

**Final Results of Redetermination Pursuant to *Vinh Hoan Corporation et al. v. United States*,
Consol. Court No. 13-00156, Slip Op. 15-16 (February 19, 2015)**

I. SUMMARY

The U.S. Department of Commerce (the “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 *Vinh Hoan Corporation et al. v. United States*, Consol. Court No. 13-00156, Slip Op. 15-16 (February 19, 2015) (“*Vinh Hoan*”). This remand addresses several issues in the eighth administrative review of the antidumping duty order on certain frozen fish fillets (“fish fillets”) from the Socialist Republic of Vietnam (“Vietnam”).¹

In accordance with the Court’s instructions, the Department reconsidered its selection of the surrogate country, and the selection of certain surrogate values (“SVs”), *i.e.*, whole live *pangasius* fish, surrogate financial statements, various by-products and several other SVs, as they relate to the selection of the surrogate country.² Additionally, and in accordance with the Court’s instructions, the Department made changes to Vinh Hoan Corporation’s³ (“Vinh Hoan”) margin calculation, specifically, by adjusting the denominators for Vinh Hoan’s factors of production (“FOPs”) to exclude water weight, and adjusting the consignment expense for certain sales. The Department made changes to the margin calculations of Vinh Hoan, Anvifish Joint

¹ See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2010-2011*, 78 FR 17350 (March 21, 2013) (“*Final Results*”); changed in *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Amended Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 29323 (May 20, 2013).

² See *Vinh Hoan* at 6-34 and 37-41.

³ Vinh Hoan was one of two mandatory respondents selected by the Department. We note that Vinh Hoan includes Vinh Hoan Corporation and its affiliates Van Duc Food Export Joint Company and Van Duc Tien Giang (“VDTG”).

Stock Company (“Anvifish”) and the separate rate respondents’ margins⁴ to account for a small change in the live whole fish SV. Also, at the Department’s request, the Court granted the Department a voluntary remand to reconsider the calculation of the cap applied to Vinh Hoan’s fish oil by-product SV.⁵

The Department has accounted for all of the changes in the margin calculations for Vinh Hoan and Anvifish pursuant to this remand redetermination.⁶ For these final remand results, the Department continues to find that sales by Vinh Hoan, Anvifish, and the separate rate respondents were made for less than normal value (“NV”) during the period of review (“POR”).

II. ANALYSIS

A. Surrogate Country Selection

The CIT remanded the issue of surrogate country selection to the Department.⁷ The Court determined that the Department should consider all GNI data on the record, and the relative differences between countries’ GNI data, in connection with its other findings relating to the selection of the primary surrogate country, including data considerations.⁸ We find that parties’ arguments, and the Court’s opinion, regarding our selection of a surrogate country center around evaluating the 2010 gross national income (“GNI”) data found in the Surrogate Country

⁴ Because the margins for Vinh Hoan and Anvifish changed from the *Final Results*, the margins for the companies not individually examined but receiving a separate rate would change in the event the Court sustains these final results of redetermination, and the Department subsequently issues amended final results.

⁵ See *Vinh Hoan* at 4-6.

⁶ See Memo to the File, from Susan Pulongbarit, Case Analyst, “Eighth Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Remand Results Analysis Memorandum for Vinh Hoan Corporation,” dated concurrently with this remand (“Vinh Hoan Final Analysis Memo”); Memo to the File, from Paul Walker, Case Analyst, “Eighth Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Remand Results Analysis Memorandum for Anvifish Joint Stock Corporation,” dated concurrently with this remand (“Anvifish Final Analysis Memo”).

⁷ See *Vinh Hoan* at 34.

⁸ *Id.* at 29.

List,⁹ additional 2011 GNI data placed on the record by an interested party,¹⁰ as well as the selection of certain SVs, which informed the decision to select Indonesia as the surrogate country.¹¹

Use of GNI Data in Selecting a Surrogate Country

Section 773(c)(4)(A) of the Tariff Act of 1930, as amended (the “Act”) states that the Department should “to the extent possible” utilize the prices, or costs, of FOPs in one or more market economy countries that are, *inter alia*, “at a level of economic development comparable to that of the nonmarket economy country.” The statute is silent with respect to how, or on what basis, the Department may make this determination, but it is the Department’s long-standing practice to use *per capita* GNI data reported in the World Bank’s *World Development Report* as the indicator of the level of economic development.¹²

The statute does not require that the Department use a surrogate country that is (a) at a level of economic development identical or *most* comparable to that of the nonmarket economy (“NME”) country, nor (b) the *most* significant producer of comparable merchandise.¹³ The statute requires only that the Department use a surrogate market economy (ME) country that is at a level of economic development comparable to that of the NME country, and that is a

⁹ See letter to Interested Parties, from Matthew Renkey, Acting Program Manager, “Antidumping Duty Administrative Review of Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Country List,” dated November 22, 2011 (hereafter referred to as the “Surrogate Country List” or the “2010 GNI data”).

¹⁰ See VASEP’s December 26, 2012 submission at Exhibit 3.C (a re-submission of VASEP’s November 20, 2012 submission). This submission contains 2011 GNI data from the World Bank’s *World Development Report*, hereafter referred to as the “2011 GNI data.”

¹¹ See *Final Results* at Comments I.A.

¹² See, e.g., *Preliminary Determination of Sales at Less Than Fair Value: Steel Wire Garment Hangers from the People’s Republic of China*, 73 FR 15726, 15728 (March 25, 2008), unchanged in *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); *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) and accompanying Issues and Decision Memorandum, at Comment 1; *Fresh Garlic from the People’s Republic of China, Final Results and Partial Rescission of the 18th Antidumping Duty Administrative Review; 2011-2012*, 79 FR 36721 (June 30, 2014) and accompanying Issues and Decision Memorandum, at Comment 1.

¹³ See *Policy Bulletin No. 04.1*, “Non-Market Economy Surrogate Country Selection Process,” (March 1, 2004) (“*Policy Bulletin*”), available on the Department’s Web site at <http://enforcement.trade.gov/policy/bull04-1.html>.

significant producer of comparable merchandise.¹⁴ Even these requirements are not binding, as the statute requires that they be met *only to the extent possible*.¹⁵

Nevertheless, wherever possible, the Department selects a surrogate country at the *same* level of economic development as the NME country, which certainly satisfies the statutory requirement. The Department does so by considering candidate countries that lie in a relatively narrow *per capita* GNI range that is *centered* on the *per capita* GNI of the NME country. This implicit association between (a) the NME country's level of economic development, and (b) a *per capita* GNI range, *i.e.*, the idea that countries with different *per capita* GNIs can nevertheless be at the same level of economic development, is reasonable and consistent with the country classification schemes of non-government organizations that study economic development issues. For example, although the United Nations and the World Bank use somewhat different country classification schemes, both classify countries on the basis of *per capita* income *ranges*, not specific *per capita* incomes. For example, all would agree that the United Kingdom, the United States and Switzerland have attained the same high level of economic development, even though their *per capita* GNIs widely differ (\$37,780, \$48,450, and \$76,380, respectively, in 2011).¹⁶

The same type of grouping can be made all along the continuum of *per capita* GNIs world-wide, by thinking of *per capita* income *ranges* as a flight of stairs. If the flight of stairs represents the general notion that higher income goes hand-in-hand with higher levels of economic development, then each (flat) step represents a level of economic development and: (i) for example, Peru with a *per capita* GNI of \$5,500 in 2011 is on one of the lower steps on the staircase; (ii) the United States is on the highest step; (iii) the United Kingdom and Switzerland

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See VASEP's December 26, 2012 submission at Exhibit 3.C.

are on the same step as the United States; (iv) there are other countries on Peru's step; and (v) other countries populate the steps in between. Thus, the staircase metaphor illustrates that (a) the level of economic development increases with *per capita* GNI if the difference or jump in *per capita* GNI is big enough to take you from step to step, and (b) different countries can be at the same level of economic development even if their *per capita* GNIs differ as long as those differences are small enough that you stay on the same step. Each (flat) step (each level of economic development) is associated with a range of *per capita* GNI; and the staircase itself (all of the steps collectively) is associated with a relatively broad range of *per capita* GNI. There is no agreed-upon method for defining the range of *per capita* GNI for each step. The World Bank, for example, places all countries into one of four "steps", based on *per capita* GNI: low income (\$1,025 or less), lower middle income (\$1,026 to \$4,035), upper middle income (\$4,036 to \$12,475), and high income (\$12,476 and higher).¹⁷ We note that as a matter of policy, the Department has not adopted the World Bank income groups as is for the purpose of defining a "level of economic development" under section 773(c)(4)(A) of the Act primarily because these income groups are not sufficiently "centered" on the NME countries that are subject to our antidumping proceedings. Rather, the Department defines the appropriate "step" for each non-market economy country at issue through the use of a relatively narrow range of *per capita* GNI, centered on the country at issue.

In the example above, involving the United Kingdom, the United States and Switzerland, one can ask which of the three countries is the most economically comparable to another country, say, Canada, on the basis of national differences in *per capita* GNI, or some other economic variable. However, in the surrogate country selection context, there is nothing in the statute that directs, or suggests, that the Department undertake such an analysis. Nothing in

¹⁷ See VASEP's December 26, 2012 submission at Exhibit 3.C.

relevant provisions of the statute refers to economic comparability; instead, the only directive is for the Department to use a surrogate country that is at a level of economic development comparable to that of the NME country. Since the Department, where possible, selects a surrogate country from a non-exhaustive list of countries all of which are at a level of economic development that is not only comparable, but the same as the NME country's level, parsing differences in the *per capita* GNIs of the surrogate candidates on a surrogate country list would do nothing to further statutory objectives or fulfill statutory requirements. Instead, consistent with the statute, the Department attempts to distinguish among the countries on a surrogate country list, and select a primary surrogate country on the basis of data quality and significant producer considerations.¹⁸

Because the non-exhaustive list of candidate countries is only a *starting point* for the surrogate country selection process, the Department also considers other countries at the same level of economic development as the NME country that interested parties propose, as well as other countries that are not at the same level of economic development as the NME country, but still a comparable level. As a general rule, the Department selects a surrogate country that is at the same level of economic development as the NME country unless it is determined that none of the countries are viable options because they (a) are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available SV data, or (c)

¹⁸ We note that “economic comparability” is used here and elsewhere by the Department interchangeably with the statutory language, “level of economic development comparable to.”

are not suitable for use because of other factors.¹⁹ Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh level-of-economic-development differences or significant producer considerations.²⁰

Analysis of the 2010 GNI Data

In its remand decision, the Court directed the Department to consider the *relative* differences in *per capita* GNI of the countries on the Surrogate Country List, and to weigh these differences against the strengths and weaknesses of the surrogate valuation data. Because these countries are at the same level of economic development as Vietnam, there is no meaningful difference between their *per capita* GNIs for the purposes of surrogate country selection. While the Department could parse the data to determine which country on the Surrogate Country List has *per capita* GNI most comparable to Vietnam, nothing in the statute suggests or directs the Department to undertake such a task, as the statute directs the Department to compare levels of economic development.²¹ As a result, it is not required by statute for the Department to consider economic comparability when choosing among countries on the Surrogate Country List, nor is it necessary because there are no meaningful differences between GNIs.²² For these reasons the

¹⁹ See, e.g., *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 4386 (January 22, 2013) and the accompanying Issues and Decision Memorandum at Comment 2; *Certain Steel Threaded Rod from the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 67332 (November 9, 2012) and accompanying Issues and Decision Memorandum at Comment 1; *Certain Steel Wheels from the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 76 FR 67703, 67708 (November 2, 2011), unchanged in *Certain Steel Wheels from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances*, 77 FR 17021 (March 23, 2012).

²⁰ See *Surrogate Country List*.

²¹ See *Policy Bulletin*; see also section 773(c)(4) of the Act.

²² Although they now argue differently, VASEP made this argument regarding 2010 GNI data for Bangladesh and Indonesia in *Vietnam Shrimp*. See, e.g., *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2011-2012*, 78 FR 56211 (September 12, 2013) (“*Vietnam Shrimp*”) and accompanying Issues and Decision Memorandum at Comment 1.

Department attempts to distinguish countries on the Surrogate Country List on the basis of significant producer²³ and data considerations. Moreover, when data quality is considered, we believe that once countries are within a certain narrow enough *per capita* GNI range, as reflected by the Surrogate Country List, data quality and availability considerations are more relevant factors than *per capita* GNI differences to achieve the statutory purpose.

Nevertheless, for purposes of this remand, under court order and under respectful protest, Commerce has parsed differences in the *per capita* GNI of the countries on the Surrogate Country List,²⁴ and we note that the *per capita* GNI of Bangladesh (\$640) is approximately half that of Vietnam (\$1,100), and the *per capita* GNI of Indonesia (\$2,580) is approximately twice that of Vietnam.²⁵ We do not find the differences in the 2010 GNI data between Bangladesh, Indonesia and Vietnam to render these countries at different levels of economic development. As the Department explained in *Fujian Lianfu Forestry*, although the difference in GNI *per capita* between India and the PRC seems “large in nominal terms, seen in the context of the spectrum of economic development across the world, the two countries are at a fairly similar stage of development.”²⁶ Having examined the differences in the 2010 GNI data between the countries, and although Bangladesh’s GNI is closer to Vietnam’s than is Indonesia’s GNI, we

²³ In the *Preliminary Results* we found that all six countries on the surrogate country list were significant producers of comparable merchandise. See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results of the Eighth Antidumping Duty Administrative Review and Ninth New Shipper Reviews, Partial Rescission of Review, and Intent to Revoke Order in Part*, 77 FR 56180 (September 12, 2012) (“*Preliminary Results*”). As we found all countries on the Surrogate Country List to be at the same level of economic development and significant producers of comparable merchandise, we turned to data considerations in selecting a primary surrogate country.

²⁴ Of the six countries on the Surrogate Country List (Bangladesh, India, Indonesia, Nicaragua, Pakistan and the Philippines), no party placed SVs on the record for Nicaragua or Pakistan, and only very limited information was placed on the record for India. Of the three countries for which the record contains sufficient SV information, as we noted in the *Final Results*, the Philippines whole live fish value is not as robust as the Bangladeshi and Indonesian values and the Department harbors concerns about the collection methods. See *Final Results* at Comment I.C. As a result, we have limited our discussion of *per capita* GNIs here to Bangladesh and Indonesia.

²⁵ *Id.*

²⁶ See *Fujian Lianfu Forestry Co., Ltd., A.K.A. Fujian Wonder Pacific Inc., Fuzhou Huan Mei Furniture Co., Ltd., and Jiangsu Dare Furniture Co., Ltd. v. United States*, 638 F. Supp. 2d 1325 (CIT 2009) (“*Fujian Lianfu Forestry*”).

find that data considerations outweigh any differences in *per capita* GNI in the statutory requirement to obtain accurate dumping margins.²⁷ Moreover, as discussed in the *Final Results*, and below, we continue to find that Indonesia offers superior data to that of Bangladesh.

Analysis of the 2011 GNI Data

The 2011 World Bank data indicate that the differences in *per capita* GNI for both Bangladesh (\$770) and Indonesia (\$2,940) grew apart from Vietnam (\$1,260) from 2010. Nevertheless, the *per capita* GNI of Bangladesh remained at approximately half that of Vietnam, and the *per capita* GNI of Indonesia remained approximately twice that of Vietnam. Again, while the Department does not normally consider this particular ratio or have a bright-line test, we find that the 2011 GNI data fall within or near the range that the CAFC considered appropriate.²⁸ As noted above, we do not find the small disparities in GNI to render either Bangladesh or Indonesia to be no longer economically comparable to Vietnam.

In sum, we note that, as with the 2010 GNI data, Bangladesh is closer in terms of absolute dollars *per capita* to Vietnam than is Indonesia. However, the data considerations in this case clearly weigh in favor of Indonesia's selection over any of the countries that were initially identified, including Bangladesh. Having examined the differences in the 2011 GNI data between the countries, and although Bangladesh's GNI is closer in absolute terms to Vietnam's than is Indonesia's GNI, we find that data considerations outweigh the relatively modest differences in *per capita* GNI in the statutory requirement to obtain accurate dumping margins.²⁹ As noted above, we continue to find that Indonesia offers superior data to that of

²⁷ See *Writing Instrument Mfrs. Ass'n, Pencil Section v. United States*, 984 F. Supp. 629, 637 (CIT 1997) (“*Writing Instruments*”) (The Court finds that the paramount objective of the statute is to obtain the most accurate determination of dumping margins utilizing the best information available within the broad outlines of the statute.).

²⁸ See *Dorbest*, 604 F. 3d 1363, 1372 (Fed. Cir. 2010) (“*Dorbest CAFC*”). In both the 2010 GNI data and the 2011 GNI data Indonesia's GNI was 2.3 times that of Vietnam.

²⁹ See *Writing Instruments*, 984 F. Supp. 629, 637 (CIT 1997).

Bangladesh. Thus, the continued selection of Indonesia as the primary surrogate country contributes far more to the accuracy of the margin calculation than Bangladesh's relative GNI proximity in 2010 and 2011.

B. Surrogate Value for Whole Live Fish

The Court determined the Department should provide more explanation as to: (a) how it arrived at certain conclusions regarding the species contained in the Indonesia Aquaculture Statistics ("IAS"), (b) how it drew its comparison of the *pangasius* industries in Indonesia and Vietnam, and (c) how it analyzed the contemporaneity of IAS and data from the Bangladeshi Department of Agriculture Marketing ("DAM data").³⁰

Species Contained in the IAS

Regarding the Court's questions on the selection of the SV for whole live fish, we first address species specificity in the IAS. The Petitioners obtained an affidavit from Dr. Slamet Soebjakto ("Soebjakto Affidavit"), Director General of Aquaculture, which is printed on the letterhead of the Ministry of Marine Affairs and Fisheries of Indonesia, dated within the POR, and which answers a series of questions posed by the Petitioners to Mr. Soebjakto.³¹ We note that the Soebjakto Affidavit states that there are two types of *pangasius* species "commonly" grown in Indonesia, namely *pangasius hypophthalmus* and *pangasius jambal*, as well as *pangasius pasopati* (a hybrid of *pangasius hypophthalmus* and *pangasius jambal*).³² Based on this statement the Department concluded that *pangasius pasopati* is not commonly grown in Indonesia, as it was not listed as one of the two common species, and therefore, only a small

³⁰ See *Vinh Hoan* at 51.

³¹ See Petitioners' November 20, 2012 submission at Exhibit 6. Mr. Soebjakto's signature appears on the 2011 IAS publication.

³² *Id.*

amount of the IAS data would include data for *pangasius pasopati*. We note that the Soebjakto Affidavit states that *pangasius pasopati* is grown in pond, cage and floating net cultures.³³

The Soebjakto Affidavit also states that, although the exact percentages are not known, the *pangasius* species “predominantly” grown in Indonesia is *pangasius hypophthalmus*, which is “widely raised in pond and cage culture.”³⁴ We took two pieces of key information away from this quote, (a) that between the two common types of *pangasius* grown in Indonesia (*pangasius hypophthalmus* and *pangasius jambal*), the species predominantly grown is *pangasius hypophthalmus*; and (b) that *pangasius hypophthalmus* is widely raised in pond and cage culture. The Soebjakto Affidavit then goes on to describe the production of *pangasius hypophthalmus* to be “dominant” as compared to *pangasius jambal*.³⁵ As a result, the Department found that the IAS data, in general, is highly representative of *pangasius hypophthalmus*, and therefore, sufficiently specific to respondents’ whole live fish FOP.³⁶ However, in an attempt to utilize the most specific-specific data in the IAS, we excluded from the SV calculation data from the paddy and floating net aquaculture areas.³⁷ As pond and cage culture were specifically singled out by Dr. Soebjakto as areas where *pangasius hypophthalmus* is widely raised, we concluded that *pangasius hypophthalmus* is not widely raised in paddy and floating net cultures, and that therefore *pangasius jambal* must be widely raised in paddy and floating net aquaculture areas. Thus, we find that the exclusion of paddy and floating net cultures, *i.e.*, the exclusion of most

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ In the last administrative review we found that data containing four species of *pangasius* to be sufficiently specific to respondents’ whole live fish input. 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) (“7th Fish Final”) and accompanying Issues and Decision Memorandum at Comment I.C.

