangladesh* and the other factors the Department points to in support of the argument that the DAM website data represent commercial quantities, the main purpose for this was to demonstrate that the *Pangasius* industry in Bangladesh was mature and not insignificant, as opposed to that found in the Philippines. Moreover, even though no quantities are associated with the DAM website data, nothing

mandates that the math behind a price be associated with a quantity as a price is not rendered meaningless absent volume information. In contrast, if the DAM had reported only values, then the values would be rendered meaningless (with regard to price) as value mandates both quantities and values, *i.e.*, value = price x quantity. In any event, the purpose and scope of the DAM is to collect and report weekly market prices gathered from each upazila (sub-district) in each district and not values and volumes/quantities.⁶⁷

With regard to Petitioners' claim that the DAM website data could account for at most 76.6 metric tons, we disagree. This figure is actually a lower level volume cap assuming that districts, that reported a price for a certain week, only sold one quintal from all of its upazilas. Although we may not be able to provide a volume ceiling, or actual quantities associated with the prices, we find that, given the other information on the record, the DAM website data do not constitute insignificant quantities given that the individual price points for each district could be associated with hundreds or thousands of quintals, especially in the case of Mymensing.

The POR DAM website data, taken together, represent national-level governmental-price monitoring and reporting, covering numerous commodities for the POR, one of which was the specific *Pangasius* fish species at issue. While direct volume information would have strengthened our conclusion as to the data's reliability, the lack of such a link does not rule out, or even weigh heavily against, use of its price information for surrogate valuation given the available record evidence.

Finally we note that Petitioners did not question our reference to other cases, in which we relied on sources for major inputs that do not contain specific volume or value data used to generate the prices, *e.g.*, *Hangers* and *Nails*. Thus, while not ideal, we continue to find that the DAM website price data represent broadly representative, national-level price monitoring

⁶⁷ See VASEP's May 10, 2011, submission at Exhibit 13 (*i.e.*, Letters from DAM Officials).

specific to the *Pangasius* species at issue, and are collected by a government agency and maintained on a regular basis.

Given the totality of the above evidence, the Department continues to find that the DAM website data is preferable to the other sources of information on the record.

D. By-Products SVs

1. Fish Waste

Vinh Hoan

- For fish waste, there is nothing on the record that supports the Department's finding that by-products are not internationally traded, nor has the Department explained why the species of the fish is an important consideration in valuing fish waste.
- The Vitarich price quote has no official company stamp, is not an actual transaction price, and the record does not support finding it to be a broad market average

Department's Position:

We disagree with Vinh Hoan. First, the Department's finding that fish waste (as opposed to by-products in general) is not generally internationally traded is supported by the record; plainly, there is no HTS category specific to fish waste itself. Vinh Hoan cited to various HTS numbers as evidence that there is trade in fish by-products, but again, these are either for other by-products besides unprocessed fish waste, or are no longer used because they are not specific to fish waste. Second, we did not give undue weight to the species from which the fish waste was generated. Rather, the price quote happens to be for *Pangasius* by-products, which is a fact that we noted in our remand, but which was not central to our analysis. What was central was that it was a price specifically for fish waste. The fact that it happened to be for the same species is merely an additional point in its favor. Third, we dispute the argument that the Vitarich price quote is unreliable because it has no company stamp. 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.⁶⁸ Lastly, regarding the Vitarich price quote not being an actual transaction price or representative of a broad market average, its far greater specificity, and the fact that it meets the other SV criteria outweigh those two considerations in this instance. Indeed, it is the only SV source specific to fish waste that is from an approved surrogate country and contemporaneous.

2. Fresh Broken Meat

Vinh Hoan

- Disagrees that HTS 0304.19.00.00 is not specific to the input. While it would also cover fresh whole fillets, it also covers fresh broken fillets. As such, it is specific.
- The whole fish must be killed, bled, gutted, skinned, filleted, and frozen. All of those are value-added actions. Thus, a fillet, whether whole or broken, is a value-added product.
- Faults the Vitarich price quote with the same reasoning as above for fish waste.

