

**Final Results of Redetermination Pursuant to *Vinh Hoan Corporation et al. v. United States*,
Consol. Court No. 13-00156, Slip Op. 16-53 (May 26, 2016)**

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. 16-53 (May 26, 2016) (“*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 certain surrogate values (“SVs”), *i.e.*, sawdust and rice husk, provided further explanation concerning the “cap” to the fish oil by-product, and discussed the use of the absolute value of by-products in the margin calculation.²

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) (“*Amended Final Results*”) and accompanying Ministerial Error Memorandum. This is the second remand stemming from the *Final Results*. The Department addressed several issues raised by the Court in the First Remand Results. See *Final Results of Redetermination Pursuant to Vinh Hoan Corporation et al. v. United States*, Consol. Court No. 13-00156, and Slip Op. 15-16, dated August 3, 2015 (“*First Remand Results*”).

² See *Vinh Hoan* at 22-28 (fish oil cap and the absolute value of by-products in the margin calculation) and 30-36 (sawdust and rice husk SVs).

The Department has accounted for all changes in Vinh Hoan Corporation's ("Vinh Hoan")³ margin calculation pursuant to this remand redetermination.⁴ No changes in this remand determination affect the margin for Anvifish Joint Stock Company, the other mandatory respondent in this administrative review. For these final remand results, the Department continues to find that sales by Vinh Hoan were made for less than normal value ("NV") during the period of review ("POR"), and we recalculated the margin for all the separate rate respondents based on the change to Vinh Hoan's margin.

II. ANALYSIS

A. Surrogate Values

When determining whether prices are aberrational, the Department has found that the existence of higher prices alone does not necessarily indicate that the prices are distorted or misrepresentative, and thus, it is not a sufficient basis upon which to exclude a particular surrogate value.⁵ Rather, it is the Department's practice that interested parties must provide specific evidence showing whether the value is aberrational. In testing the reliability of SVs which were valued using import statistics alleged to be aberrational, the Department's practice is to examine Global Trade Atlas ("GTA") import data from the same harmonized tariff schedule ("HTS") number for: (a) the surrogate country over multiple years to determine if the current data appear aberrational compared to historical values, or (b) POR-specific data for potential

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

⁴ See Memo to the File, from Susan Pulongbarit, Case Analyst, "Eighth Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Draft Remand Results Analysis Memorandum for Vinh Hoan Corporation," dated concurrently with this notice ("Draft Analysis Memo").

⁵ See, e.g., *Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2012-2013*, 80 FR 13332 (March 13, 2015) ("*Hangers*") and accompanying Issues and Decision Memorandum at Comment 5.

surrogate countries for a given case.⁶ Regarding sawdust and rice husk, interested parties had ample opportunity to place this type of SV benchmark information on the record, *i.e.*, from May 23 to December 4, 2012, but failed to do so.

Nevertheless, based on the Court's order, and consistent with the Department's practice elucidated above, we placed benchmark information on the record for sawdust and rice husk, *i.e.*, historic Indonesia GTA data for these HTS numbers.⁷ Due to the limited nature of historic rice husk information available from GTA, we also placed POR-specific rice husk GTA data on the record from other countries on the surrogate country list.⁸ We invited parties to comment on this data. On August 8, 2016, we received timely comments from Petitioners and from Vinh Hoan.⁹

Sawdust

The Court remanded the issue of the sawdust SV to the Department.¹⁰ The Court determined that the Department failed to respond to arguments and record evidence that significantly detracts from its determination that Indonesian import data is specific and reliable.¹¹ The Court noted, in "light of the record data indicating that non-specific merchandise may have rendered the HTS category non-specific, {the Department} cannot simply rely upon the fact that the word "sawdust" is in the heading to conclude the data source is specific and not aberrational."¹² We discuss the issues raised by the Court below.

A. *Evidence on the Record of the Administrative Review*

⁶ *Id.*; *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 Comment 6.

⁷ See the Department's letter to All Interested Parties, dated July 27, 2016 ("Sawdust/Rice Husk Benchmark and SV Data").

⁸ *Id.*

⁹ See Petitioners' August 8, 2016 submission ("Petitioners' Supplemental Benchmark and SV Data"); Vinh Hoan's August 8, 2016 submission ("Vinh Hoan's Supplemental Benchmark and SV Data").

¹⁰ See *Vinh Hoan* at 32-34.

¹¹ *Id.*

¹² *Id.* at 34.

The record of the administrative review contains several sawdust SVs. There are two Bangladeshi price quotes on the administrative record for sawdust: (a) one from MK Traders, selling “wood saw dust” at \$0.13/kilogram (“kg”); and (b) one from SR Apparels, selling “raw sawdust” at \$0.065/kg.¹³ Based on the descriptions of the products in the price quotes, and other information found in the price quotes, we believe that these sawdust quotes are not for value-added products, and that the sawdust offered for sale in these price quotes is not processed in any way. For example, the MK Traders price indicates that “We don’t dry {the sawdust} in Sun or any dry machine that’s why moisture may present,” and the SR Apparels price quote states that the sawdust is “raw.”