³⁷ The IAS reports data for four types of freshwater aquaculture areas, pond, cage, river and paddy. See, *e.g.*, Petitioners’ November 20, 2012 submission at Exhibit 4.

pangasius jambal data, makes the whole live fish SV more than sufficiently specific to respondents' input.

The conclusions by the Department, that cage and pond culture are representative of *pangasius hypophthalmus* production, and that floating net and paddy culture is representative of *pangasius jambal* production, dovetail with the following sentence in the Soebjakto Affidavit: "The data of *pangasius* production collected from the regions is not specified according to the species, however the production of *pangasius* data based on types of cultures may be used to indicate the production of each *pangasius* species."³⁸ Thus, we find that the Soebjakto Affidavit supports the Department's methodology of using specific aquaculture areas to determine the production of various species of *pangasius*. As a result, we find that using the pond and cage culture data provided by IAS to be reliable and specific to the input in question.

Regarding price differences between *pangasius* species, we note that the Soebjakto Affidavit states that *pangasius jambal* has a "better quality of flesh (texture and colour)."³⁹ While this may lead one to the conclusion that the prices of *pangasius jambal* would be higher than that of *pangasius hypophthalmus*, an examination of the average unit values of the different aquaculture areas indicates that this is not the case. More specifically, the data used by the Department to value the whole live fish SV, 2011 and 2010 IAS data, shows that the weighted average value for *pangasius hypophthalmus* (pond and cage culture) is \$1.75/kilogram ("kg") and the weighted average value for *pangasius jambal* (paddy and floating net culture) is \$1.45/kg.⁴⁰ The record contains additional evidence that *pangasius jambal* sells for less than

³⁸ See Petitioners' November 20, 2012 submission at Exhibit 6.

³⁹ *Id.*

⁴⁰ See, e.g., Petitioners' November 20, 2012 submission at Exhibit 4. The values are reported on an Indonesian Rupiah basis, however, for ease of reference, we have converted these values to U.S. dollar values using the average POR exchange rate of 0.000113327. See Memorandum to the File, from Paul Walker, Case Analyst "8th Administrative Review, and Aligned 9th New Shipper Reviews, of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Values for the Final Results," dated March 13, 2013 at Exhibit 10.

pangasius hypophthalmus. VASEP submitted questionnaire responses from two *pangasius jambal* traders in Indonesia which indicate that *pangasius jambal* sells for \$1.13/kg and \$1.47/kg.⁴¹ It was not the Department's intention to imply that no *pangasius jambal* would be represented in IAS in any of the 325,000 metric tons ("mt") which pond and cage culture represent. Because *pangasius jambal* is not valued higher than that of *pangasius hypophthalmus*, and the difference in price is only 17 percent, we conclude that these two species of *pangasius* (a) sell at similar prices, and (b) the inclusion of small amounts of *pangasius jambal* do not affect the price of *pangasius hypophthalmus*.⁴²

Comparison of Pangasius Industries

The Court remanded to the Department several questions concerning the nature of the *pangasius* industry in Indonesia, as compared to Vietnam. More specifically, the Court has asked the Department to address (a) whether Indonesian farmers process fish before shipping it to processing facilities, *i.e.*, whether IAS data includes dead fish, (b) whether whole live *pangasius* farmed in Indonesia is farmed in a similar manner to Vietnam, and (c) whether the IAS data may be distorted due to imports of frozen *pangasius* fillets from Vietnam. We address each of these issues in turn, below.

We stated in the *Final Results*, that in evaluating whole live fish SV data from Bangladesh, Indonesia, and the Philippines, we were in the unusual situation of having on the record three sources of information issued by governments, which represent official statements

⁴¹ See VASEP's December 4, 2012 submission at Exhibit 7. We again have converted the prices to a U.S. dollar basis for ease of comparison.

⁴² Information submitted by VASEP appears to indicate that the color of *pangasius jambal* and *pangasius hypophthalmus* are similar, especially when compared to that of another species of *pangasius* listed in the scope of the order, *pangasius bocourti*. See VASEP's December 4, 2012 submission at Exhibit 6. Other evidence submitted by VASEP indicates that *pangasius jambal* and *pangasius hypophthalmus* have very similar appearances. See VASEP's November 20, 2012 submission at Exhibit 16. We cite this record information not to dispute the Soebjakto Affidavit, that there are small differences between these two species of *pangasius*, but to note that the differences may be overstated.

of those governments as to the price of whole live fish, and that while “we typically do not scrutinize official government statistics in such detail,⁴³ the necessity to respond to the comments raised by interested parties, and to select one of the sources, compelled us to do so in this case.”⁴⁴ We find that while these types of competing, official government data are not common in administrative reviews, our statement did not signify that the choice of which whole live fish data (Bangladesh, Indonesia or the Philippines) represents the best available information was unclear. In fact, we find that record information makes clear that IAS represents the best available information, and economic comparability or comparable production need not be re-examined in order to inform this finding. The scrutiny of official government statistics by the Department was meant to merely convey that we would have to go behind the data to examine such items as the collection methods, the steps a government takes to vet its data, and the type of fish (species, live or dead, *etc.*) that comprises such data. In other words, our statement explains why we are conducting the additional analysis at all, and was not meant to suggest anything as to the results of that additional analysis or the relative merits of each government data source.

Where government source data does not specify certain information, such as what type of information is included in the data, interested parties have attempted to fill these gaps in the administrative record by submitting affidavits or correspondence with, in the case of IAS, Indonesian government officials. For example, VASEP obtained an affidavit from Dr. Ketut Sugama (“Sugama Affidavit”), which is printed on the letterhead of the Ministry of Marine Affairs and Fisheries of Indonesia, and dated within the POR.⁴⁵ Unlike the Soebjakto Affidavit,

⁴³ See, e.g., *Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of the Eleventh Administrative Review and New Shipper Reviews*, 72 FR 34438 (June 22, 2007) and accompanying Issues and Decision Memorandum at Comment 2.b (where the Department notes we typically find official government publications to be reliable and credible sources of information).

⁴⁴ See *Final Results* at Comment I.C.

⁴⁵ See VASEP’s June 14, 2012 submission at Exhibit 19.E.

the questions posed to Mr. Sugama were not included in VASEP's submission.⁴⁶ Also, unlike the Soebjakto Affidavit, no information was submitted by VASEP which indicates what individual approached Mr. Sugama, and under what circumstances this information was collected.⁴⁷ These details were critical in assessing the reliability of the Sugama affidavit, because we do not know if the questions posed to Mr. Sugama were leading. As a result, we find that the Sugama Affidavit is a less reliable source than the Soebjakto Affidavit.

The Sugama Affidavit states that Indonesian farmers process some fish once they are harvested.⁴⁸ As noted above, we have used information in affidavits submitted by parties to fill gaps in the administrative record. One of the questions the Sugama Affidavit attempted to shed light on is whether dead, or processed, fish are included in IAS. With respect to this question, we find that there is no gap in the administrative record to fill. The source document is clear on this subject as the IAS publication itself states that it (a) excludes data for fish which are discarded for any reason (age, disease, *etc.*), (b) represents the wet weight at landed harvest time, and (c) in cases where harvested fish are processed, the quantities and values recorded are converted to the initial live weight.⁴⁹ As a result, we find that the IAS data is specific to the whole live fish consumed by respondents.

As we noted in the *Final Results*, and the Court has agreed, dead fish may be included in the DAM data, record evidence indicates that dead fish sell for less than live fish, and respondents only consume live fish.⁵⁰ While the Court notes that the Department values FOPs in one or more market economy countries that are at a level of economic development comparable to that of the NME, and is a significant producer of comparable merchandise, and that although

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ See Petitioners' November 20, 2012 submission at Exhibit 6.

⁵⁰ See *Final Results* at Comment I.C; *Vinh Hoan* at 54.

the Department has considerable discretion in applying these statutory requirements, the Department's obligation to determine accurate dumping margins bounds this discretion.⁵¹ The use of the DAM data in this administrative review in any margin calculation would prevent the Department from calculating accurate dumping margins, as the DAM data is undervalued by its inclusion of dead fish.⁵² The fact that IAS data is specific to the whole live fish consumed by respondents ensures that a more accurate dumping margin will be determined.

With regard to VASEP's arguments concerning the fish farming processes, we note that in general, record evidence indicates that *pangasius* are primarily grown in ponds in Vietnam, and that cage production in Vietnam accounts for a small percentage of production.⁵³ The same holds true in Indonesia. The IAS data indicates that the vast majority of *pangasius* in Indonesia (86 percent) is farmed just as it is in Vietnam, in ponds and cages.⁵⁴ As noted above, nearly all *pangasius hypophthalmus* is farmed in ponds and cages, just as it is in Vietnam. Also as noted above, we used the pond and cage aquaculture data to value whole live fish. As a result, we find that the farming methods in Indonesia are similar to those in Vietnam, especially those used in the production of whole live *pangasius hypophthalmus*.

While VASEP and Vinh Hoan have focused some of their arguments around the *pangasius hypophthalmus* species, we note that multiple species of *pangasius* are found in Vietnam, just as they are in Indonesia. We also note that the scope of this order covers three types of fish from Vietnam in the *pangasius* genus, *pangasius bocourti*, *pangasius*

⁵¹ See Vinh Hoan at 27-28.

⁵² See Final Results at Comment I.C.

⁵³ See, e.g., VASEP's December 4, 2012 submission at Exhibit 18, which indicates that 95 percent of *pangasius* is grown in ponds in Vietnam. See Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 37116 (June 23, 2003) ("Fish Investigation Final") and accompanying Issues and Decision Memorandum at Comment 3 (three of four mandatory respondents use cages to farm whole live fish).

⁵⁴ See Petitioners' November 20, 2012 submission at Exhibits 3 & 4.

hypophthalmus and *pangasius micronemus*.⁵⁵ The majority of *pangasius* grown in Vietnam is *pangasius hypophthalmus*, just as it is in Indonesia; in this way the two countries' *pangasius* industries are also similar.

However, although the Department has undertaken this comparison based on the Court's order, we continue to assert that the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry. As we stated in *Sebacic Acid*, the statute does not define "comparable merchandise" and the relevant legislative history evidences Congress' intent to allow the agency to select from a wide category of merchandise in identifying comparable merchandise.⁵⁶ Thus, to impose a requirement that merchandise must be produced by the same process, and share the same end uses, to be considered comparable would be contrary to the intent of the statute.⁵⁷

Lastly, we find VASEP's argument that imports of frozen *pangasius* fillets distorts the IAS data to be unpersuasive. First, VASEP has shown no causal relationship between imports of a finished product like frozen fish fillets and the price of whole live fish in Indonesia. Nor has VASEP provided any record information which indicates that imports of *pangasius* fillets into Indonesia affect whole live fish prices in Indonesia. Without anything more than assertions, the Department is unable to address their arguments.

Contemporaneity of Whole Live Fish Data Sources

Section 773(c)(1) of the Act instructs the Department to value the FOPs based upon the best available information from a ME country, or countries, that the Department considers

⁵⁵ See Notice of Antidumping Duty Order: *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 47909 (August 12, 2003).

⁵⁶ See H.R. Conf. Rep. No. 100-576 (1988), reprinted in 1988 U.S.C.C.A.N. 1547.

⁵⁷ See *Sebacic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 65674, 65675-76 (December 15, 1997) and accompanying Issues and Decision Memorandum at Comment 1.

appropriate. When considering what constitutes the best available information, the Department considers several criteria, including whether the SV data is contemporaneous, publicly available, tax- and duty- exclusive, representative of a broad market average, and specific to the input.⁵⁸ Regarding contemporaneity, the Department has consistently recognized that data sources which overlap part of the POR are contemporaneous.⁵⁹ For example, when selecting among financial statements to calculate surrogate financial ratios, the Department has selected statements from a company that overlaps with the most months of the POR when the record contains multiple financial statements from a single company.⁶⁰ For other SVs we have found that when one source covers more months of the POR than another, we consider the source with more coverage to be more contemporaneous.⁶¹ In some cases we have found that data which partially covers the period, and include months outside of the POR, are not as fully contemporaneous as data which covers the entire period.⁶²

To ensure full POR coverage, the Department used the 2011 and 2010 IAS publications to calculate the whole live fish SV. As a result, we note that none of the above described situations exist in this case because the IAS data used covers the entirety of the POR. While the IAS contains some data which is outside the POR, because it is a yearly publication which does

⁵⁸ 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) (“Sodium Hex”) and accompanying Issues and Decision Memorandum at Comment 3.

⁵⁹ See, e.g., *Frontseating Service Valves from the People's Republic of China: Final Results of the 2008-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 76 FR 70706 (November 15, 2011) and accompanying Issues and Decision Memorandum at Comment 9 (the Department found that SV data from a period that overlaps a part of the POR is contemporaneous with that review period).

⁶⁰ See, e.g., *Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 26712 (May 9, 2014) and accompanying Issues and Decision Memorandum at Comment 2.

⁶¹ See, e.g., *Certain Steel Nails from the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review*, 76 FR 16379 (March 23, 2011) and accompanying Issues and Decision Memorandum at Comment 5 (electricity rates for one source cover more of the POR than another source, and are thus more contemporaneous).

⁶² See *Notice of Final Determination of Sales at Less Than Fair Value: Lawn and Garden Steel Fence Posts from the People's Republic of China*, 68 FR 20373 (April 25, 2003) and accompanying Issues and Decision Memorandum at Comment 3.

not correspond to the POR, both the DAM data and the IAS fully cover the POR. We recognize that the DAM data cover the entire POR with no additional months included. However, we do not find that the DAM data's precise coverage of the POR outweighs any of the other concerns we have with the DAM data. Specifically, as noted in the *Final Results*, IAS is a much broader market average than the DAM data, as it provides greater national coverage (IAS covers 28 of 33 districts where as the DAM data covers 27 of 68 districts), as well as a much greater volume (325,000 metric tons versus 52,000 metric tons) of national *pangasius hypophthalmus* fish production; as elucidated above, IAS is as species-specific as the DAM data, but unlike the DAM data does not contain dead fish, thus making it more specific than the DAM data; and finally, we harbor concerns with the procedures DAM takes to vet its data which DAM did not address when queried by the Department.⁶³

C. Non-fish Surrogate Values

The Court determined the Department should provide more explanation as to how selected certain surrogate values (SVs) - labor, sawdust, rice husk, fish waste, fish belly, fish skin, fish oil, fish meal, frozen broken meat, fresh broken meat, brokerage and handling ("B&H"), inland truck freight, and financial ratios - informed our surrogate country selection. Certain SVs cited by the Court - fish waste, fish belly, fish skin, fish meal, and fresh broken meat, B&H, inland truck freight, and financial ratios – did not inform our selection of the surrogate country, as explained below. For ease of reference, we have attached a chart to this remand which summarizes our findings on the non-fish SVs.⁶⁴

⁶³ See *Final Results* at Comment I.C.

⁶⁴ See Attachment I. For the final remand, we have expanded this chart to include other SVs, not commented upon by the Court, which indicate that for most SV's Indonesia provided better data.

SV Selection Criteria

In selecting the most appropriate SVs, the Department considers several factors, including whether the SV is (a) publicly available, (b) tax- and duty-exclusive, (c) represents a broad market average, (d) contemporaneous with the POR and (e) specific to the input.⁶⁵ 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 FOPs on a case-by-case basis.⁶⁶ 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.⁶⁷ Below, for each SV cited by the Court, we have used the criteria noted above to determine which SV meets the Department's SV criteria, when necessary, and how that selection informed our decision to select Indonesia as the primary surrogate country.

Labor

Under the current labor methodology, it is the Department's practice to value labor using industry-specific data reported by the International Labor Organization ("ILO") under Chapter 6A ("ILO Chapter 6A"), which reflects all costs related to labor (*i.e.*, wages, benefits, housing, training, *etc.*).⁶⁸ It is the Department's preference to value labor using ILO Chapter 6A data under the rebuttable presumption that ILO Chapter 6A data better accounts for all direct and

⁶⁵ See, e.g., *Sodium Hex* at Comment 3.

⁶⁶ See, e.g., *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*"); 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.

⁶⁷ See, e.g., *Mushrooms* at Comment 1.

⁶⁸ See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing The Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) ("*New Labor Methodology*").

indirect labor costs.⁶⁹ However, in this review, there is no ILO Chapter 6A data on the record from any of the surrogate countries proposed by parties, and thus, the Department must look outside its preferred data source for the best available information to value labor.

In this review there are two labor SV sources, a study by the Bangladeshi Bureau of Statistics, *Wage Rate of the Working Poor in Bangladesh 2009-10* (“Bangladeshi fishery workers/fisherymen labor rate”), and ILO Chapter 5B data for Indonesia (“Indonesian 5B data”).⁷⁰ Regarding the Bangladeshi fishery workers/fisherymen labor rate, we note that no party has argued that this source is not tax- and duty- exclusive, nor has any party argued that it is not publicly available. Indeed, it appears to be published by the Bangladeshi government for public consumption.⁷¹ However, the Department has concerns with whether this data represents a broad market average because this data source collected data only for November as an estimate for the October-December 2009 quarter and for the previous quarter, July-September 2009.⁷² The Department finds that the data does not provide full coverage for an annual cost of labor, and thus, does not provide coverage of seasonal trends in labor.⁷³ The Department also finds that the Bangladeshi fishery workers/fisherymen labor rate is not contemporaneous with the POR because the data was collected in 2009.⁷⁴ Additionally, the Department finds that this labor rate is not as specific as the Indonesian 5B data in that it does not provide full coverage of the industry because it only reports data for fisherymen, and does not report data for female workers in the industry.⁷⁵ It has been the Department’s practice to calculate a labor rate that covers the

⁶⁹ See *Dorbest CAFC*, 604 F.3d 1363 (Fed. Cir. 2010); *New Labor Methodology*, 76 FR 36092, 36093.

⁷⁰ See VASEP’s May 23, 2012 submission at Exhibit 3.A for the Bangladeshi fishery workers/fisherymen labor rate. See Petitioners’ May 23, 2012 submission at Exhibit 33 for the Indonesian 5B data.

⁷¹ See VASEP’s May 23, 2012 submission at Exhibit 3.A.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

total population of the industry, and basing a labor rate only on a sub-part of the industry would incompletely reflect the labor rate for the total population of the industry.⁷⁶

Regarding the Indonesian 5B data, as we stated in the *Final Results*, the data comes from a publicly available source, the ILO, and is representative of broad market averages, given that ILO data represents country-wide data.⁷⁷ Moreover, there is no indication that the data is inclusive of duties and taxes. With respect to specificity, we find the Indonesian 5B data to be specific to the industry in question because, as we explained in a prior review, the explanatory notes for sub-classification 15 of the ISIC-Revision 3 Standard entitled, “Manufacture of Food Products and Beverages” specifically states that the category includes the processing and preservation of fish and fish products.⁷⁸ Finally, we note that the Indonesian 5B data is not contemporaneous as it is from 2008.