Department's Position:

We disagree with Vinh Hoan. The Vitarich price quote is precisely specific to the fresh broken meat (trimmings) by-product that results from the fillet production process. As such, a basket HTS category is no longer the best data on the record. While broken meat does result after the first few stages of processing of the whole fish, in the underlying review, Vinh Hoan recognized that it is inherently not a "value-added" by-product.⁶⁹ This is simply because any "value" added is counterbalanced by the fact that the resulting fish meat is incidentally broken/torn from the whole fish, rather than being further processed into a finished product, or fish oil or meal. As for the Vitarich price quote not being an actual transaction price or representative of a broad market average, as in our determination for fish waste above, we find

⁶⁸ See Petitioners' May 10, 2011, SV submission at Exhibit 16.

⁶⁹ See Vinh Hoan's May 6, 2011, Supplemental Section D Response at 10.

that its far greater specificity and the fact that it meets the other SV criteria outweigh those two considerations in this instance. Indeed, it is the only SV source specific to fish waste that is from an approved surrogate country and contemporaneous.

3. Frozen Broken Fillets

Vinh Hoan

- HTS 0304.29.00.000 is more specific to the item being valued as it is frozen and described as a fillet, albeit broken.
- It is illogical to cap the value of this by-product, because it is value-added.

Department's Position:

We disagree with Vinh Hoan. The previously-used HTS category (0304.29.00.000) included whole frozen fillets. The new HTS category selected (0304.99.0000) covers frozen broken fish meat only, *i.e.*, it does not include whole frozen fillets that are undamaged finished products, and it thus more specific to the frozen broken fillet by-product. Lastly, Vinh Hoan's comments about capping the value are irrelevant because we did not in fact cap the value of this by-product in our calculations.

4. Fish Oil

Vinh Hoan

- The Department does not have the discretion to manipulate SVs to avoid perceived distortions. Even if it does have such authority, it would need to document the reason for the manipulation (what the distortion is), and how the manipulation reasonably addresses the distortion.
- Fish oil is a valuable and marketable by-product, and the decision to cap its value is at odds with the record and the economics of the fish industry and Vinh Hoan's operations.

- Should the Department continue to cap the fish oil SV, it should correct the clerical error it made in the calculation by not including the freight cost of certain by-product processing inputs.

Department’s Position:

We disagree with Vinh Hoan, in part. First, the distortion noted by the Court⁷⁰ and addressed in this remand redetermination is two-fold: 1) the fish oil SV is nearly double the price of the fish input; and 2) the fish oil HTS includes refined fish oil, whereas Vinh Hoan’s fish oil is unrefined.⁷¹ Second, the cap does not ignore economics or Vinh Hoan’s experience; we used Vinh Hoan’s own FOP and production data along with SV data to ensure the value was a “fully-loaded” one. While Vinh Hoan laments that the cap applied by the Department results in a SV that is “mere pennies” more than the unprocessed fish waste SV (observing that fish oil is produced from fish waste), it ignores the bulk nature of its own fish oil production. Vinh Hoan’s combined operations produced [] kilograms of fish oil. Using the SV for fish oil instead of fish waste to value this output produces a net result of over [], which is not an insignificant amount. As a final matter, we agree with Vinh Hoan’s suggested correction to the fish oil cap calculation to account for the freight expenses of the by-product processing inputs.

IV. Conclusion

Pursuant to the Court’s Remand Opinion and Order, and based on the analysis of the issues the Department was instructed to reconsider, the Department has maintained its selection of Bangladesh as the primary surrogate country, and has selected different SVs for the fish waste, fresh broken meat, and frozen broken fillets by-products, and has capped the fish oil by-product SV. Upon accounting for all calculation changes as a result of changes in the by-product

⁷⁰ See Remand Opinion and Order at 25-26.

⁷¹ See Vinh Hoan’s May 6, 2011, Supplemental Section D Response at Exhibit 13, where in the production process is described as simply cooking the fish oil, putting it into containers, and storing it.

SVs, the margins for all respondents, except Vinh Hoan, have changed to \$0.19 per kilogram.⁷²

Vinh Hoan still remains *de-minimis*.



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

26 JUNE 2015

Date

⁷² See Memorandum to the File, Analysis of Vinh Hoan for the Final Remand Results, dated June 29, 2015; and Memorandum to the File, Analysis of QVD for the Draft Remand Results, dated April 24, 2015.