In the First Remand Results, we found these price quotes were not contemporaneous, that they do not represent broad market averages, that the record does not demonstrate that they were tax- and duty-exclusive, and that the SR Apparels quote was unreliable.¹⁴ As a general policy, the Department is cautious in using price quotes as a party could, for example, receive ten quotes and provide the Department with only the two it prefers, or potentially influence the quotes it receives from a company.¹⁵ The Department often does not know the conditions under which price quotes were solicited and whether or not these were self-selected from a broader range of quotes.¹⁶ Without access to all of the information on how the price quotes were obtained, it is difficult to confirm that quotes reflect a typical broad market average cost. Unlike the SR

¹³ See Vinh Hoan’s November 20, 2102 submission at Exhibit 4; the Vietnam Association of Seafood Exporters and Producers’ (“VASEP”) November 20, 2012 submission at Exhibits 2.b. and 2.c.

¹⁴ See First Remand Results at 25 – 27.

¹⁵ 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) (“*Wood Flooring 2014*”) and accompanying Issues and Decision Memorandum at Comment 4; *Certain Polyethylene Terephthalate Resin from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 81 FR 13331 (March 14, 2016) (“*PET Resin*”) and accompanying Issues and Decision Memorandum at Comment 2.

¹⁶ See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47191 (September 15, 2009) (“*Vietnam Shrimp 2009*”) and accompanying Issues and Decision Memorandum at Comment 7.B.

Apparels quote, the MK Traders quote is accompanied by an affidavit indicating how it was obtained.¹⁷ The affidavit indicates that the entity gathering this information contacted leading sawdust traders all over Bangladesh *via* telephone and e-mail, but in the end only one price quote was submitted. Thus, we do not know if other quotes were received.¹⁸ For these reasons, we do not find these price quotes to be suitable sources to value sawdust, or even to be used as a benchmark.

The record of the administrative review also contains non-contemporaneous Bangladeshi UNComTrade data for HTS 4401.30, “Sawdust and Wood Waste and Scrap,” valued at \$2.45/kilogram (“kg”)¹⁹ and contemporaneous Indonesia GTA data for HTS 4401.30, “Sawdust and Wood Waste and Scrap” valued at \$1.43/kg.²⁰

B. *Evidence Added to the Record for this Remand*

The Court requested that the Department examine the aberrationality of the sawdust SV; however, because the record lacks the requisite information to complete this analysis, the Department placed benchmark/SV information for sawdust on the record for the purposes of this remand, specifically Indonesian historical data for HTS 4401.30.²¹ Petitioners did not provide

¹⁷ See VASEP’s November 20, 2012 submission at Exhibit 2.c.

¹⁸ *Id.*

¹⁹ This value is from 2006, and is \$1.70/kg, but after we inflated it to be contemporaneous with the POR, it is \$2.45/kg. 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 Preliminary Results,” dated August 30, 2012 at Exhibit 1.

²⁰ This was valued in Indonesian Rupiah, 12,656, but for ease of reference have converted it to U.S. Dollars. 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 1.

²¹ See Sawdust/Rice Husk Benchmark and SV Data. The surrogate country lists the following countries as being at a level of economic development comparable to Vietnam in terms of per capita gross national income being at a level of economic development: Bangladesh, India, Indonesia, Nicaragua, Pakistan and the Philippines. See the Department’s Letter to All Interested Parties, dated November 22, 2011 (“Surrogate Country List”).

comments on these data. Vinh Hoan did provide comments on these data,²² but, as noted below, we find Vinh Hoan's arguments and data concerning the sawdust SV unpersuasive.

Vinh Hoan provided additional Indonesian historical data for HTS 4401.30 on a monthly basis, and argues that the Indonesian import values are driven by exceedingly small, but very expensive, shipments from Singapore, the United States, and Germany and, therefore, because their value is so low, they cannot be shipments of sawdust.²³ According to Vinh Hoan, information it provided calls into question the validity of the imports from Singapore and the United States covered by HTS 4401.30, into Indonesia. Vinh Hoan submitted three PowerPoint slides, from a presentation titled "Forest Biodiversity and Climate Change Workshop, Singapore, 2-5 September 2009," which indicates that Singapore has no forest industry.²⁴ We do not have any information as to the author of this presentation and cannot ascertain the validity of the statements provided therein. The pages included from the PowerPoint presentation make assertions concerning Singapore's forest areas, but provide no support for these statements.²⁵ Vinh Hoan did not provide additional information which supports the conclusions in the PowerPoint presentation. Further, Vinh Hoan provided no additional information concerning the effect of United States or German imports into Indonesia for HTS 4401.30.²⁶

²² See Vinh Hoan's Supplemental Benchmark and SV Data.

²³ See Vinh Hoan's Supplemental Benchmark and SV Data at Attachment 1.