In sum, we find that the Bangladeshi fishery workers/fisherymen labor rate meets two of the Department’s SV criteria: public availability and tax- and duty- exclusive. In contrast, the Indonesian 5B data satisfies four of the Department’s SV criteria, public availability, exclusive of tax and duties, specific to the industry in question, and is a broad market average. Consequently, we continue to find that the Indonesian 5B data represents the best available information to value respondents’ labor FOP. As such, the selection of the labor SV informed our selection of Indonesia as the primary surrogate country.

⁷⁶ See *Antidumping Methodologies; Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; Request for Comments*, 71 FR 61716, 61721 (October 19, 2006).

⁷⁷ See Petitioners’ May 23, 2012 submission at Exhibit 33; *Final Results* at Comment III.

⁷⁸ See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Sixth Antidumping Duty Administrative Review and Sixth New Shipper Review*, 76 FR 15941 (March 22, 2011) (“6th Fish Final”) and accompanying Issues and Decision Memorandum at Comment III.

Rice Husk

In this review there are two competing types of SV sources for rice husk, price quotes and import statistics. VASEP submitted two price quotes for rice husk from Bangladeshi companies, Seraph International and SR Apparels.⁷⁹ While we find that these two price quotes are specific to the input in question and publicly available, they do not meet any other of the Department's SV criteria. More specifically, these price quotes are single transaction prices from two individual companies, and therefore, do not represent a broad-market average.⁸⁰ In past cases the Department has stated that it prefers to use SVs that are not price quotes where other more reliable data, such as Indonesian Global Trade Atlas ("GTA") import data, are available.⁸¹ In addition, the Department notes that the record does not demonstrate that the Bangladeshi rice husk price quotes are ex-factory and tax- and duty-exclusive because (a) the affidavit accompanying the Seraph International price quote does not state that the price quote is on an ex-factory and tax- and duty-exclusive basis, and (b) the emails regarding the SR Apparels price quote are not accompanied by an affidavit, and the emails do not state whether this price quote is tax- and duty-exclusive.⁸² The Department also has concerns about the reliability of the two Bangladeshi rice husk price quotes because (a) the email regarding the SR Apparels price quote is from Alibaba.com, which is an online commodities search engine and not an official company inquiry, (b) the Seraph International price quote does not indicate the payment terms, and (c) for the SR Apparels price quote, the price quote is not on official company letterhead, there is no information on the record as to whether it was obtained directly from the company or

⁷⁹ See VASEP's November 20, 2012 submission at Exhibit 2.B.

⁸⁰ See, e.g., *Certain Tissue Paper Products from the People's Republic of China: Final Results and Partial Rescission of the 2007-2008 Antidumping Duty Administrative Review and Determination Not To Revoke in Part*, 74 FR 52176 (October 9, 2009) ("*Tissue*") and accompanying Issues and Decision Memorandum at Comment 3.

⁸¹ See, e.g., *Prestressed Concrete Steel Wire Strand from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 28560 (May 21, 2010) ("*Wire Strand*") and accompanying Issues and Decision Memorandum at Comment 1.B.

⁸² See VASEP's November 20, 2012 submission at Exhibit 2.B.

issued by an official of the company for sale in the ordinary course of business.⁸³ Finally, we note that neither price quote is contemporaneous to the POR.

As noted in the *Final Results*, the Department has previously found that data from GTA, such as that on the record for this input, is publicly available, represents a broad market average, and is tax- and duty- exclusive.⁸⁴ Additionally, the GTA data is contemporaneous with the POR. Finally, the HTS is specific to the input at issue because the HTS heading from which the data is derived, “Cereal, Straw, and Husks, Unprepared, Whether Or Not Chopped, Ground, Pressed or In the Form of Pellets,” is specific to the rice husk FOP reported by the respondents because husk is one of the items covered by the plain terms of the HTS description.⁸⁵ Additionally, the Department notes that the courts upheld the Department’s use of broad import categories when the category’s selection was supported by substantial evidence.⁸⁶

In sum, we find that the Bangladeshi price quotes for rice husk only meet two of the Department’s SV criteria, specificity. In contrast, the Indonesian GTA data satisfies all of the Department’s SV criteria. As such we continue to find that the Indonesian GTA data represents the best available information to value respondents’ rice husk FOP, and the selection of this data source informed our decision to select Indonesia as the primary surrogate country.

⁸³ See VASEP’s November 20, 2012 submission at Exhibit 2.B.

⁸⁴ See, e.g., *Drawn Stainless Steel Sinks from the People’s Republic of China: Investigation, Final Determination*, 78 FR 13019 (February 26, 2013) (“*Sinks*”) and accompanying Issues and Decision Memorandum at Comment 2.

⁸⁵ See Petitioners’ May 23, 2012 submission at Exhibit 30; *Final Results* at Comment V.

⁸⁶ See, e.g., *Writing Instruments*, 984 F. Supp. 629, 640 (CIT 1997); *Guangdong Chems. Imp. & Exp. Corp. v. United States*, 460 F. Supp. 2d 1370-71 (CIT 2006) (“*Guangdong Chems*”); *Peer Bearing Co. Changshan v. United States*, 752 F. Supp. 2d 1333, 1335 (CIT 2011) (“*Peer Bearing*”); *Dorbest Ltd. v. United States*, 462 F. Supp. 2d 1289-90 (CIT 2006) (sustaining the Department’s use of a data set that included merchandise other than that being valued).

Sawdust

VASEP submitted two price quotes for sawdust from Bangladeshi companies, SR Apparels and MK Traders.⁸⁷ While we find that these two price quotes are specific to the input in question and publicly available, however, they suffer from the same shortcomings noted above with respect to rice husk in that they do not meet any of the other of the Department's SV criteria. More specifically, these price quotes are single transaction prices from two individual companies, and therefore, do not represent a broad-market average.⁸⁸ In past cases the Department has stated that it prefers to use SVs that are not price quotes where other more reliable data, such as Indonesian GTA import data, are available.⁸⁹ In addition, the Department notes that the record does not demonstrate that the Bangladeshi sawdust price quotes are ex-factory and tax- and duty-exclusive because (a) the affidavit accompanying the MK Traders price quote does not state that the price quote is on an ex-factory and tax- and duty-exclusive basis, and (b) the emails regarding the SR Apparels price quote are not accompanied by an affidavit, and the emails do not state whether this price quote is tax- and duty-exclusive.⁹⁰ The Department also has concerns about the reliability of the SR Apparels sawdust price quote because (a) the email regarding the SR Apparels price quote is from Alibaba.com, which is an online commodities search engine and not an official company inquiry, and (b) the SR Apparels price quote is not on official company letterhead and there is no information on the record as to whether it was obtained directly from the company and issued by an official of the company for

⁸⁷ See VASEP's November 20, 2012 submission at Exhibit 2.B & C.

⁸⁸ See, e.g., *Tissue* at Comment 3.

⁸⁹ See, e.g., *Wire Strand* at Comment 1.B.

⁹⁰ See VASEP's November 20, 2012 submission at Exhibit 2.B.

sale in the ordinary course of business.⁹¹ Finally, we note that neither price quote is contemporaneous to the POR.

The record contains Indonesian GTA data and Bangladeshi UN ComTrade data to value sawdust. As noted above, the Department has previously found that data from GTA, such as that on the record for this input, is publicly-available, represents a broad market average, and is tax- and duty- exclusive.⁹² In addition, the Department has previously found that data from UN ComTrade, such as that on the record for this input, is publicly-available, represents a broad market average, and is tax- and duty- exclusive.⁹³ However, the Indonesian GTA data is contemporaneous with the POR, whereas the Bangladeshi UN ComTrade data is not. Finally, the HTS numbers are specific to the input at issue because the HTS headings from which the data is derived, “Sawdust And Wood Waste and Scrap,” is specific to the sawdust FOP reported by the respondents because sawdust is one of the items covered by the plain terms of the HTS description.⁹⁴ Additionally, the Department notes that the Court has upheld the Department’s use of broad import categories when the category’s selection was supported by substantial evidence.⁹⁵

In sum, although we do not find that the MK Traders price quote has the reliability issues that are present with the SR Apparel quote, we still find that the Bangladeshi price quotes only meet two of the Department’s SV criteria, specificity. In contrast, the Indonesian HTS data satisfies all of the Department’s SV criteria, and the Bangladeshi HTS data satisfies all of the

⁹¹ *Id.*

⁹² *See, e.g., Sinks* at Comment 2.

⁹³ *See, e.g., Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the New Shipper Review*, 77 FR 27435 (May 10, 2012) (“*Fish New Shipper*”) and accompanying Issues and Decision Memorandum at Comment II.E.

⁹⁴ *See, e.g.,* Petitioners’ May 23, 2012 submission at Exhibit 32.

⁹⁵ *See, e.g., Writing Instruments*, 984 F. Supp. 629, 640 (CIT 1997); *Guangdong Chems*, 460 F. Supp. 2d at 1370-71; *Peer Bearing*, 884 F. Supp. 2d at 1333-35; *cf. also Dorbest*, 462 F. Supp. 2d at 1289-90 (sustaining the Department’s use of a data set that included merchandise other than that being valued).

Department's SV criteria, except contemporaneity. As such we continue to find that the Indonesian HTS data represents the best available information to value respondents' sawdust FOP, and the selection of this data source informed our decision to select Indonesia as the primary surrogate country.

Fish Meal

In this review we have two SVs for fish meal, a price quote from an Indonesian company, Yahdi, and Bangladeshi UN ComTrade data. While we find that the price quote is specific to the input in question, it does not meet any other of the Department's SV criteria. More specifically, the price quote is a single transaction price from one company, and therefore, does not represent a broad-market average.⁹⁶ In addition, the Department notes that the record does not demonstrate that the Indonesian fish meal price quote is ex-factory and tax- and duty-exclusive because (a) there is no affidavit accompanying the price quote, and (b) the price quote does not indicate whether it is tax- and duty-exclusive.⁹⁷ The Department also has concerns about the reliability of the Yahdi price quote because (a) the price quote is from Agromaret, which is an online commodities search engine and not an official company inquiry, (b) the payment terms are not included; and (c) the price quote is not on official company letterhead, there is no information on the record as to whether it was obtained directly from the company, or issued by an official of the company for sale in the ordinary course of business.⁹⁸ Finally, we note that the price quote is not contemporaneous to the POR.

As noted above, the Department has previously found that data from UN ComTrade, such as that on the record for this input, is publicly-available, represents a broad market average, and

⁹⁶ See, e.g., *Tissue* at Comment 3.

⁹⁷ See Petitioners' November 20, 2012 submission at Exhibit 5.

⁹⁸ *Id.*

is tax- and duty- exclusive.⁹⁹ Although the Bangladeshi UN ComTrade data is not contemporaneous with the POR, it is specific to the input at issue because the HTS heading from which the data is derived, “Flours, Meals & Pellets Of Fish, Crust, Mol Or Other Aqua Invert, Unfit Human Cons,” is specific to the fish meal FOP reported by the respondents because meal of fish is one of the items covered by the plain terms of the HTS description.¹⁰⁰ Additionally, the Department notes that the courts upheld the Department’s use of broad import categories when the category’s selection was supported by substantial evidence.¹⁰¹

In sum, we find that the Yahdi price quote only meets one of the Department’s SV criteria, specificity. In contrast, the Bangladeshi HTS data satisfies all of the Department’s SV criteria, with the exception of contemporaneity. As such we continue to find that the Bangladeshi HTS data represents the best available information to value respondents’ fish meal by-product. Because we selected a SV from Bangladesh for this by-product, the only SV sourced from Bangladesh in this review, the selection of this SV did not inform our selection of Indonesia as the primary surrogate country.

Frozen Broken Meat

Although the Court ordered that we apply our SV analysis to frozen broken meat in order to determine how the selection of this SV applied to the selection of Indonesia as the primary surrogate country, we note that the only two SV sources for this by-product come from Indonesian import statistics, specifically, HTS 0304.29, advocated for by Vinh Hoan, and HTS 0304.99.0000, advocated for by Petitioners.¹⁰² The two competing GTA HTS numbers are

⁹⁹ See, e.g., *Fish New Shipper* at Comment II.E.

¹⁰⁰ See Vinh Hoan’s May 23, 2012 submission at Exhibit 2.

¹⁰¹ See, e.g., *Writing Instruments*, 984 F. Supp. 629, 640 (CIT 1997); *Guangdong Chems*, 460 F. Supp. 2d at 1370-71; *Peer Bearing*, 884 F. Supp. 2d at 1333-35; cf. also *Dorbest*, 462 F. Supp. 2d at 1289-90 (sustaining the Department’s use of a data set that included merchandise other than that being valued).

¹⁰² See *Final Results* at Comment VII.C.

publicly-available, represent a broad market average, tax- and duty- exclusive,¹⁰³ and are contemporaneous. We selected HTS 0304.99.0000 in the *Final Results* because it is more specific, as the plain terms of the HTS description “Other Fish Meat (Whether Or Not Minced) Frozen” is more representative of the frozen broken meat by-product than is HTS 0304.29, “Fish Fillets, Frozen, Nesoi.”¹⁰⁴ Although we selected HTS 0304.99.0000 in the *Final Results*, we find that selecting either HTS would inform our decision to select Indonesia as the surrogate country.

Fish Oil

Although the Court ordered that we apply our SV analysis to fish oil in order to determine how the selection of this SV applied to the selection of Indonesia as the primary surrogate country, we note that the only two SV sources for this by-product come from Indonesia, specifically, HTS 1504.20.9000, advocated for by Vinh Hoan and VASEP, and an Indonesian price quote, advocated for by Petitioners.¹⁰⁵ We find the Yahdi price quote is a single transaction price from one company, and therefore, does not represent a broad-market average.¹⁰⁶ Moreover, the record does not demonstrate that the Yahdi fish oil price quote is ex-factory and tax- and duty-exclusive because (a) there is no affidavit accompanying the price quote, and (b) the price quote does not indicate whether it is tax- and duty-exclusive.¹⁰⁷ As we note above, we harbor concerns about the reliability of the Yahdi price quote because (a) the price quote is from Agromaret, which is an online commodities search engine and not an official company inquiry, (b) the payment terms are not included; and (c) the price quote is not on official company letterhead, there is no information on the record as to whether it was obtained directly from the

¹⁰³ See, e.g., *Sinks* at Comment 2.

¹⁰⁴ See *Final Results* at Comment VII.C.

¹⁰⁵ See *Final Results* at Comment VII.B.

¹⁰⁶ See, e.g., *Tissue* at Comment 3.

¹⁰⁷ See Petitioners’ November 20, 2012 submission at Exhibit 5.

company, or issued by an official of the company for sale in the ordinary course of business.¹⁰⁸

Finally, we note that the price quote is not contemporaneous to the POR.

HTS 1504.20.9000 is publicly-available, represent a broad market average, is tax- and duty- exclusive,¹⁰⁹ and is contemporaneous. In addition, the HTS heading from which the data is derived, “Fish Fats & Oils & Their Fractions Exc Liver, Refined or Not, Not Chemically Mod,” lists fish oil as one of the items covered by the plain terms of the HTS description. However, based on Vinh Hoan’s description of its fish oil production process, we harbor concerns that HTS 1504.20.9000 may be an overly broad HTS category in which to value the respondents’ fish oil, given that by its terms it may include refined fish oil. It is because of this concern that we have capped the fish oil SV, as noted in Section F, below. Although we selected HTS 1504.20.9000 in the *Final Results*, we find that selecting either value would inform our decision to select Indonesia as the surrogate country.

*Fish Waste, Fish Belly and Fish Skin*¹¹⁰

In this review we have three competing SVs for fish waste, fish belly and fish skin, a price quote from a Bangladeshi company, Asian Seafood Limited, a price quote from a Philippine company, Vitarich,¹¹¹ and Indonesian import statistics. We examine below how each of these meet the Department’s SV criteria.

¹⁰⁸ *Id.*

¹⁰⁹ *See, e.g., Sinks* at Comment 2.

¹¹⁰ Although the Court lists only these three by-products, in fact there were several more by-products valued using the same SV source, for example, Vinh Hoan reported fish bladder, fish stomach, fish skin, frozen fish stomach, frozen fish fin, frozen fish skin. We note this because part of our SV selection process was based around the much greater specificity of one of the price quotes as compared to an alternative price quote. More specificity in this case, ensures greater by-product coverage for these different by-products. *See, e.g., Memorandum to the File, from Susan Pulongbarit, through Scot T. Fullerton, “Eighth Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results Analysis Memorandum for Vinh Hoan Corporation,”* dated March 13, 2013.

¹¹¹ *See* Petitioners’ May 23, 2012 submission at Exhibit 19.

Regarding the Indonesia import statistics, while we have previously found that data from GTA meets many of our SV criteria,¹¹² we find this HTS to be unusable. It is not clear that the description of the Indonesian HTS in question, “Animal Products Nesoi; Dead Animals, Unfit for Human Consumption, Other Product of Fish or Crustaceans, Mollusks or Other Aquatic Invertebra,” is specific to the by-product at issue, and as a result, we find that fish waste, fish belly and fish skin would not be covered by this HTS category. While HTS descriptions for other SVs, as noted above, make clear that the FOPs in question would fall into the respective HTS categories, in this case we find that this HTS is not a usable source to value fish waste, since it is not clear that these types of fish waste would fall into this HTS category. Since we do not have a source that met our SV criteria to value fish waste from the primary surrogate country, Indonesia, we looked to an alternative surrogate country.

VASEP submitted a price quote for *pangasius* fish waste, fish belly and fish skin from a Bangladeshi company, Asian Seafood.¹¹³ While we find that this price quote is specific to the input in question, although not as specific as the Vitarich price quote, it does not meet any other of the Department’s SV criteria. More specifically, this price quote is a single transaction and does not represent a broad-market average.¹¹⁴ In addition, the Department notes that the record does not demonstrate that the price quote is ex-factory and tax- and duty-exclusive because (a) the affidavit accompanying the Asian Seafood price quote does not state that the price quote is on an ex-factory and tax- and duty-exclusive basis, (b) nor does the price quote itself state that it is on an ex-factory and tax- and duty-exclusive basis.¹¹⁵ The Department does not have concerns about the reliability of the price quote, as we have with other price quotes on the record of this

¹¹² See, e.g., *Sinks* at Comment 2.

¹¹³ See VASEP’s November 20, 2012 submission at Exhibit 2.A.

¹¹⁴ See, e.g., *Tissue* at Comment 3.

¹¹⁵ See VASEP’s November 20, 2012 submission at Exhibit 2.A.

review, because the Asian Seafood quote is on official company letterhead and there is information on the record which indicates that it was obtained directly from the company, and was issued by an official of the company for sale in the ordinary course of business.¹¹⁶ Finally, we note that the price quote is not contemporaneous to the POR.

Petitioners submitted a price quote for *pangasius* fish waste, fish belly, fish head, fish bones and tail waste, fish trimmings and fish skin from a Philippine company, Vitarich.¹¹⁷ We find that this price quote is specific to the input in question, and is even more specific than the Asian Seafoods quote because it covers more by-products. This price quote is a single transaction and does not represent a broad-market average.¹¹⁸ In addition, the Department notes that the record has demonstrated that the price quote is ex-factory and tax- and duty-exclusive because the affidavit accompanying the Vitarich price states that the price quote is on an ex-factory and tax- and duty-exclusive basis.¹¹⁹ The Department does not have concerns about the reliability of the price quote as we have with other price quotes on the record of this review because the Vitarich quote is on official company letterhead, there is information on the record which indicates that it was obtained directly from the company, and was issued by an official of the company for sale in the ordinary course of business.¹²⁰ Finally, we note that the price quote is not contemporaneous to the POR.

In sum, we find that the Indonesian HTS data is not specific to the by-products in question, and is therefore not usable. As this was the only value for these by-products on the record for Indonesia, for the selection of a SV for these by-products we looked to an alternative surrogate country. We find that the Asian Seafood price quote meets one of the Department's

¹¹⁶ *Id.* at Exhibit 2.B.

¹¹⁷ *See* Petitioners' May 23, 2012, SV Submission at Exhibit 19.

¹¹⁸ *See, e.g., Tissue* at Comment 3.

¹¹⁹ *See* Petitioners' May 23, 2012, SV Submission at Exhibit 19.

¹²⁰ *Id.* at Exhibit 2.B.

SV criteria, specificity. In contrast the Vitarich price quote meets two of the Department's SV criteria, it is tax- and duty- exclusive, it is more specific than the Asian Seafood quote and it is closer to the POR than the Asian Seafood quote. As such we continue to find that the Vitarich price quote represents the best available information to value respondents' fish oil by-product. Because we valued these by-products using a Philippine SV, the selection did not inform our decision to select Indonesia as the primary surrogate country.

Fresh Broken Meat

In this review we have two competing SVs for fresh broken meat, a price quote from a Philippine company, Vitarich,¹²¹ advocated for by Petitioners, and Indonesian import statistics, advocated by Vinh Hoan.¹²² We examine below how each of these meet the Department's SV criteria.

As noted above, while we have previously found that data from GTA meets many of our SV criteria,¹²³ we find this Indonesian GTA data to be unusable. The HTS description, "Fish Fillets and Other Meat, Fresh or Chilled, Excluding Steaks, Nesoi," is not specific to the by-product at issue because it is not clear that fresh broken meat would fall into this HTS category. While HTS descriptions for other SVs, as noted above, make clear that the FOPs in question would fall into the respective HTS categories, in this case we find that HTS 0304.19 is not a usable source to value fresh broken meat, since it is not clear that this type of by-product would fall into this HTS category. Since we do not have a SV source to value fish waste from the primary surrogate country, Indonesia, we looked to an alternative surrogate country.

¹²¹ See Petitioners' May 23, 2012 submission at Exhibit 19.

¹²² See Vinh Hoan's November 20, 2012 submission at Exhibit 1.

¹²³ See, e.g., *Sinks* at Comment 2.

Petitioners submitted a price quote for *pangasius* fresh broken meat from a Philippine company, Vitarich.¹²⁴ We find that this price quote is specific to the input in question, as it covers *pangasius* trimmings. This price quote is a single transaction and does not represent a broad-market average.¹²⁵ In addition, the Department notes that the record demonstrates that the price quote is ex-factory and tax- and duty-exclusive because the affidavit accompanying the Vitarich price states that the price quote is on an ex-factory and tax- and duty-exclusive basis.¹²⁶ The Department does not have concerns about the reliability of the price quote, as we have with other price quotes on the record of this review, because the Vitarich quote is on official company letterhead and there is information on the record which indicates that it was obtained directly from the company and issued by an official of the company for sale in the ordinary course of business.¹²⁷ Finally, we note that the price quote is not contemporaneous to the POR.

In sum, we find that the Indonesian HTS data is not specific to the by-product in question, and is therefore not usable. As this was the only value for this by-product on the record for Indonesia, for the selection of a SV for this by-product we looked to an alternative surrogate country. We find that the Vitarich price quote meets two of the Department's SV criteria, it is tax- and duty- exclusive, and it is specific. As such we continue to find that the Vitarich price quote represents the best available information to value respondents' fresh broken meat by-product. Because we valued this by-product using a Philippine SV, the selection did not inform our decision to select Indonesia as the primary surrogate country.

¹²⁴ See Petitioners' May 23, 2012, SV Submission at Exhibit 19.

¹²⁵ See, e.g., *Tissue* at Comment 3.

¹²⁶ See VASEP's November 20, 2012 submission at Exhibit 2.A.

¹²⁷ *Id.* at Exhibit 2.B.

Foreign B&H

At the outset we note that no party raised arguments concerning any B&H SV on the record, and as such, there was no issue concerning B&H for us to address in the *Final Results*. However, based on the Court's order, we have applied our SV analysis to the values on the record of this review. We note the record contains four B&H SVs (a) *Doing Business, Camarines*, from the Philippines,¹²⁸ (b) *Doing Business, Indonesia*,¹²⁹ (c) *Doing Business, Bangladesh*,¹³⁰ and (d) an average of three Indian companies B&H expenses used to value B&H in the antidumping dumping duty investigation of seamless refined copper pipe and tube from the PRC (referred to hereafter as "three companies B&H").¹³¹

Beginning with the three companies B&H, we find that this data is specific to B&H expenses, is net of taxes and duties, and is publicly available, as it is taken from the public versions of Indian companies' submissions to the Department.¹³² However, as it is representative of only three companies' experience, it is not a broad market average, nor is it contemporaneous, as the data are from 2005 to 2008.¹³³

The Department previously found that data from *Doing Business* is publicly-available, represents a broad market average, and is tax- and duty- exclusive.¹³⁴ Additionally, we note that the *Doing Business* information from all three countries is contemporaneous with the POR. Finally, we find that *Doing Business* lists all charges associated with exporting a product overseas - document preparation, customs clearance, and port and terminal handling - charges

¹²⁸ See Petitioners' May 23, 2012 submission at Exhibit 20.A.

¹²⁹ *Id.* at Exhibit 35.A.

¹³⁰ See VASEP's May 23, 2012 submission at Exhibit 11.A.

¹³¹ See Vinh Hoan's May 23, 2012 submission at Exhibit 11.

¹³² *Id.*

¹³³ See, e.g., *Tissue* at Comment 3.

¹³⁴ See, e.g., *Fish New Shipper* at Comment II.G.

that would be included in B&H. As a result we find *Doing Business* to be specific to respondents' B&H expenses.

In sum, we find that the three companies B&H data meet three of the Department's SV criteria: specificity, net of taxes and duties, and is publicly available. In contrast, *Doing Business* meets all of the Department's SV criteria. Because *Doing Business* from Bangladesh, Indonesia and the Philippines equally meet the Department's selection criteria, this SV does not favor the use of one country over another. Consequently, we selected *Doing Business Indonesia* to value B&H only after selecting Indonesia as the surrogate country.

We note that it is the Department's practice, consistent with 19 CFR 351.408(c)(2), to value the FOPs in a single surrogate country, when possible.¹³⁵ There are important economic reasons for this regulatory preference. It is most accurate to rely on factor costs from a single surrogate country because sourcing data from a single country better reflects the trade-off between labor costs and other factors' costs, including capital, based on their relative prices. The primary surrogate methodology enables the Department to capture the complete interrelationship of factor costs that a producer in the primary surrogate country faces. The Department only resorts to other surrogate country information if the record does not contain a value for a factor from the primary surrogate, or if a primary surrogate country value on the record is determined, based on record evidence, to be aberrational or unreliable.¹³⁶ The CIT has upheld the Department's preference for deriving surrogate data from a single country.¹³⁷ As the court

¹³⁵ See, e.g., *See Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not To Revoke in Part*, 77 FR 53856 (September 4, 2012) ("*China Shrimp*") and accompanying Issues and Decision Memorandum at Comment 10.

¹³⁶ See, e.g., *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 74 FR 6838 (April 13, 2009) ("*Citric Acid*") and accompanying Issues and Decision Memorandum at Comment 5.D.

¹³⁷ See, e.g., *Clearon Corporation and Occidental Chemical Corp. v. United States*, Slip Op. 13-22 (CIT 2013) ("*Clearon*") at 13.

pointed out in *Peer Bearing*, “the preference for use of data from a single country could support a choice of data as the best available information where the other available data upon a fair comparison, are otherwise seen to be fairly equal.”¹³⁸ As a consequence, because the record contains *Doing Business* data sets from Indonesia, the Philippines and Bangladesh which are otherwise equal, we have no need to depart the surrogate country to value B&H.¹³⁹

Foreign Inland Truck Freight

At the outset we note that no party raised arguments concerning any inland truck freight SVs on the record, and as such, there was no issue concerning inland truck freight for us to address in the *Final Results*. However, based on the Court’s order, we have applied our SV analysis to the values on the record of this review. We note that parties placed six inland freight SVs on the record: (a) the 2008 *Bangladesh Statistical Yearbook*.¹⁴⁰ (b) the 2005 *Bangladesh Statistical Yearbook*,¹⁴¹ (c) *Doing Business, Camarines*, from the Philippines,¹⁴² (d) *Doing Business, Indonesia*,¹⁴³ (e) *Doing Business, Bangladesh*¹⁴⁴ and (f) information from the Directorate General of Mineral and Coal, from Indonesia.¹⁴⁵

The Department has previously found that data from the *Bangladesh Statistical Yearbook*, such as those on the record for this movement expense, is publicly-available, represents a broad market average, and is tax- and duty- exclusive.¹⁴⁶ Although the *Bangladesh*

¹³⁸ See *Peer Bearing Co-Chongshan v. United States*, 804 F.Supp 2d 1338, 1353 (CIT 2011) (“*Peer Bearing*”), citing to *Peer Bearing Company-Chongshan v. United States*, 752 F. Supp. 2d at 1353, 1373 (CIT 2011).

¹³⁹ See 19 CFR 351.408(c)(2); *Clearon*, at *6 (“{T}he court must treat seriously {the Department’s } preference for the use of a single surrogate country.”); *Globe Metallurgical*, 32 CIT 1070, 1076 (2008); see also *Peer Bearing*, 752 F. Supp. 2d 1353, 1373 (CIT 2011).

¹⁴⁰ See An Phu’s May 23, 2013 submission at Exhibit 14.

¹⁴¹ See VASEP’s May 23, 2012 submission at Exhibit 8; see also Vinh Hoan’s May 23, 2012 submission at Exhibit 8.

¹⁴² See Petitioners’ May 23, 2012 submission at Exhibit 20.A.

¹⁴³ *Id.* at Exhibit 35.A.

¹⁴⁴ See VASEP’s May 23, 2012 submission at Exhibit 11.A.

¹⁴⁵ See Petitioners’ May 23, 2012 submission at Exhibit 35.B.

¹⁴⁶ See, e.g., *Fish New Shipper* at Comment II.G.

Statistical Yearbook information is not contemporaneous with the POR, it is specific to a general freight rate as it covers truck freight.

As noted above, the Department has previously found that data from *Doing Business*, such as those on the record for this movement expense, is publicly-available, represents a broad market average, and is tax- and duty- exclusive.¹⁴⁷ Additionally, we note that the *Doing Business* information from all three countries is contemporaneous with the POR. Finally, we find that *Doing Business* lists inland freight as a specific charge, and is thus a general freight rate which is as specific as other general freight rates on the record, such as the *Bangladesh Statistical Yearbook*.

The information from the Directorate General of Mineral and Coal is difficult to assess because it is not translated. While it appears to be from an Indonesian government source, on letterhead, and includes a signature, it was not submitted in accordance with 19 CFR 351.303(e), which requires that a “document submitted in a foreign language must be accompanied by an English translation of the entire document or of only pertinent portions, where appropriate, unless the Secretary waives this requirement for an individual document.” We note that the Petitioners did not request approval for the submission of a partially translated document. The absence of complete translations precludes the Department from fully evaluating the information provided. For this reason, the Department’s practice has been to exclude SV data from consideration when it is not fully translated.¹⁴⁸ As a result, we have not considered this SV source for inland truck freight.

¹⁴⁷ *Id.*

¹⁴⁸ See, e.g., *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350 (June 4, 2013) (“*Xanthan Gum*”) and accompanying Issues and Decision Memorandum at Comment 2.

In sum, we find that the *Bangladesh Statistical Yearbook* data meet all of the Department's SV criteria, with the exception of contemporaneity. In contrast, *Doing Business* meets all of the Department's SV criteria. Because *Doing Business* from Bangladesh, Indonesia and the Philippines equally meet the Department's selection criteria, this SV does not favor the use of one country over another. Consequently, we selected *Doing Business Indonesia* to value inland truck freight only after selecting Indonesia as the surrogate country.

As noted above, it is the Department's practice, consistent with 19 CFR 351.408(c)(2), to value the FOPs in a single surrogate country, when possible.¹⁴⁹ The CIT has upheld the Department's preference for deriving surrogate data from a single country.¹⁵⁰ As the court pointed out in *Peer Bearing*, "the preference for use of data from a single country could support a choice of data as the best available information where the other available data upon a fair comparison, are otherwise seen to be fairly equal."¹⁵¹ As a consequence, because the record contains *Doing Business* data sets from Indonesia, the Philippines and Bangladesh which are otherwise equal, we have no need to depart the surrogate country to value inland truck freight.¹⁵²

Surrogate Financial Ratios

The record contains two financial statements from Bangladeshi seafood producers, Apex Foods Limited ("Apex") and Gemini Sea Food ("Gemini").¹⁵³ We note that the Apex and Gemini financial statements are contemporaneous, complete, publicly available, and the companies manufacture merchandise which is comparable to subject merchandise. Specifically, Apex's 2011/2010 financial statements and Gemini's 2011/2010 financial statements each

¹⁴⁹ See, e.g., *China Shrimp* at Comment 10.

¹⁵⁰ See, e.g., *Clearon*, Slip Op. 13-22 (CIT 2013) at 13.

¹⁵¹ See *Peer Bearing*.

¹⁵² See 19 CFR 351.408(c)(2); *Clearon*, at *6 ("The court must treat seriously {the Department's } preference for the use of a single surrogate country."); *Globe Metallurgical*, 32 CIT 1070, 1076 (2008); see also *Peer Bearing*, 752 F. Supp. 2d 1353, 1373 (CIT 2011).

¹⁵³ See VASEP's May 23, 2012 submission at Exhibits 12.a and 12.B.

overlap the POR.¹⁵⁴ The financial statements are publicly available and certified by independent auditors to conform to Bangladeshi accounting standards, and are producers of frozen shrimp, which is a comparable industry to producing frozen fish fillets.¹⁵⁵ Consequently, Apex and Gemini meet the Department’s criteria for selecting surrogate financial ratios.

As we noted in the *Final Results*, the record contains one contemporaneous financial statement from an Indonesian seafood producer, PT Dharma Samudera Fishing Industries (“DSFI”).¹⁵⁶ We found that DSFI’s financial statements are contemporaneous, complete, publicly available and the company manufactures merchandise which is comparable to subject merchandise. Specifically, DSFI’s 2011 financial statements overlap the POR, are publicly available and certified by independent auditors to conform to Indonesian accounting standards, the company is based in Indonesia and is a producer of frozen fish fillets.¹⁵⁷ Consequently, DSFI meets the Department’s criteria for selecting surrogate financial ratios.

As the financial statements from Bangladesh and Indonesia both meet the criteria for calculating surrogate ratios, we applied our normal precedent in selecting which statements to select. The statute directs the Department to base the valuation of the FOPs on “the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate. . . .”¹⁵⁸ 19 CFR 351.408(c)(4) further stipulates that the Department normally will value manufacturing overhead, SG&A expenses and profit using non-proprietary information gathered from producers of identical or comparable merchandise in the

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ See *Final Results* at Comment II.

¹⁵⁷ See Petitioners’ May 23, 2012 submission at Exhibit 36.

¹⁵⁸ See section 773(c)(1) of the Act.

surrogate country.¹⁵⁹ In complying with the statute and the regulations, it is the Department's practice to determine surrogate financial ratios using data from market-economy surrogate companies in the primary surrogate country based on the specificity, contemporaneity, and quality of the data.¹⁶⁰ We find these financial statements from Bangladesh and Indonesia equally meet the Department's selection criteria, and as such, this SV does not favor the use of one country over another. Consequently, we selected the DSFI financial statement to calculate surrogate ratios only after selecting Indonesia as the surrogate country.

As noted above, it is the Department's practice, consistent with 19 CFR 351.408(c)(2), to value the FOPs in a single surrogate country, when possible.¹⁶¹ The CIT has upheld the Department's preference for deriving surrogate data from a single country.¹⁶² As the court pointed out in *Peer Bearing*, "the preference for use of data from a single country could support a choice of data as the best available information where the other available data upon a fair comparison, are otherwise seen to be fairly equal."¹⁶³ As a consequence, because the record contains equally comparable financial statements from Indonesia and Bangladesh, we have no need to depart from the surrogate country when valuing surrogate financial ratios.¹⁶⁴

D. Consignment Sales

The CIT remanded the issue of consignment sales to the Department. In the *Final Results*, the Department applied credit expenses and inventorying costs to Vinh Hoan's

¹⁵⁹ See *Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 52049 (September 12, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

¹⁶⁰ See *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079 (September 8, 2006) and accompanying Issues and Decision Memorandum at Comment 1.

¹⁶¹ See, e.g., *China Shrimp* at Comment 10.

¹⁶² See, e.g., *Clearon*, Slip Op. 13-22 (CIT 2013) at 13.

¹⁶³ See *Peer Bearing*.

¹⁶⁴ See 19 CFR 351.408(c)(2); *Clearon*, at *6 ("{T}he court must treat seriously {the Department's } preference for the use of a single surrogate country."); *Globe Metallurgical*, 32 CIT 1070, 1076 (2008); see also *Peer Bearing*, 752 F. Supp. 2d 1353, 1373 (CIT 2011).

consignment constructed export price (“CEP”) sales because it found that “Vinh Hoan calculated the credit expenses for its consignment CEP sales in the same manner as CEP sales, despite the fact that the two types of sales differed.”¹⁶⁵ The Court determined that the Department should reconsider its decision to treat all sales to one customer as consignment sales, or explain why it is doing so despite record evidence that only some sales to such customers were consignment sales.

Upon further review of the record, the Department finds that only some of the sales by Vinh Hoan’s customer were consignment sales. Vinh Hoan reported that the consignment arrangement with its customer began in 2009. According to the agreement, Vinh Hoan delivered the merchandise directly to cold storage in the United States, which Vinh Hoan’s customer would then sell to its own customer.¹⁶⁶ This arrangement ended during the POR, in February 2011, at which point the two parties agreed that Vinh Hoan would make a one-time sale to its customer to purchase the remaining inventory.¹⁶⁷ As a result, the Department has determined to treat only those sales from Vinh Hoan’s customer that entered into cold storage pursuant to the consignment arrangement as consignment sales. Accordingly, the Department will apply credit expenses and inventory carrying costs solely to Vinh Hoan’s consignment sales to the customer with which it had a consignment agreement.

E. Gross Weight vs. Net Weight Adjustment

We reconsidered our use of Vinh Hoan’s gross weight denominator in accordance with the Court’s order. In revisiting whether it is more appropriate to calculate Vinh Hoan’s margin using a gross weight or net weight denominator, we find that we should re-calculate Vinh Hoan’s margin using the net weight denominator.

¹⁶⁵ See Verification Report at 7.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

In the LTFV investigation of this proceeding, the Department was required to determine whether U.S. price and NV for the respondents should be based on net weight or gross weight for the subject merchandise. As established in the *Fish Investigation Final*, net weight (or unglazed weight) is the weight of the frozen fish fillets only, whereas gross weight (or glazed weight) is the net weight of the frozen fish fillets with additional water added as glazing or ice.¹⁶⁸ In determining what weight basis should be used to compare the U.S. price to the NV in the LTFV investigation, the Department stated:

Because the Department's practice is to use the U.S. price paid to the Respondents and because the Respondents sell, invoice, and are paid for the subject merchandise sold to the United States on a gross weight basis, we are using the gross weight U.S. price as our starting export price. Consequently, to calculate the dumping margins, we are using the gross weight factors of production reported by the Respondents in order to ensure that the normal value is fully comparable to the U.S. price.¹⁶⁹

Bearing this in mind, we examined the information Vinh Hoan submitted and found that it reported its U.S. sales and FOPs using inconsistent denominators. Specifically, Vinh Hoan reported its U.S. sales database on a net weight basis¹⁷⁰ while its FOP database was reported on a gross weight basis.¹⁷¹

As noted by the Court, the Department's regulations state that "{A} fair comparison shall be made between the between the export price or constructed export price and normal value."¹⁷² In order to make a fair comparison between Vinh Hoan's U.S. prices and NV, the Department finds that an adjustment must be made in order to calculate Vinh Hoan's margin on a consistent basis. Because Vinh Hoan reported its U.S. sales on a net weight basis the FOP database should be adjusted from a gross weight basis to a net weight basis.

¹⁶⁸ See *Fish Investigation Final* at footnote 7.

¹⁶⁹ *Id.* at 4 (Discussion of Issues at I.A.).

¹⁷⁰ See Vinh Hoan's January 3, 2012 submission at 9 (Section C response).

¹⁷¹ *Id.* at 16 (Section D response).

¹⁷² See Section 773(a) of the Act.

In order to make this adjustment, the Department re-opened the record and requested that Vinh Hoan submit a revised FOP database using the net quantity denominator that is on the record.¹⁷³ In its request, the Department advised Vinh Hoan that no other changes should be made to the reporting methodology or to the calculation in general.¹⁷⁴ Vinh Hoan resubmitted its Section D database, using a net weight quantity denominator.¹⁷⁵ Using Vinh Hoan's revised FOP database, the Department recalculated Vinh Hoan's margin by comparing a net weight U.S. price with a net weight NV.

F. Fish Oil

In the underlying review, we valued the fish oil by-product offset to NV using Indonesian GTA data, and then capped the SV by calculating the constructed value to produce fish oil. Upon remand, after reviewing the information on the record the Department has revised its fish oil calculation and discussed below. The Department continues to find that the Indonesian GTA import data under HTS 1504.20.9000, "Fish Fats & Oils & Their Fractions Exc Liver, Refined Or Not, not chemically Mod" is the best available information to value this by-product, and that a constructed value ("CV") for fish oil is appropriate based upon record evidence related to the nature of Vinh Hoan's fish oil by-product. However, we find the calculation needs to be corrected for certain errors concerning (a) FOP ratios for electricity, labor, fish waste, rice husk, coal, and sawdust used in the production of fish, (b) revising the calculation so that fish waste, and not whole live fish, is the relevant input for valuing the by-product, (c) a fish waste FOP ratio should be included in the calculation of the total cost of manufacturing for fish oil, and (d)

¹⁷³ See Letter from Commerce, to Vinh Hoan, regarding "Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Remand Redetermination of Antidumping Duty Administrative Review; 2010-2011," dated April 7, 2015.

¹⁷⁴ *Id.*

¹⁷⁵ See Vinh Hoan's April 21, 2015 submission.

the addition of surrogate freight costs to only those inputs which incurred them (*i.e.*, sawdust, rice husk, and coal).

The Department finds that the calculation used at the *Final Results* for unrefined fish oil was not mathematically correct because it multiplied the CV for fish oil by the total cost of fish oil to produce a kilogram of fish fillets, which resulted in a cost that did not have common units of measure. The Department has corrected this error by not multiplying the CV for fish oil by the total cost of fish oil to produce a kilogram of fish. However, the Department also finds that it made an error in the calculation by constructing the cost to produce fish oil using total fish fillet production as the denominator for the inputs that went into producing fish oil. Because fish oil is the finished product for which the Department is building the constructed value, the Department finds that the cost for the inputs should be based on the total production of fish oil and not the total production of fish fillets. Accordingly, the Department recalculated the FOP ratios for electricity, labor, fish waste, rice husk, and sawdust used in the production of fish oil using total production of fish oil as each FOP ratio's denominator.

The Department also made an error when it calculated the ratio of fish oil production to fish meal. Specifically, the Department finds that it did not include the production of fish oil by Vinh Hoan's affiliate, VDTG, in the numerator and denominator. Accordingly, the Department is making this correction for the remand redetermination and is applying a revised ratio of fish oil to the FOP ratios. Additionally, the fish waste, not the whole live fish, is the relevant input for valuing fish oil. As described by Vinh Hoan, fish oil is produced from fish head, bone, gut and fat, which is fish waste collected at the filleting stage.¹⁷⁶ Therefore, the Department finds that the fish waste is the relevant input for valuing fish oil.

¹⁷⁶ See Vinh Hoan's Section D response.

The Department also finds that a fish waste FOP ratio should be included in the calculation of the total cost of manufacturing for fish oil, which was not included in the calculation used in the *Final Results*. Because Vinh Hoan did not report a fish waste FOP ratio, the Department derived this FOP ratio by taking Vinh Hoan's reported whole live fish FOP ratio required to produce one kilogram of fish fillets and subtracting by one kilogram of fish fillet to obtain the volume of fish waste required to produce one kilogram of fish fillets.¹⁷⁷

The Department also finds that it should include the surrogate freight costs incurred for the inputs required to produce Vinh Hoan's unrefined fish oil. In order to do so, it is appropriate to only include the surrogate freight costs incurred for the inputs that incurred these costs and not for inputs, such as fish waste, that did not incur these surrogate freight costs. Accordingly, for the final results, the Department will only add surrogate freight costs to sawdust, rice husk, and coal.¹⁷⁸

III. COMMENTS FROM INTERESTED PARTIES

The Department released the draft remand on May 14, 2015. Interested parties submitted comments on May 21, 2015,¹⁷⁹ and June 1, 2015.¹⁸⁰

A. Surrogate Country Selection

Vinh Hoan's Comments

- In the final remand the Department should address the purpose of the Surrogate Country List, how it is created if it is only a "starting point," and how the Department determines which countries belong on which set of "stairs" in its analysis.¹⁸¹

¹⁷⁷ See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2011-2012*, 79 FR 19053 (April 7, 2014) ("9th Fish Final") and accompanying Issues and Decision Memorandum at Comment XXIII, FN 546.

¹⁷⁸ See Vinh Hoan Final Analysis Memo.

¹⁷⁹ Binh An Seafood Joint Stock Company submitted a statement which indicated that it disagreed with the draft remand and agreed with any comments submitted by Vinh Hoan. See Binh An Seafood Joint Stock Company's May 21, 2015 submission.

¹⁸⁰ See Petitioners' and Vinh Hoan's June 1, 2015 submissions.

Petitioners' Comments

- When examining either the 2010 or 2011 GNI data, Vietnam's GNI is twice the size of Bangladesh's and Indonesia's is twice the size of Vietnam's, thus, as the relative GNI differences are the same, there is no basis to conclude based on relative GNIs that one of these surrogates is more comparable.
- Likewise, regardless of whether 2010 or 2011 GNI data are used, the World Bank classifies Vietnam, Indonesia and the Philippines as "lower-middle-income" economies, but places Bangladesh in the "low-income" economies category - a lower level of economic development based on its lower GNI and significantly lower stage of development. Accordingly, the Department must conclude that Bangladesh's nominally closer absolute *per capita* GNI level does not outweigh the World Bank's conclusion that Indonesia is at a closer level of economic development to Vietnam than is Bangladesh, or the overwhelming superiority of the Indonesian data.
- The Court was struck by the fact that in this review the Department found itself in the "unusual situation of having on the record three sources of information issued by governments, which represent official statements of those governments as to the price of whole live fish" relevant to the Department's analysis,¹⁸² and that the Department would need to apply an unusual level of scrutiny to "these otherwise usable data sets."¹⁸³ Here, the Court implies that because the datasets are government-issued, they are somehow equally usable for surrogate values, and thus directs the Department to evaluate the relative economic comparability of Bangladesh, Indonesia and Vietnam, effectively as a tie breaker, and relies on *Ad Hoc Shrimp I* to suggest that the Department must examine relative GNI differences to

¹⁸¹ In the Draft remand we used a set of stairs as an analogy to explain level of economic development.

¹⁸² See *Vinh Hoan* at 28.

¹⁸³ *Id.* at 32.

break the tie.¹⁸⁴ In *Ad Hoc Shrimp I*, the Court noted that the Department itself found that the data “were so similar in quality” that the Department could not make a distinction between the two based on its usual criteria, thus concluding that the Department had not provided a “reasonable explanation as to why potentially slight differences in data quality necessarily outweigh potentially large differences in economic comparability.”¹⁸⁵

- In this case, the Bangladeshi data quality is so poor in comparison to that of Indonesia that the Department did not need to weigh other factors, such as the economic comparability of each country, to help evaluate datasets that were only “slightly different.” The Department’s explanations on remand directly address the Court’s concerns, are supported by substantial evidence, and are in accordance with the law.

Department’s Position: We have addressed each of the parties’ concerns below. We continue to find that data considerations outweigh the relatively modest differences in *per capita* GNI. As such, we continue to select Indonesia as the primary surrogate country.

Relative Quality of the Bangladeshi and Indonesian Whole Live Fish Data

We agree with Petitioners that the quality of IAS data is superior to, not equivalent to, the DAM Data. We continue to find that the evidence demonstrates that the DAM data contains dead fish, and this renders the IAS data significantly superior to the DAM data. The respondents consume only whole live *pangasius* fish to produce subject merchandise¹⁸⁶ and prices of dead *pangasius* fish in Bangladesh are substantially lower than those for whole live *pangasius* fish.¹⁸⁷

¹⁸⁴ See *Ad Hoc Shrimp Trade Action Comm. v. United States*, 882 F. Supp. 2d 1366 (CIT 2012) (“*Ad Hoc Shrimp I*”).

¹⁸⁵ See *Ad Hoc Shrimp I*, 882 F.Supp.2d at 1375.

¹⁸⁶ See, e.g., Anvifish’s January 13, 2012 submission at 5; Vinh Hoan’s January 3, 2012 submission at 7.

¹⁸⁷ See Petitioners’ November 20, 2012 submission at Exhibit 8. Also, Vinh Hoan reported that it pays less for fish which are sluggish, or near dead. See Vinh Hoan Verification Report at 27. This lends further evidence that the *DAM Data* may undervalue the live whole fish price as fish die throughout the day at the wholesale markets. The Vinh Hoan Verification Report indicates that on each invoice there are two prices for two quantities from the same supplier. *Id.* Company officials indicated that this is because towards the end of each incoming batch, the

The Department issued a letter to the DAM asking it to explain whether the wholesale prices published online were specific to whole live fish or whether they included prices for dead fish, to which DAM did not respond.¹⁸⁸ As such, we find that the DAM Data contains prices for both dead and live fish, and therefore, the DAM Data is not specific to the input in question.

Specificity is a key element of the test for the usability of a SV, because if the SV data does not cover the FOP in question, it cannot be used for SV purposes.¹⁸⁹ Moreover, regarding the reliability of the DAM Data, as we stated in the *Final Results*, “Affidavits from DAM officials note that DAM officials interview local wholesale businessmen at markets about their estimated selling prices of various fish, report those prices to DAM, and apart from interviews, the DAM officials do not undertake any process to consistently validate the prices, although DAM will correct mistakes or anomalies if they are brought to DAM’s attention.”¹⁹⁰ Moreover, because “the Department is uncertain as to what, if any, procedures are used by DAM to ensure its data accuracy, that the Department requested information from DAM concerning its collection and collation methods; however, DAM did not respond.”¹⁹¹ The concerns the Department has with respect to the specificity of the DAM Data and the reliability of the DAM Data, as well as the fact that IAS is a much broader market average than the DAM Data, lead us to conclude that the IAS data for whole live fish data represent the best available information.

remaining fish on the delivery boat are worn out and not moving around as much. *Id.* They pay the farmer less for these fish. *Id.*

¹⁸⁸ See the Department’s letter to Shafiqur Rahman Shaikh, Chief, Research, Planning & Department, dated July 27, 2012 (“DAM Questionnaire”).

¹⁸⁹ See *Jinan Yipin Corp. v. United States*, 800 F. Supp. 2d 1226, 1304 (CIT 2011) (“*Yipin*”) (where the Court noted that if a set of data is not sufficiently “product specific,” it is of no relevance whether or not the data satisfy the other criteria). See also *Tianjin Machinery Import & Export Corp. v. United States*, 806 F. Supp. 1008, 1017-1018 (CIT 1992) (recognizing the fact that SVs must reflect the experience of the respondents’ industry).

¹⁹⁰ See Petitioners’ June 14, 2012 submission at Exhibits 26, 29 and 45. See also *Final Results* at Comment I.C.

¹⁹¹ See DAM Questionnaire.

Purpose of the Surrogate Country List

Regarding Vinh Hoan's question regarding the purpose of the Surrogate Country List, because Vietnam was treated as an NME, when calculating NV, section 773(c)(4) of the Act requires the Department to value FOPs, to the extent possible, in a surrogate country that is (a) at a level of economic development comparable to Vietnam, and (b) a significant producer of comparable merchandise. Section 773(c)(4)(A) of the Act is silent with respect to how the Department may determine that a country is economically comparable to the NME country. As such, the Department's long standing practice has been to identify those countries which are at a level of economic development similar to Vietnam in terms of GNI data available in the *World Development Report* provided by the World Bank.¹⁹²

The Department considers the countries on the Surrogate Country List to satisfy the statutory requirement that they are equally comparable in terms of economic development and serve as an adequate group to consider when gathering SV data. Further, providing parties with a range of countries with varying GNIs (as described above and further below) is reasonable and practicable. The purpose of the Surrogate Country List is to provide a consistent starting point for all proceedings involving the same NME country, in this case Vietnam. The list also provides a reasonably predictable process so that, in any proceeding involving an NME country, interested parties can anticipate the process and methodology that the Department follows. While the Surrogate Country List is intended to be a practical and reliable starting point, the Department provides parties an opportunity to comment on the list early in every proceeding and

¹⁹² See *Pure Magnesium from the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 75 FR 80791 (December 23, 2010) and accompanying Issues and Decision Memorandum at Comment 4. Identifying potential surrogate countries based on GNI data has been affirmed by the CIT. See, e.g., *Fujian Lianfu Forestry*, 638 F. Supp. 2d 1325, 1347-50 (CIT 2009).

to provide relevant data for countries on the list or for alternative countries if any have been proposed.

General Methodology for Selecting Surrogates for the List

The Department's methodology satisfies the statute's requirement that the Department value factors of production, to the extent possible, using data from one or more market economies that are at a level of economic development comparable to that of the NME country. The annual release of the *World Bank Development Report*, which includes the latest *per capita* GNI data, initiates the process of creating the surrogate country list. The Department first examines the new *per capita* GNI data for the NME country, in this case Vietnam, and the change in *per capita* GNI from the previous year, and compares the change in Vietnam's *per capita* GNI to the respective changes in *per capita* GNIs of the existing set of surrogate countries. Next, we determine whether it is necessary to re-establish the GNI range in light of the year-to-year GNI changes. Once the *per capita* GNI range is determined using the latest data, *i.e.*, the metaphorical step from the stairs analogy explained above, the Department then searches for countries within that range which are suitable candidates for inclusion on the new Surrogate Country List. Consistent with judicial guidance, the Department places an emphasis on achieving a degree of "balance" in the GNI range represented by the list.¹⁹³ We also try to preserve the same number of surrogate countries above and below Vietnam (often three countries with *per capita* GNIs higher/lower than Vietnam, for a total of six).

¹⁹³ For example, the CAFC invalidated the regression methodology used for labor values, in part, because the Department relied on countries that were not at a level of economic development comparable to the PRC. In that context, the CAFC noted that the Department could rely on market economy countries on the case record that were between half of the PRC's GNI and between one to two times the PRC's GNI. *See Dorbest CAFC*, 604 F. 3d 1363, 1372 (Fed. Cir. 2010). This Court noted that in creating such lists, the Department "does not have to achieve mathematical perfection" when selecting the upper and lower GNI range. *See Dorbest Ltd. v. United States*, 755 F. Supp. 2d 1291, *1297-98, fn 17 (CIT 2011).

It is often the case that several of the existing surrogate countries sufficiently track Vietnam's per capita GNI and are found to be actively used – and advocated for by interested parties – in ongoing proceedings. For countries such as these, there is a strong inclination to continue relying on them, so long as the *per capita* GNIs are within the Surrogate Country List's income range. In other instances, however, countries on the list are periodically evaluated if they are not selected over time and sometimes replaced. When changes in the NME's GNI warrant consideration of adding or removing countries from the list, the Department considers a range of factors, including the SV requirements for the existing products under investigation, the data quality and availability of alternative surrogate countries, and the degree of specificity in the import data relied on to value the FOP. Put another way, we do not consider smaller and less diversified economies as viable surrogate countries when measured against the factors outlined above, *e.g.*, the data quality and availability of alternative surrogate countries, economic diversity of the manufacturing sector in the alternative countries.

During the process of selecting the surrogate countries, the Department relies on its case experience and professional expertise to develop the list of potential surrogate countries; but, it is critical to note that the list is non-exhaustive.¹⁹⁴ When an interested party identifies another alternative surrogate country that is within the *per capita* GNI range of surrogates on the list, *i.e.*, countries on the same step as the NME, the Department accords that surrogate country the same consideration as given to those identified by the Department.¹⁹⁵ As noted above, the Department also considers surrogate countries on the record that are outside the *per capita* GNI range of the list, *i.e.*, countries on a different step, but selection of such a country as the primary surrogate

¹⁹⁴ See *Hardwood and Decorative Plywood from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013) (“*Plywood*”) and accompanying Issues and Decision Memorandum at Comment 7.

¹⁹⁵ See *Plywood* at Comment 7.

requires that data or significant producer considerations outweigh *per capita* GNI proximity concerns. The statute does not require further analysis of the many complex factors that can affect the relative GNI differences between Vietnam and other countries.

We note that the 2011 GNI data used in the subsequent Vietnamese fish fillets review rendered Indonesia off the Surrogate Country List.¹⁹⁶ As such, using 2011 GNI data, we consider Indonesia to be on a different “step” than the countries on the Surrogate Country List. Nevertheless, we find here that data considerations outweigh *per capita* GNI proximity concerns. The Department notes that in *Ad Hoc Shrimp II*, the Court established that the Department had weighed relative GNIs and found that, based on record evidence, the accuracy-enhancing value of one country’s superior FOP data quality outweighed the accuracy-enhancing value of another country’s relative GNI proximity.¹⁹⁷ The facts in *Ad Hoc Shrimp II* are similar to the facts in this remand and support our decision here. In *Ad Hoc Shrimp II*, the Court supported the Department’s analysis elucidated in this final remand, where the Department examined data considerations when taking into account weighing relative GNI in the primary surrogate country selection.¹⁹⁸

We have attached to this remand a summary of all SV choices and their contribution to our selection of Indonesia as the surrogate country. See Attachment I. This Attachment demonstrates that Indonesian data is superior to Bangladeshi data for most inputs, including many significant inputs. As explained above, the Department analyzed the relative differences in GNI and found that regardless of whether 2010 or 2011 GNI data are used (a) Indonesia is at a

¹⁹⁶ See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2011-2012*, 79 FR 19053 (April 7, 2014) and accompanying Issues and Decision Memorandum at Comment I.A.

¹⁹⁷ See *Ad Hoc Shrimp Trade Action Comm. V. United States*, 986 F. Supp. 2d 1362, 1367 (CIT 2014)(“*Ad Hoc Shrimp II*”).

¹⁹⁸ *Id.*

comparable level of economic development to Vietnam and (b) data considerations strongly favor selecting Indonesia over Bangladesh. The differences in GNI between Bangladesh and Vietnam on the one hand, and Indonesia and Vietnam on the other, are not so significant either in relative terms or in absolute dollar value in either 2010 or 2011 to outweigh the superiority of the Indonesia data overall. These differences in GNI are small and do not have an impact on relative economic comparability sufficient to override data quality concerns. Accordingly, the best primary surrogate country in this case that provides the best available information for most inputs is Indonesia.

B. Surrogate Value for Whole Live Fish

Vinh Hoan's Comments

- Vinh Hoan did not comment on this issue.

Petitioners' Comments

- The Department aptly demonstrated that the IAS prices it used to calculate respondents' margins are specific to the species of *pangasius* fish used by respondents and the cultures used to grow *pangasius* fish in Vietnam.
- The DAM Data are not usable as (a) the data source no longer included the largest *pangasius* producing district, included a significantly smaller percentage of districts and data coverage, and included numerous price omissions; (b) record evidence, never explained by the Bangladeshi authorities, demonstrated that lower-priced dead fish were included in the DAM Data; and (c) the Department continued to have serious concerns about the accuracy of the DAM Data.
- The IAS Data for *pangasius* fish does not evidence different cost structures for pond and cage cultures.

- With respect to the 2010 cage culture price for the Sumatra region identified by the Court, the record does not contain sufficient information for the Department to evaluate whether the reported price resulted from the particular supply and demand factors in that particular region at that particular time or some other factors. The Department has repeatedly found that the existence of a higher or lower price in a dataset is not *prima facie* evidence of a distortion.¹⁹⁹

Department's Position:

We agree with Petitioners that the IAS Data does not evidence differences in cost structures for pond and cage cultures. While the average cage price is slightly higher than the average pond price, an examination of the IAS shows several instances in the same time period that the prices for fish produced in cages is less than that produced in ponds. For example, in 2010, the price of *pangasius* fish farmed in cages in the Sumatera district, Riau province, was \$1.21/kg, whereas the price of *pangasius* fish farmed in ponds in the same region was \$1.98/kg.²⁰⁰ In another example, prices of *pangasius* fish farmed in cages in the Kalimantan region, Kalimantan Barat province, was \$1.64/kg, whereas the price of *pangasius* fish farmed in ponds in the same region was \$1.98/kg.²⁰¹ As noted above, Indonesia and Vietnam grow the majority of *pangasius* fish in ponds,²⁰² leading us to conclude that the *pangasius* industries of the two countries are similar.

We disagree with Petitioners regarding the Sumatra district, Lampung province IAS data. In response to the Court's concerns with the 2010 cage data for Sumatra district, Lampung province, we have addressed whether this data is aberrational. In order to demonstrate that a

¹⁹⁹ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order*, 75 FR 844 (January 6, 2010) and accompanying Issues and Decision Memorandum at Comment 2 (allegation of errors in a dataset must be supported by a "colorable claim," i.e., substantial evidence).

²⁰⁰ See Petitioners' November 20, 2012 submission at Exhibits 3 and 4.

²⁰¹ *Id.*

²⁰² See, e.g., VASEP's December 4, 2012 submission at Exhibit 18, which indicates that 95 percent of *pangasius* is grown in ponds in Vietnam.

value is aberrational, or unreliable, significantly deviating from the norm, it is necessary to have multiple points of comparison.²⁰³ In *Xanthan Gum*, the Department stated that “having only two values to compare could result in finding either the higher value aberrational in comparison to the lower value or the lower value aberrational in comparison to the higher value.”²⁰⁴ The current administrative record contains historical IAS data which demonstrate that the data for Sumatra district, Lampung province are aberrational.²⁰⁵ A comparison of the IAS data, based on region, indicate that the price for Sumatra district, Lampung province is several times larger than those of other areas in Indonesia. As such, the Sumatra district, Lampung province data has been removed from the whole live fish surrogate value for the results of this remand.

However, we do not find record evidence showing that the aberrational nature of the Sumatra district, Lampung province 2010 cage data is related to the inclusion of *pangasius jambal* in the data. As noted above, we do not find that significant quantities of *pangasius jambal* are grown in cages, and the price of *pangasius jambal* is similar to that of *pangasius hypophthalmus*. Data for Sumatra Lampung’s other 2011 cage culture, and other aquaculture areas, indicate that *pangasius* fish from this region are below the national average.²⁰⁶

²⁰³ See, e.g., *See Multilayered Wood Flooring from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) (“*Wood Flooring*”) and accompanying Issues and Decision Memorandum at Comment 14.

²⁰⁴ See *Xanthan Gum* at Comment 16.A.

²⁰⁵ See, e.g., *Wood Flooring* at Comment 15. See also *Carbazole Violet Pigment 23 from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 36630 (June 28, 2010) (“*Violet Pigment*”) and accompanying Issues and Decision Memorandum at Comments 5 and 6. See also Petitioners’ November 20, 2012 submission at Exhibits 3 and 4.

²⁰⁶ See Petitioners’ November 20, 2012 submission at Exhibits 3 and 4.

C. Surrogate Value for Rice Husk

Vinh Hoan's Comments

- Indonesian HTS 1213.00.0000 covers “Cereal Straw and Husks, Unprepared, Whether or Not Chopped, Ground, Pressed or in the Form of Pellets,” and as such, covers too many items to be specific to the rice husk consumed by Vinh Hoan. Specificity is a key element in determining the usability of a SV, and while the Department, out of necessity, can make allowances for the factors of contemporaneity, broad market average, *etc.*, if the SV is not specific to the input, then it cannot be used.²⁰⁷
- The data derived from HTS 1213.00.0000 is aberrational, and is higher than the SVs of other FOPs, as well as the two Bangladeshi price quotes for rice husk, and the Philippine GTA data for rice husk.
- Rice husk should be valued using a price quote from a Bangladeshi company, Seraph International. This price quote is presented on company letterhead, obtained through a routine commercial inquiry, represents a price quote for a commercial transaction, listed payment terms, delivery terms (“ex works basis”), and identified the entity providing the prices. Precedent demonstrates that tax- and duty-exclusivity is the least probative of the SV criteria, and it is unclear what duties would be applicable on products sold on an ex-works basis.
- The fact that the Seraph International price quote is not from the primary surrogate country, contemporaneous, or a broad market average, cannot be deemed “fatal” by the Department to its use because the Department used SVs which did not meet all of these criteria in this administrative review.

²⁰⁷ See *Yipin*, 800 F. Supp. 2d at 1304 (CIT 2011) (where the Court noted that if a set of data is not sufficiently “product specific,” it is of no relevance whether or not the data satisfy the other criteria).

Petitioners' Comments

- The Bangladeshi price quotes are from companies which do not appear to sell rice husk in the ordinary course of business.
- The Seraph International price quote is unreliable because the affidavit accompanying the quote references multiple discussions with sawdust traders in Bangladesh, but respondents have not placed the details of such conversations on the record.

Department's Position: We find that Indonesian HTS 1213.00.0000 is specific to the input in question, as the plain terms of the HTS description, "Cereal Straw and Husks, Unprepared, Whether or Not Chopped, Ground, Pressed or in the Form of Pellets," cover rice husk. Vinh Hoan is correct that specificity is a key element of the test for the usability of a SV, because if the SV data does not cover the FOP in question, it cannot be used for SV purposes.²⁰⁸ However, in this case Vinh Hoan acknowledged in its draft remand comments that this HTS, in fact, encompasses rice husk.²⁰⁹ As noted above, the courts have upheld the Department's use of broad import categories when the category's selection was supported by substantial evidence.²¹⁰

Based on the Department's practice concerning aberrational SVs this HTS is not aberrational. In order to demonstrate that a value is aberrational, or unreliable, significantly deviating from the norm, it is necessary to have multiple points of comparison.²¹¹ In *Xanthan Gum*, the Department stated that "having only two values to compare could result in finding either the higher value aberrational in comparison to the lower value or the lower value

²⁰⁸ See *Yipin*, 800 F. Supp. 2d 1226, 1304 (CIT 2011) (where the Court noted that if a set of data is not sufficiently "product specific," it is of no relevance whether or not the data satisfy the other criteria).

²⁰⁹ See Vinh Hoan's June 1, 2015 submission at 3 (the HTS "clearly encompasses rice husks").

²¹⁰ See, e.g., *Writing Instruments*, 984 F. Supp. 629, 640 (CIT 1997); *Guangdong Chems*, 460 F. Supp. 2d at 1370-71; *Peer Bearing*, 884 F. Supp. 2d at 1333-35; cf. also *Dorbest*, 462 F. Supp. 2d at 1289-90 (sustaining the Department's use of a data set that included merchandise other than that being valued).

²¹¹ See, e.g., *Wood Flooring* at Comment 14.

aberrational in comparison to the higher value.”²¹² The current administrative record does not contain, for example, historical HTS data for Indonesia or HTS data for other countries on the surrogate country list which would demonstrate that the data used in this review are aberrational.²¹³ The record contains two price quotes for rice husk from Bangladeshi companies, Seraph International and SR Apparels.²¹⁴ As noted above, while we find these price quotes to be specific and publicly available, and we find that they do not meet any of the Department’s other SV criteria, and importantly, find them to be unreliable. As such, we do not find these price quotes to be reliable sources to compare to the Indonesian HTS data. The record also contains Philippine data for HTS 1213.00.0000, which is described as “Cereal Straw and Husks, Unprepared, Whether or Not Chopped, Ground, Pressed or in the Form of Pellets.”²¹⁵ Thus, the current administrative record only contains two reliable data points to compare for this SV, and consistent with *Xanthan Gum*, we cannot determine whether the higher Indonesia value (\$10.50/kg) is aberrational in comparison to the lower Philippine value (\$2.07/kg).²¹⁶

In selecting the most appropriate SVs, the Department considers several factors, including whether the SV is (a) publicly available, (b) tax- and duty-exclusive, (c) represents a broad market average, (d) contemporaneous with the POR and (e) specific to the input.²¹⁷ 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.²¹⁸ After weighing the record evidence, we continue to disagree with Vinh Hoan on the appropriateness of the Seraph

²¹² See *Xanthan Gum* at Comment 16.A.

²¹³ See, e.g., *Wood Flooring* at Comment 15. See also *Violet Pigment* at Comments 5 and 6.

²¹⁴ See VASEP’s November 20, 2012 submission at Exhibit 2.B.

²¹⁵ See Petitioners’ May 23, 2012 submission at Exhibit 15.

²¹⁶ See *Xanthan Gum* at Comment 16.A. For the Philippine HTS data, see Petitioners’ May 23, 2012 submission at Exhibit 15. For the Indonesian HTS data, *id.* at Exhibit 30.

²¹⁷ See, e.g., *Sodium Hex* at Comment 3.

²¹⁸ See, e.g., *Mushrooms* at Comment 1.

International price quote to value rice husk. As noted above, while the price quote is specific to the input in question, and publicly available, it is not tax- and duty-exclusive, representative of a broad market average, or contemporaneous with the POR, whereas the GTA data from Indonesia and the Philippines meet all of the Department's SV criteria. The Department did not employ any "fatal flaw" test, as suggested by Vinh Hoan, to determine the appropriate SV for rice husk; we applied our SV criteria, as noted above.

Although the Department inadvertently stated that the Seraph International price quote was not on an ex-works basis in the draft remand, we continue to find that the record is devoid of any information as to whether this price quote is tax- and duty-exclusive. Vinh Hoan speculates that taxes or duties would not apply to sales of rice husk in Bangladesh, but provided no cite to record information pertaining to the validity of this assertion. Moreover, while Vinh Hoan argues that tax- and duty-exclusivity is the least probative of the SV criteria, it is the Department's practice to not apply a hierarchy to its SV criteria.²¹⁹ As such, we continue to find that the record does not demonstrate that the Seraph International price quote is tax- and duty-exclusive because the affidavit accompanying the price quote does not state that it is on a tax- and duty-exclusive basis.²²⁰

In sum, consistent with the Court's order to examine how the selection of the rice husk SV contributes to our selection of Indonesia as the surrogate country, we find that the Bangladeshi price quotes for rice husk only meet two of the Department's SV criteria, specificity and public availability. In contrast, the Indonesian and Philippine GTA data satisfy all of the Department's SV criteria, and because the GTA sources equally meet the Department's selection criteria, this SV does not favor the use of one country over another. Consequently, we selected

²¹⁹ *Id.*

²²⁰ *See* VASEP's November 20, 2012 submission at Exhibit 2.B.

Indonesian GTA data to value rice husk only after selecting Indonesia as the surrogate country.²²¹

We note that it is the Department's practice, consistent with 19 CFR 351.408(c)(2), to value the FOPs in a single surrogate country, when possible.²²² There are important economic reasons for this regulatory preference. It is most accurate to rely on factor costs from a single surrogate country because sourcing data from a single country better reflects the trade-off between labor costs and other factors' costs, including capital, based on their relative prices. The primary surrogate methodology enables the Department to capture the complete interrelationship of factor costs that a producer in the primary surrogate country faces. The Department only resorts to other surrogate country information if the record does not contain a value for a factor from the primary surrogate, or if a primary surrogate country value on the record is determined, based on record evidence, to be aberrational or unreliable.²²³ This Court has upheld the Department's preference for deriving surrogate data from a single country.²²⁴ As the Court pointed out in *Peer Bearing*, "the preference for use of data from a single country could support a choice of data as the best available information where the other available data upon a fair comparison, are otherwise seen to be fairly equal."²²⁵ As a consequence, because the record contains GTA data from Indonesia and the Philippines which are otherwise equal, we have no need to depart from our choice of surrogate country to value rice husk.²²⁶

²²¹ In the draft remand we inadvertently did not include Philippine GTA data in our analysis.

²²² See, e.g., *China Shrimp* at Comment 10.

²²³ See, e.g., *Citric Acid* at Comment 5.D.

²²⁴ See, e.g., *Clearon*, Slip Op. 13-22 (CIT 2013) at 13.

²²⁵ See *Peer Bearing*, 804 F.Supp 2d 1338, 1353 (CIT 2011), citing to *Peer Bearing Company-Chongshan v. United States*, 752 F. Supp. 2d at 1353, 1373 (CIT 2011).

²²⁶ See 19 CFR 351.408(c)(2); *Clearon*, at *6 ("{T}he court must treat seriously {the Department's } preference for the use of a single surrogate country."); *Globe Metallurgical*, 32 CIT 1070, 1076 (2008); see also *Peer Bearing*, 752 F. Supp. 2d 1353, 1373 (CIT 2011).

D. Surrogate Value for Sawdust

Vinh Hoan's Comments

- Indonesian HTS 4401.30 covers “Sawdust, Wood Waste and Scrap,” and as such, is a basket category covering more complex products than sawdust. Vinh Hoan submitted several U.S. Customs and Border Protection (“CBP”) Rulings for products classified under HTS 4401.30, which describe various value-added products that are very different than the sawdust consumed by Vinh Hoan.
- The data derived from HTS 4401.30 is aberrational, and is higher than the SVs of other FOPs. It is much higher than the two Bangladeshi price quotes for sawdust.
- Sawdust should be valued using the MK Traders price quote, as it is specific to sawdust.

Petitioners' Comments

- The Bangladeshi price quotes are not specific to the input in question because it is for raw, unprocessed sawdust, not the pressed sawdust consumed by Vinh Hoan, and therefore, are undervalued.
- The MK Traders price quote is unreliable because the affidavit accompanying the quote references multiple discussions with sawdust traders in Bangladesh, but respondents have not placed the details of such conversations on the record.

Department's Position: We find that Indonesian HTS 4401.30 is specific to the input in question, as the plain terms of the HTS description (“Sawdust, Wood Waste and Scrap”) cover sawdust. Specificity is a key element of the test for the usability of a SV, because if the SV data does not cover the FOP in question, it cannot be used for SV purposes.²²⁷ The Court has upheld

²²⁷ See *Yipin*, 800 F. Supp. 2d 1226, 1304 (CIT 2011) (where the Court noted that if a set of data is not sufficiently “product specific,” it is of no relevance whether or not the data satisfy the other criteria).

the Department's use of broad import categories when the category's selection was supported by substantial evidence.²²⁸

We do not find Vinh Hoan's arguments concerning specificity to be persuasive. Vinh Hoan has pointed to CBP Rulings to demonstrate that Indonesian HTS 4401.30 (and Bangladeshi HTS 4401.30) is not specific to the sawdust it consumes. We note that one CBP Ruling is for a cat litter product which is made from the waste of pine, spruce, fir, hemlock and cedar trees and pressed into pellets.²²⁹ Another concerns particles of wood from hardwood species of trees which are pressed into shape.²³⁰ Two of the CBP Rulings are for products made using sawdust, and are used in making fire.²³¹ Vinh Hoan reported that it consumes pressed sawdust, which is burned as an energy source.²³² Thus we find that the CBP Rulings support the use of HTS 4401.30 because two relate to pressed sawdust products and two relate to products made from sawdust used as an energy source, both of which are applicable to the sawdust consumed by Vinh Hoan.

Based on the Department's practice concerning aberrational SVs, we find Indonesian HTS 4401.30 to not be aberrational. In order to demonstrate that a value is aberrational, or unreliable, because it significantly deviates from the norm, it is necessary to have multiple points of comparison.²³³ In *Xanthan Gum*, the Department stated that "having only two values to compare could result in finding either the higher value aberrational in comparison to the lower

²²⁸ See, e.g., *Writing Instruments*, 984 F. Supp. 629, 640 (CIT 1997); *Guangdong Chems*, 460 F. Supp. 2d at 1370-71; *Peer Bearing*, 884 F. Supp. 2d at 1333-35; cf. also *Dorbest*, 462 F. Supp. 2d at 1289-90 (sustaining the Department's use of a data set that included merchandise other than that being valued).

²²⁹ See Vinh Hoan's November 20, 2012 submission at Exhibit 3, "The tariff classification of sawdust pellets from Canada."

²³⁰ *Id.* at "The tariff classification of wood chip bisquettes from Canada."

²³¹ *Id.* at "The tariff classification of wood chip bisquettes from Canada," and "The tariff classification of wood fire starters from Canada."

²³² See Vinh Hoan's January 3, 2012 submission at 38; Vinh Hoan's May 7, 2012 submission at 13.

²³³ See, e.g., *Wood Flooring* at Comment 14.

value or the lower value aberrational in comparison to the higher value.”²³⁴ Here, the administrative record contains three data points for comparison. The record contains two price quotes for sawdust from Bangladeshi companies, MK Traders and SR Apparels. As noted above, while we find the SR Apparels quote to be specific and publicly available, we also found that it did not meet any of the Department’s other SV criteria, and importantly, found it to be unreliable. As such, we do not find the SR Apparels price quote to be a reliable source to compare to the Indonesian HTS data. Regarding the MK Traders price quote, as noted above, while we find this price quote to be specific and publicly available, it did not meet any of the Department’s other SV criteria, and thus, does not represent the best available information with which to value sawdust.²³⁵ However, we found it to be reliable, and thus, a reliable source to compare to the Indonesian HTS data. The record also contains Bangladeshi data for HTS 4401.30 (Sawdust, Wood Waste and Scrap).²³⁶ After comparing these three sources of data, consistent with *Xanthan Gum*, we find that the Indonesian HTS value (\$1.43/kg) is not aberrational, as it rests between the MK Traders value (\$0.13/kg) and the Bangladeshi HTS value (\$1.70/kg).²³⁷

In accordance with the Court’s order to examine how the selection of the sawdust SV contributes to our selection of Indonesia as the surrogate country, we find that the Bangladeshi price quotes for sawdust only meet two of the Department’s SV criteria, specificity and public availability. In contrast, the Indonesian HTS data satisfies all of the Department’s SV criteria, and the Bangladeshi HTS data satisfies all of the Department’s SV criteria, except

²³⁴ See *Xanthan Gum* at Comment 16.A.

²³⁵ See VASEP’s November 20, 2012 submission at Exhibit 2.C.

²³⁶ See VASEP’s May 23, 2012 submission at Exhibit 2.

²³⁷ For the Indonesia HTS data, see Petitioners’ May 23, 2012 submission at Exhibit 32. For the MK Traders data, see VASEP’s November 20, 2012 submission at Exhibit 2.C. For the Bangladeshi HTS data, see VASEP’s May 23, 2012 submission at Exhibit 2.

contemporaneity. As such we continue to find that the Indonesian HTS data represents the best available information to value respondents' sawdust FOP, and the selection of this data source informed our decision to select Indonesia as the primary surrogate country.

E. Surrogate Value for Frozen Broken Meat

Vinh Hoan's Comments

- HTS 0304.29 is more specific to the item being valued as it is not limited to unbroken fillets - it covers all fillets - whether or not broken. HTS 0304.29 is more specific than is HTS 0304.99.0000, "Other Frozen Fish Meat," because it specifically covers fillets that have been frozen, and should be used to value this FOP in the final remand.

Petitioners' Comments

- Petitioners did not comment on this issue.

Department's Position: We note that the only two SV sources for this by-product come from Indonesian import statistics, specifically, HTS 0304.29, advocated for by Vinh Hoan, and HTS 0304.99.0000, advocated for by Petitioners.²³⁸ We also note that Vinh Hoan's arguments concerning these two Indonesian HTS numbers are not within the scope of this remand, because the remand order is limited to examining how the selection of certain SVs contributes to the selection of Indonesia as the surrogate country. Furthermore, we note that Vinh Hoan made no arguments concerning the selection of this SV as it pertains to surrogate country selection. As such, this argument is not properly before the Department, and thus, will not be addressed.

Consistent with the Court's order to examine how the selection of the frozen broken meat SV contributes to our selection of Indonesia as the surrogate country, we find that selecting either HTS would inform our decision to select Indonesia as the surrogate country.

²³⁸ See *Final Results* at Comment VII.C.

F. Surrogate Value for Fresh Broken Meat

Vinh Hoan's Comments

- In the draft remand, the Department rejected Indonesian import data to value this by-product because the HTS is not specific to the by-product at issue. The Department's conclusion is not supported by record evidence as the plain description of the HTS in question (HTS 0304.19.0000) covers "Fish Fillets and Other Meat, Fresh or Chilled, Excluding Steaks, Nesoi."
- For other HTS categories the Department has determined that if an HTS provision clearly covers an item, and is not a basket category, it is specific. Here, HTS 0304.19.0000 meets all of the Department's SV criteria, unlike the Vitarich price quote which is not contemporaneous, not a broad market average and not from the primary surrogate country.
- The Department's analysis of this issue is at odds with its analysis of frozen broken fillet meat, where the Department was able to examine various HTS provisions in the HTS 0304 heading, and make a determination as to which provision it believes is most specific to the byproduct.

Petitioners' Comments

- Petitioners did not comment on this issue.

Department's Position: We continue to find that Indonesian HTS 0304.19.0000 is not sufficiently specific to the fresh broken meat by-product reported by the respondents because this category includes whole unbroken fresh fish fillets. 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, unlike whole unbroken fresh fish fillets. In other

aquaculture cases, for example, in *Vietnam Shrimp 5th AR*,²³⁹ the Department consistently has valued shrimp waste product using an Indonesian price quote. As a result, we find specificity to be the most important factor in valuing this by-product.

The Vitarich price quote from the Philippines is precisely specific to the fresh *pangasius hypophthalmus* broken meat (trimmings) by-product that results from the fillet production process. Fresh broken meat is generated in the filleting stage, there are no FOPs reported in the processing of this by-product, thus it is inherently not a “value-added” by-product.²⁴⁰ Moreover, this by-product is only generated after Vinh Hoan transports fresh fish waste to Vinh Hoan Feed, and Vinh Hoan Feed in turn picks out chunks of meat from the discarded fish waste to sell.²⁴¹ As such, a basket HTS category of internationally traded goods, even one which by its description encompassed “other” fresh meat, does not represent the best data on the record. The Department disagrees with Vinh Hoan’s contention that the selection of this surrogate value is similar to that of frozen broken meat. For that FOP, as noted above, parties made arguments concerning two SV choices, both of which were Indonesian HTS numbers. For this FOP, a much more specific source is available.

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 quote has superior specificity and meets the other SV selection criteria. The affidavit accompanying the price quote explains that the price quote was obtained as publicly available information pertaining to the production

²³⁹ 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).

²⁴⁰ See Vinh Hoan’s August 2, 2012 submission at 5.

²⁴¹ *Id.* at 6.

and sales of *pangasius* fish in the Philippines, one of the countries on the surrogate country list.²⁴² The affidavit also details the payment terms, the party offering the price, and the manner in which the price quote was obtained.²⁴³ The affidavit also states that the price quotes were requested on an ex-factory and tax- and duty-exclusive basis.²⁴⁴

Consistent with the Court's order to examine how the selection of the fresh broken meat SV contributes to our selection of Indonesia as the surrogate country, we find that selecting the Vitarich price quote did not inform our decision to select Indonesia as the surrogate country.

G. Surrogate Value for Foreign B&H

Vinh Hoan's Comments

- In the *Preliminary Results* the Department valued B&H using *Doing Business Bangladesh* and used a standard weight (28,200 kg) obtained by Maersk to divide the cost of B&H incurred for shipping one 20 foot container. In the *Final Results*, the Department changed the surrogate country from Bangladesh to Indonesia, and therefore, used *Doing Business Indonesia* to value B&H. However, in the *Final Results* the Department also changed its methodology for calculating per-unit B&H expenses by changing the denominator from 28,200 kg to 10,000 kg.
- The Department did not state its intention to make this change from the *Preliminary Results*, nor did any party to this proceeding make an argument regarding the weight denominator. Therefore, the Department's action with respect to B&H expenses was not supported by substantial record evidence and should be addressed in the final remand.

Petitioners' Comments

- Petitioners did not comment on this issue.

²⁴² See Petitioners' May 23, 2012, SV Submission at Exhibit 19.

²⁴³ *Id.*

²⁴⁴ *Id.*

Department's Position: We note that Vinh Hoan's arguments concerning the B&H calculation are not within the scope of this remand, because the remand order is limited to examining how the selection of certain SV contributes to the selection of Indonesia as the surrogate country. We also note that Vinh Hoan made no arguments concerning the selection of this SV as it pertains to surrogate country selection. As such, this argument is not properly before the Department, and thus, will not be addressed.

Consistent with the Court's order to examine how the selection of the B&H SV contributes to our selection of Indonesia as the surrogate country, and as noted above, we find that the average of three Indian companies B&H expenses meet three of the Department's SV criteria: specificity, net of taxes and duties, and are publicly available, whereas *Doing Business* meets all of the Department's SV criteria. Because *Doing Business* from Bangladesh, Indonesia and the Philippines equally meet the Department's selection criteria, this SV does not favor the use of one country over another. Consequently, we selected *Doing Business Indonesia* to value B&H only after selecting Indonesia as the surrogate country.

We note that it is the Department's practice, consistent with 19 CFR 351.408(c)(2), to value the FOPs in a single surrogate country, when possible.²⁴⁵ There are important economic reasons for this regulatory preference. It is most accurate to rely on factor costs from a single surrogate country because sourcing data from a single country better reflects the trade-off between labor costs and other factors' costs, including capital, based on their relative prices. The primary surrogate methodology enables the Department to capture the complete interrelationship of factor costs that a producer in the primary surrogate country faces. The Department only resorts to other surrogate country information if the record does not contain a value for a factor from the primary surrogate, or if a primary surrogate country value on the record is determined,

²⁴⁵ See, e.g., *China Shrimp* at Comment 10.

based on record evidence, to be aberrational or unreliable.²⁴⁶ The CIT has upheld the Department's preference for deriving surrogate data from a single country.²⁴⁷ As the court pointed out in *Peer Bearing*, "the preference for use of data from a single country could support a choice of data as the best available information where the other available data upon a fair comparison, are otherwise seen to be fairly equal."²⁴⁸ As a consequence, because the record contains *Doing Business* data from Bangladesh, Indonesia and the Philippines which are otherwise equal, we have no need to depart the surrogate country to value B&H.²⁴⁹

H. Surrogate Value for Inland Freight

Vinh Hoan's Comments

- In the *Preliminary Results* the Department valued inland freight using *Doing Business Bangladesh* and used a standard container weight (28,200 kg) obtained by Maersk to divide the cost of inland freight incurred for shipping one 20-foot container. In the *Final Results*, the Department changed the surrogate country from Bangladesh to Indonesia, and therefore, used *Doing Business Indonesia* to value inland freight. However, in the *Final Results* the Department also changed its methodology for calculating per-unit inland freight expenses by changing the denominator from 28,200 kg to 10,000 kg.
- The Department did not state its intention to make this change from the *Preliminary Results*, nor did any party to this proceeding make an argument regarding the weight denominator. Therefore, the Department's action with respect to inland freight expenses was not supported by substantial record evidence, and should be addressed in the final remand.

²⁴⁶ See, e.g., *Citric Acid* at Comment 5.D.

²⁴⁷ See, e.g., *Clearon*, Slip Op. 13-22 (CIT 2013) at 13.

²⁴⁸ See *Peer Bearing*, 804 F.Supp 2d 1338, 1353 (CIT 2011), citing to *Peer Bearing Company-Chongshan v. United States*, 752 F. Supp. 2d at 1353, 1373 (CIT 2011).

²⁴⁹ See 19 CFR 351.408(c)(2); *Clearon*, at *6 ("{T}he court must treat seriously {the Department's } preference for the use of a single surrogate country."); *Globe Metallurgical*, 32 CIT 1070, 1076 (2008); see also *Peer Bearing*, 752 F. Supp. 2d 1353, 1373 (CIT 2011).

Petitioners' Comments

- Petitioners did not comment on this issue.

Department's Position: We note that Vinh Hoan's arguments concerning the inland freight calculation is not within the scope of this remand, because the remand order is limited to examining how the selection of certain SVs contributes to the selection of Indonesia as the surrogate country. We also note that Vinh Hoan made no arguments concerning the selection of this SV as it pertains to surrogate country selection. As such, this argument is not properly before the Department, and thus, will not be addressed.

Consistent with the Court's order to examine how the selection of the inland freight SV contributes to our selection of Indonesia as the surrogate country, and as noted above, we find that of the six inland freight SVs on the record, only one, *Doing Business*, meets all of the Department's SV criteria. Because *Doing Business* from Bangladesh, Indonesia and the Philippines equally meet the Department's selection criteria, this SV does not favor the use of one country over another. Consequently, we selected *Doing Business Indonesia* to value inland freight only after selecting Indonesia as the surrogate country.

We note that it is the Department's practice, consistent with 19 CFR 351.408(c)(2), to value the FOPs in a single surrogate country, when possible.²⁵⁰ There are important economic reasons for this regulatory preference. It is most accurate to rely on factor costs from a single surrogate country because sourcing data from a single country better reflects the trade-off between labor costs and other factors' costs, including capital, based on their relative prices. The primary surrogate methodology enables the Department to capture the complete interrelationship of factor costs that a producer in the primary surrogate country faces. The Department only resorts to other surrogate country information if the record does not contain a value for a factor

²⁵⁰ See, e.g., *China Shrimp* at Comment 10.

from the primary surrogate, or if a primary surrogate country value on the record is determined, based on record evidence, to be aberrational or unreliable.²⁵¹ The CIT has upheld the Department's preference for deriving surrogate data from a single country.²⁵² As the court pointed out in *Peer Bearing*, "the preference for use of data from a single country could support a choice of data as the best available information where the other available data upon a fair comparison, are otherwise seen to be fairly equal."²⁵³ As a consequence, because the record contains *Doing Business* data from Bangladesh, Indonesia and the Philippines which are otherwise equal, we have no need to depart from our choice of surrogate country to value inland freight.²⁵⁴

I. Surrogate Financial Ratios

Vinh Hoan's Comments

- In the *Final Results*, the Department valued surrogate financial ratios using the financial statement of PT Dharma Samudera Fishing Industries ("DSFI"), an Indonesian seafood processor. In the ratio calculations, the Department included a line item for "freight-in" in selling, general and administrative expenses. Because this line item refers to the cost of freight on incoming raw materials rather than the cost of shipping finished goods (commonly referred to as "freight-out"), the expense should be classified under materials, labor, and energy denominator to avoid double-counting. The Department should address this issue in the final remand.

²⁵¹ See, e.g., *Citric Acid* at Comment 5.D.

²⁵² See, e.g., *Clearon*, Slip Op. 13-22 (CIT 2013) at 13.

²⁵³ See *Peer Bearing*, 804 F.Supp 2d 1338, 1353 (CIT 2011), citing to *Peer Bearing Company-Chongshan v. United States*, 752 F. Supp. 2d at 1353, 1373 (CIT 2011).

²⁵⁴ See 19 CFR 351.408(c)(2); *Clearon*, at *6 ("{T}he court must treat seriously {the Department's } preference for the use of a single surrogate country."); *Globe Metallurgical*, 32 CIT 1070, 1076 (2008); see also *Peer Bearing*, 752 F. Supp. 2d 1353, 1373 (CIT 2011).

Petitioners' Comments

- DSFI's financial statements are more appropriate than Apex and Gemini because DSFI is a producer of frozen fish fillets and Apex and Gemini are shrimp producers. The production of frozen shrimp is a far more labor-intensive production process than finfish processing. The significantly higher per-unit amounts of labor required to produce frozen shrimp-included in the denominator for the overhead, SG&A and profit calculations-would inflate the denominator and produce financial ratios that are lower than would be expected for finfish producers with lower labor costs. Accordingly, the Department cannot reasonably rely on the financial statements of Gemini or Apex because they would result in understated overhead ratios and less accurate margins.

Department's Position: We note that Vinh Hoan's arguments concerning the calculation of surrogate financial ratios is not within the scope of this limited remand, because as discussed above, the remand order is limited to examining how the selection of surrogate financial ratios contributes to the selection of Indonesia as the surrogate country. We also note that Vinh Hoan made no arguments concerning the selection of surrogate financial ratios as it pertains to surrogate country selection. As such, this argument is not properly before the Department, and thus, will not be addressed.

We have reached a different conclusion with respect to the analysis of the selection of surrogate financial statements for the final remand. As noted above, 19 CFR 351.408(c)(4) stipulates that the Department normally will value manufacturing overhead, SG&A expenses and profit using non-proprietary information gathered from producers of identical or comparable

merchandise in the surrogate country.²⁵⁵ The Department prefers to use financial statements of producers of merchandise that are most comparable to the subject merchandise.²⁵⁶ This preference is rooted in the statute, which requires the Department to calculate surrogate values that closely approximate the experience of respondent producers of subject merchandise as if they operated in a market economy.²⁵⁷ Additionally, for purposes of selecting surrogate producers, the Department examines how similar a proposed surrogate producer's production experience is to the NME producer's production experience.²⁵⁸ DSFI is based in Indonesia and is a producer of comparable merchandise, *i.e.*, frozen fish fillets, which is the same merchandise that the Department used to determine whether certain ME countries are significant producers of comparable merchandise. On the other hand, Apex and Gemini are not primarily producers of frozen fish fillets, the comparable merchandise. In fact, Apex and Gemini only produce frozen shrimp products.²⁵⁹ Consequently, because Apex's and Gemini's core business is not based on the production of frozen fish fillets, the Department finds that these financial statements are not the best available data on the record from which to calculate surrogate financial ratios.²⁶⁰ DSFI represents a closer match to respondents' production.

Consistent with the Court's order to examine how the selection of surrogate financial ratios contributes to our selection of Indonesia as the surrogate country, and as noted above,

²⁵⁵ See *Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 52049 (September 12, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

²⁵⁶ See *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010) ("*OCTG*") and accompanying Issues and Decision Memorandum at Comment 13.

²⁵⁷ See 19 USC 1677b(c)(1); *Peer Bearing Co. v. United States*, 25 CIT 1199, 1217, 182 F. Supp. 2d 1285, 1307 (2001) ("Commerce's goal is to use surrogate values that represent the industry norm of the surrogate country").

²⁵⁸ See *OCTG* at Comment 13.

²⁵⁹ See VASEP's May 23, 2012 submission at Exhibits 12.a and 12.B.

²⁶⁰ See *Vietnam Shrimp* at Comment 2 (where the Department found that, because a proposed surrogate company's core business was not based on the production of comparable merchandise, its financial statements were not the best available data on the record from which to calculate surrogate financial ratios).

because DSFI's production is closer to that of respondents' experience, we find that the superiority of an Indonesian surrogate company's financial statements informed our decision to select Indonesia as the surrogate country.

J. Surrogate Value for Labor

Vinh Hoan's Comments

- Vinh Hoan did not comment on this issue.

Petitioners' Comments

- The Bangladeshi labor data are not specific to respondents' production processes because it only includes labor data for "fishery worker/fishermen" (*i.e.*, actual fishing operations) and does not include labor for food processing.

Department's Position: We agree with the Petitioners that the Bangladeshi labor rate is not as specific as the Indonesian 5B data in that it does not cover fish fillet processing.²⁶¹ It has been the Department's practice to calculate a labor rate that covers the total population of the industry, and basing a labor rate only on a sub-part of the industry would incompletely reflect the labor rate for the total population of the industry.²⁶² The Indonesian 5B data notes for sub-classification 15 of the ISIC-Revision 3 Standard entitled, "Manufacture of Food Products and Beverages" specifically states that the category includes the processing and preservation of fish and fish products.²⁶³ Consistent with the Court's order to examine how the selection of surrogate financial ratios contributes to our selection of Indonesia as the surrogate country, and as noted above, the selection of Indonesian 5B data, which is superior to the Bangladeshi data, informed our selection of Indonesia as the primary surrogate country.

²⁶¹ *Id.*

²⁶² See *Antidumping Methodologies; Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; Request for Comments*, 71 FR 61716, 61721 (October 19, 2006).

²⁶³ See *6th Fish Final* at Comment III.

L. Surrogate Value for Fish Waste, Fish Belly and Fish Skin

Vinh Hoan's Comments

- Vinh Hoan did not comment on this issue.

Petitioners' Comments

- The Department cannot characterize the Asian Seafood price quote as reliable given substantial record evidence that the price quote was not provided in the ordinary course of business and does not constitute a *bona fide* market value. The record contains a signed statement from the managing director of Asian Seafood, Mr. Azizur Rahman, affirming that “the November 14, 2012 offer made to Ms. Anamika Ojha of Orion International for the sale of fish waste, fish belly and fish skin was outside the company’s normal business scope, and we have never actually made a sale of individual waste products in that manner or at those prices.”²⁶⁴ As Mr. Rahman also explained, his company normally disposes of fish waste by providing it to a local contractor, who pays “a nominal amount” for the waste.²⁶⁵ Thus, the Asian Seafood price quote does not reflect commercial activity in any actual market.
- In addition, the record indicates that Ms. Ojha misrepresented herself to Asian Seafood officials as “an importer of fish byproducts in India,” and that Asian Seafood officials “were surprised to learn that Ms. Ojha was not in fact a purchaser of fish waste as she had represented to the company.”²⁶⁶
- Additionally, the record demonstrates clearly that the supposed price quote was engineered as one quote included fish oil and one quote did not after Ms. Ojha specifically asked Asian Seafood to provide a quotation excluding fish oil, yet each were for the same \$0.35/kg.²⁶⁷

²⁶⁴ See Petitioners’ December 4, 2012 submission at Exhibit 3.A, Attachment 2.A.

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ *Id.* at Attachments 1 and 2.

The Asian Seafood price quote is unreliable because the affidavit accompanying the quote references multiple discussions with *pangasius* processors in Bangladesh, but respondents only placed one of the price quotes on the record, and have not placed the details of such conversations on the record.

Department’s Position: The Petitioners’ arguments stem mainly from the fact that the Asian Seafood price quote and accompanying affidavit are self-serving. Regarding the integrity of “self-serving” affidavits submitted in support of differing by-product price quotes, as we noted above in Comment II, the CIT rejected such claims by parties in past segments of this case, explaining that “if an affidavit is made from personal knowledge and sets forth specific facts, then whether it is ‘self-serving’ is beside the point.”²⁶⁸ The Department agrees, and we considered the merits of such affidavits submitted by parties.

However, similar to our discussion of the Sugama Affidavit and Soebjakto Affidavit above, we note that VASEP did not submit the full correspondence with Ms. Ojha.²⁶⁹ These communications are critical in assessing the reliability of Asian Seafood price quote. On the other hand, Petitioners obtained and submitted for the record the full correspondence between Asian Seafood and Ms. Ohja.²⁷⁰ As a result, we find that the correspondence submitted by Petitioner to be more reliable than that submitted by VASEP. Petitioners’ submission calls into question two key pieces of information in the Asian Seafood price quote (a) that the prices contained therein represent normal transaction prices and (b) that the sale was engineered, as

²⁶⁸ See *Catfish Farmers of Am. v. United States*, Slip Op. 13-63 (CIT 2013) at *13 (citing *Caterpillar Inc. v. Sturman Industries, Inc.*, 387 F.3d 1358, 1374-75 (CAFC 2004); *Payne v. Pauley*, 337 F.3d 767 (7th Cir. 2003)).

²⁶⁹ See Petitioners’ December 4, 2012 submission at Exhibit 3.A.

²⁷⁰ *Id.*

pangasius fish oil was specifically excluded from the price quote.²⁷¹ As such, we find the Asian Seafood price quote to not be reliable.

This finding does not change our results from the draft remand where we found that because we valued these by-products using a Philippine SV, the selection did not inform our decision to select Indonesia or Bangladesh as the primary surrogate country.

L. Fish Oil Cap

Vinh Hoan's Comments

- There is no record basis supporting a cap on the value of Vinh Hoan's fish oil. As a result, the Department should instead value fish oil using the Indonesian HTS 1504.20.9000, "Fish Fats & Oils & Their Fractions Exc Liver, Refined or Not, Not Chemically Mod."
- The Department did not address how its fish oil calculation addresses the concern that unrefined fish oil is less valuable than refined fish oil.
- If the Department continues to apply the fish oil calculation, it must correct certain errors as follows: 1) remove the fish oil/fish meal ratio from step 3 of the calculation; 2) value the by-product material input as live fish and not fish waste; and 3) adjust fish waste using the presumption that more than one kilogram of fish waste is required to produce one kilogram of fish oil.

Petitioners' Comments

- The Department should revise its fish oil calculation as it did not consistently calculate the cost for each of the by-product inputs as intended.
- The Department's by-product offset does not properly offset Vinh Hoan's cost of production.

²⁷¹ We note that the Asian Seafood fish oil price, \$0.35/kg is similar to the capped *pangasius* fish oil SV, discussed below.

Department’s Position: With respect to Vinh Hoan’s argument that the record does not support placing a cap on the value of Vinh Hoan’s by-product fish oil, we disagree. We find that in this case, the suggested HTS category for the valuation of fish oil, Indonesian HTS 1504.20.9000, “Fish Fats & Oils & Their Fractions Exc Liver, Refined or Not, Not Chemically Mod,” has a value greater than the value for the main input, whole fish. Specifically, the Indonesian HTS for fish oil is \$3.10/kg, while the whole fish SV is \$1.79/kg. The Department has previously found it appropriate to cap the value of a by-product when the by-product SV exceeds the value of the main input.²⁷² As such, consistent with *MSG* and *Wood Flooring*, we continue to find it appropriate to place a cap on the valuation of Vinh Hoan’s fish oil.

Regarding Vinh Hoan’s assertion that the Department did not address how its fish oil calculation speaks to the concerns that unrefined fish oil is less valuable than refined fish oil, we disagree. When selecting SVs with which to value FOPs, the Department is directed to use the “best available information” on the record. Specifically, when selecting SVs for use in an NME proceeding, the Department’s preference is to use, where possible, publicly available, tax-exclusive, and product-specific prices for the POI, with each of these factors applied non-hierarchically to the particular case-specific facts from a single surrogate country.²⁷³ As

²⁷² See, e.g., *Monosodium Glutamate from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and the Final Affirmative Determination of Critical Circumstances*, 79 FR 58326 (September 29, 2014) (“*MSG*”) and accompanying Issues and Decision Memorandum at Comment 11 (“A by-product by definition is less valuable than the input from which it is derived. Where there is no evidence that the by-product is a value-added by-product, assigning a by-product a value that is higher than the value of the input from which it is derived is unreasonable.”); *Wood Flooring* at Comment 24 (“...the Department has found in past cases that it may disregard a surrogate value when it is clear that the selection of that surrogate value would yield an unreasonable result.” In that case the Department also noted that the HTS value for scrap was higher than the SVs for the main inputs (log, veneer and core inputs). While all interested parties acknowledged that the plain terms of the HTS description made it specific to the by-product, the HTS description was not the only relevant factor for the Department to consider, as using the HTS “would produce an unreasonable result not explained by the record.”); *Fish New Shipper* at Comment II.B.3 (where the Department capped broken fillet by-products at the value for whole live fish because broken fillets were not a value-added byproduct).

²⁷³ See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 3987 (January 22, 2009) and accompanying Issues and Decision Memorandum at Comment 5.

determined in the *Final Results*, Indonesian HTS 1504.20.9000 is the best available SV on the record because as it meets the criteria considered by the Department. We noted, however, that this HTS is a basket category that includes both refined and unrefined oil, while Vinh Hoan's by-product is only unrefined oil that is minimally processed, stored in a vat, and sold unpackaged.²⁷⁴ As stated in the *Final Results*, while the Indonesian HTS 1504.20.9000 is sufficiently specific, the HTS may contain refined fish oil which is not sufficiently similar to the fish oil by-product.²⁷⁵ Upon further examination, we note that Indonesian HTS 1504.20.9000 values fish oil at \$3.10/kg, while the SV for the main input, whole fish, is \$1.79. For fish by-products, because the record contains information about the values of the main input (whole live fish) and output (frozen fish fillets) the Department is able to ascertain whether the value of a by-product makes commercial sense.²⁷⁶ It would be illogical to value an unrefined by-product like fish oil at a value greater than that of the main input, a value that also approaches that of the finished product, frozen fish fillets.²⁷⁷ Given that the fish oil SV is greater than whole fish and that Vinh Hoan's fish oil is unrefined and minimally processed, as discussed above, HTS 1504.20.9000 value is more closely priced to the value of refined fish oil, and should, therefore, be capped.

Regarding Vinh Hoan's argument that the Department should not apply the fish oil/fish meal ratio of 0.57 in step 3 of its calculation, we disagree. The Vinh Hoan verification report

²⁷⁴ See Memorandum to the File, through Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9, from Susan Pulongbarit, International Trade Analyst, AD/CVD Operations Office 9, "Verification of the Sales and Factors of Production Response of Vinh Hoan Corporation in the 2010-2011 Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam," dated December 14, 2010 ("Vinh Hoan Verification Report") at 33 and 39-40.

²⁷⁵ See *Final Results* at 28-39.

²⁷⁶ We do not have record evidence concerning, for example, the price of logs, finished lumber or FOPs used to press sawdust, which could enable us to determine whether the HTS for sawdust is appropriate.

²⁷⁷ See *Blue Field (Sichuan) Food Industrial Co., Ltd. v. United States*, 949 F. Supp. 2d 1311, 1327, (CIT 2013) (in which the Court found that it is not reasonable for the Department to use a price for a rice by-product that is twice as high as the price of rice). See also *Zhengzhou Harmoni Spice Company Co., Ltd. v. United States*, 617 F. Supp. 2d 1281, 1297 (CIT 2009) ("The statutory objective of calculating dumping margins as accurately as possible can be achieved only when Commerce's choice as to what constitutes the best available information evidences a rational and reasonable relationship to the factor of production it represents.")

describes the process by which Vinh Hoan produces fish oil and fish meal. At verification, the Department observed that Vinh Hoan saves fish scrap during the production process and that all of the scrap is transferred to Vinh Hoan Feed, where it is processed into fish oil and fish meal. During this process, machines at Vinh Hoan Feed chop and grind the scrap, and then cook the chopped and ground scrap. The scrap is pressed, and then dried. Once it is dried, the dry part is used for fish meal, and the remaining liquid is further cooked to become fish oil.²⁷⁸ In addition to this process observed at verification, Vinh Hoan also reported each of the raw materials and energy (*i.e.*, labor, electricity, rice husk, coal, and sawdust) used to produce fish oil and fish meal to the Department. Specifically, each of the consumption rates for the raw materials and energy used to produce processed by-products reflected the consumption rates for both fish oil and fish meal, cumulatively.²⁷⁹ In order to account for the fact that a fraction of the FOPs consumed during the by-product production process is dedicated to fish meal, while fish oil continues to a different production process, the Department will continue to apply the fish oil ratio.

Regarding Vinh Hoan's assertion that the Department must revise the fish oil calculation to value the by-product material input as live fish instead of fish waste, we disagree. In its response to the Department's original questionnaire, the Vinh Hoan stated that the main input is fresh fish scrap, and in some instances, purchased fresh scrap.²⁸⁰ Accordingly, the Department continues to value the by-product material input as fish waste.

With respect to Vinh Hoan and Petitioners' argument that the fish oil calculation should be revised in step four to apply a usage factor for fish waste, we agree. Similar to the Department's treatment of the other FOPs used in the production process, we agree that only a

²⁷⁸ See Vinh Hoan Verification Report at 33.

²⁷⁹ See Letter from Vinh Hoan, to the Department, regarding "Certain Frozen Fish Fillets from Vietnam: Vinh Hoan Corporation – Section D Questionnaire Response," dated January 3, 2012 at 35-38.

²⁸⁰ *Id.* at 36.

fraction is dedicated to Vinh Hoan's fish oil production. As such, we have changed the fish oil cap calculation to include a usage factor.

With respect to Petitioner's argument that the Vinh Hoan by-product contains an error and should correct it by removing the absolute value from its calculation in the Department's margin calculation, we disagree. As stated by Vinh Hoan, "Vinh Hoan constructed a dedicated scrap recovery facility and storage tanks with a substantial capital investment to process and recover fish oil."²⁸¹ As such, we find that Vinh Hoan does incur some costs during the by-product production cost. Therefore, we find that the absolute value should not be removed from the calculation in order to reflect such costs.

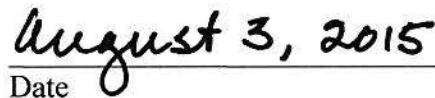
²⁸¹ See Vinh Hoan Draft Comments at 15-16.

IV. CONCLUSION

Pursuant to the Court's order, and based on the analysis of the four issues the Department was instructed to reconsider, the Department has maintained its selection of Indonesia as the primary country (adjusted to exclude data from a certain region), has adjusted how we treated Vinh Hoan's consignment sales and has used Vinh Hoan's net weight of production for the FOP usage ratios. In addition, we have provided more explanation as to how we calculated the fish oil cap. After accounting for all calculation changes, the margins are as follows (a) Vinh Hoan changed to \$0.28 per kg, (b) Anvifish changed to \$2.30 per kg, and (c) the separate rate respondents changed to \$1.29 per kilogram.²⁸²



Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance


Date

²⁸² See Vinh Hoan Final Analysis Memo; Anvifish Final Analysis Memo; and Memo to the File, from Paul Walker, Case Analyst, "Eighth Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Remand Results Separate Rate Margin," dated concurrently with this remand.

Attachment I

FOP	Country	Description	Publicly Available	Tax/Duty Exclusive	Broad Market Average	Contemporaneous	Specific to the Input	Additional Concerns
FOPs not Questioned in Remand								
Whole Live Fish	Bangladesh	DAM	Yes	Yes	Yes*	Yes	No	* Not nearly as broad as Indonesia DAM has reliability issues
	Indonesia	IAS	Yes	Yes	Yes	Yes	Yes	
	Philippines	BAS	Yes	Yes	No	Yes	No	
Fish Feed	Bangladesh	Aquaculture Study	Yes	Yes	No	No	Yes	-
	Indonesia	GTA	Yes	Yes	Yes	Yes	Yes	
Fingerlings	Bangladesh	Aquaculture Study	Yes	Yes	No	No	Yes	-
	Indonesia	GTA	Yes	Yes	Yes	Yes	Yes	
Environ Treatments	Bangladesh	Aquaculture Study	Yes	Yes	No	No	Yes	-
	Indonesia	GTA	Yes	Yes	Yes	Yes	Yes	
Nutrition	Bangladesh	UN ComTrade	Yes	Yes	Yes	No	Yes	-
	Indonesia	GTA	Yes	Yes	Yes	Yes	Yes	
Lime	Bangladesh	Aquaculture Study	Yes	Yes	No	No	Yes	-
	Indonesia	GTA	Yes	Yes	Yes	Yes	Yes	
Medicines	Bangladesh	UN ComTrade	Yes	Yes	Yes	No	Yes	-
	Indonesia	GTA	Yes	Yes	Yes	Yes	Yes	
Breadcrumbs	Bangladesh	UN ComTrade	Yes	Yes	Yes	No	Yes	-
	Indonesia	GTA	Yes	Yes	Yes	Yes	Yes	
Batter Mix	Bangladesh	UN ComTrade	Yes	Yes	Yes	No	Yes	-
	Indonesia	GTA	Yes	Yes	Yes	Yes	Yes	
STPP	Bangladesh	UN ComTrade	Yes	Yes	Yes	No	Yes	-
	Indonesia	GTA	Yes	Yes	Yes	Yes	Yes	
Cooking Oil	Bangladesh	UN ComTrade	Yes	Yes	Yes	No	Yes	-
	Indonesia	GTA	Yes	Yes	Yes	Yes	Yes	
Ice	Bangladesh	Financial Statement	Yes	Yes	No	No	Yes	Only record source
CO Gas	Bangladesh	UN ComTrade	Yes	Yes	Yes	No	Yes	-
	Indonesia	GTA	Yes	Yes	Yes	Yes	Yes	
Salt	Bangladesh	UN ComTrade	Yes	Yes	Yes	No	Yes	-
	Indonesia	GTA	Yes	Yes	Yes	Yes	Yes	
PE Bags	Bangladesh	UN ComTrade	Yes	Yes	Yes	No	Yes	-
	Indonesia	GTA	Yes	Yes	Yes	Yes	Yes	
PP Bgas	Bangladesh	UN ComTrade	Yes	Yes	Yes	No	Yes	-
	Indonesia	GTA	Yes	Yes	Yes	Yes	Yes	
Carton	Bangladesh	UN ComTrade	Yes	Yes	Yes	No	Yes	-
	Indonesia	GTA	Yes	Yes	Yes	Yes	Yes	
Tape	Bangladesh	UN ComTrade	Yes	Yes	Yes	No	Yes	-
	Indonesia	GTA	Yes	Yes	Yes	Yes	Yes	
Plastic Sheet	Bangladesh	UN ComTrade	Yes	Yes	Yes	No	Yes	-
	Indonesia	GTA	Yes	Yes	Yes	Yes	Yes	
Pallets	Bangladesh	UN ComTrade	Yes	Yes	Yes	No	Yes	Only record source
Water	Bangladesh	Dhaka Water Auth.	Yes	Yes	No	Yes	Yes	-
	Indonesia	Pam Jaya	Yes	Yes	No	Yes	Yes	
Diesel	Bangladesh	World Bank Pump Price	Yes	Yes	Yes	Yes	Yes	-
	Indonesia	GTA	Yes	Yes	Yes	Yes	Yes	
Electricity	Bangladesh	Dhaka Electric Co.	Yes	Yes	No	Yes	Yes	-
	Indonesia	PLN Price	Yes	Yes	No	Yes	Yes	
Coal	India	GTA	Yes	Yes	No	Yes	Yes	Incomplete
	Indonesia	GTA	Yes	Yes	Yes	Yes	Yes	
FOPs Questioned in Remand								
Labor	Bangladesh	Bureau of Stats	Yes	Yes	No	No	No	-
	Indonesia	5B	Yes	Yes	Yes	No	Yes	
Rice Husk	Bangladesh	Price Quotes	Yes	No	No	No	Yes	Unreliable
	Indonesia	GTA	Yes	Yes	Yes	Yes	Yes	
Sawdust	Bangladesh	Price Quotes	Yes	No	No	No	Yes	Unreliable
	Indonesia	GTA	Yes	Yes	Yes	Yes	Yes	
Fish Meal	Bangladesh	UN ComTrade	Yes	Yes	Yes	No	Yes	Unreliable
	Indonesia	Price Quote	Yes	No	No	No	Yes	
Frozen Broken Meat	Indonesia	GTA	Yes	Yes	Yes	Yes	Yes	-
	Indonesia	GTA	Yes	Yes	Yes	Yes	No	
Fish Oil	Indonesia	GTA	Yes	Yes	Yes	Yes	Yes	-
	Indonesia	Price Quote	Yes	No	No	No	Yes	
Various Fish Wastes	Bangladesh	Price Quote	Yes	No	No	No	Yes	Unreliable Unusable Greatest Specificity
	Indonesia	GTA	Yes	Yes	Yes	Yes	No	
	Philippines	Price Quote	Yes	Yes	No	No	Yes	
Fresh Broken Meat	Indonesia	GTA	Yes	Yes	Yes	Yes	No	Unusable
	Philippines	Price Quote	Yes	Yes	No	No	Yes	
B&H	Bangladesh	Doing Business	Yes	Yes	Yes	Yes	Yes	-
	India	3 Companies	Yes	Yes	No	No	Yes	
	Indonesia	Doing Business	Yes	Yes	Yes	Yes	Yes	
	Philippines	Doing Business	Yes	Yes	Yes	Yes	Yes	
Foreign Inland Truck Freight	Bangladesh	Statistical Yearbook	Yes	Yes	Yes	No	Yes	Untranslated
	Indonesia	Dir. Gen. Min. & Coal	Yes	Unknown	Unknown	Yes	Unknown	
	Bangladesh	Doing Business	Yes	Yes	Yes	Yes	Yes	
	Indonesia	Doing Business	Yes	Yes	Yes	Yes	Yes	
Philippines	Doing Business	Yes	Yes	Yes	Yes	Yes		
FOPs Questioned in Remand								
Surrogate Ratios	Bangladesh	Apex	Yes	Yes	Yes	Yes	No	-
	Bangladesh	Gemini	Yes	Yes	Yes	Yes	No	
	Indonesia	DSFI	Yes	Yes	Yes	Yes	No	

FOP	Country	Company	Publicly Available	Contemporaneous	Comparable Merchandise	Identicle Merchandise
Surrogate Ratios	Bangladesh	Apex	Yes	Yes	Yes	No
	Bangladesh	Gemini	Yes	Yes	Yes	No
	Indonesia	DSFI	Yes	Yes	Yes	No