²⁴ *Id.* at Attachment 2.

²⁵ *Id.*

²⁶ Vinh Hoan also provided an email chain from one of its employees which purports to show that, according to the Port Import/Export Reporting Services ("PIERS"), there were no exports under HTS 4401.30 from 2008 to 2011 from the United States to Indonesia. *Id.* at Attachment 4. We have no way to verify the contents of this email chain as the Department does not have a subscription to PIERS data. In past cases the Department has found PIERS data to be not as reliable as other sources because it is a secondary source, unlike GTA, which is a primary source. See, e.g., *Honey from the People's Republic of China: Final Results and Rescission of Antidumping Duty New Shipper Reviews*, 76 FR 4289 (January 25, 2011) ("*Honey*") and accompanying Issues and Decision memorandum at Comment 3; *Wuhu Fenglian Co., Ltd. v. United States*, 899 F.Supp.2d 1355, 1366 (CIT 2013) ("*Wuhu Fenglian*"). Vinh Hoan could have simply provided U.S. export data from GTA, in the same way it provided Indonesian import data for HTS 4401.30, to confirm this claim, but it did not. In any case, this email chain appears to undermine Vinh Hoan's argument that exports from the United States to Indonesia caused the HTS 4401.30 entries to be unreasonably high.

Assuming, *arguendo*, Vinh Hoan's claims are correct concerning imports into Indonesia from Germany, Singapore and the United States, we examined the impact on the yearly average prices by excluding the disputed import statistics. The Department's practice is not to selectively remove import data from weighted-average import values because otherwise, parties would advocate the manipulation of data by removing one or more line items they find objectionable, with the result that we would not be using the average prices for that category, but some subset thereof.²⁷ Because the Court requested that we analyze these data, we have made an exception to our practice in this case to ascertain the validity of Vinh Hoan's arguments, but are aware this is a subjective exercise, as not all data from these countries would be considered aberrational, as claimed by Vinh Hoan. For example, the monthly data for Singapore provided by Vinh Hoan range from \$0.22/kg to \$17.00/kg, with quantities of 20 metric tons and one kilogram, respectively.²⁸ In fact, most exports from Singapore are of a low price, and these data drive the average unit value ("AUV") downward. Further complicating this exercise is that Vinh Hoan has not provided any quantitative thresholds for data it deems aberrational. We removed data from these three countries for quantities of less than 100 kg, and which have an AUV many times higher than the AUV for the POR. As shown in the chart below (Chart 1), the removal of these data results in no difference in the AUVs. As Vinh Hoan states, the "aberrational" data for these particular countries consist of small quantities, and as expected, the Department finds that the inclusion or exclusion of these data has no impact on the historic AUVs for HTS 4401.30

²⁷ See, e.g., *Certain Uncoated Paper from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 81 FR 3112 (January 20, 2016) and accompanying Issues and Decision Memorandum at Comment 2; *Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Results of New Shipper Review; 2012-2013*, 80 FR 41476 (July 15, 2015) and accompanying Issues and Decision Memorandum at Comment 11.D.

²⁸ See Vinh Hoan's Supplemental Benchmark and SV Data at Attachment 1.

because these values represent broad market averages for different periods of time.²⁹ In sum, we find Vinh Hoan’s arguments noted above to be speculative, and unsupported by record evidence.

| Chart 1 | | | | |
|---|-------------------|-------------------|-------------------|-------------------|
| Indonesia Import Statistics | | | | |
| Commodity: 4401.30, Sawdust And Wood Waste And Scrap, Whether Or Not Agglomerated In Logs, Briquettes, Pellets Or Similar Forms | | | | |
| Years Ending in July ³⁰ | | | | |
| Partner Country | 2008 AUV (USD/kg) | 2009 AUV (USD/kg) | 2010 AUV (USD/kg) | 2011 AUV (USD/kg) |
| All Countries | 0.99 | 0.45 | 1.31 | 1.43 |
| Excluding VH’s Data | 0.99 | 0.45 | 1.31 | 1.43 |

Vinh Hoan reported consuming sawdust as an energy source to produce fish oil and fish meal³¹ and provided a paper titled “Approximate Heating Value of Common Fuels” from the University of Connecticut which indicates that, as an energy source, dried sawdust generates 14 – 18 million British Thermal Units (“BTUs”)/ton, whereas anthracite coal produces 26 million BTUs/ton, and bituminous coal 24 million BTUs/ton.³² Vinh Hoan contends that it does not make sense that mere sawdust would cost exponentially more than coal, when on a per-ton basis, coal provides a greater BTU return than sawdust. Vinh Hoan argues that this is further evidence that HTS 4401.30 is not limited to, or specific to, sawdust and that it must cover more value-added items.

Furthermore, Vinh Hoan provided information which indicates that coal produces more energy than sawdust. The information Vinh Hoan provided is specific to anthracite and bituminous coal,³³ however, as Vinh Hoan only reported “coal” as an FOP,³⁴ the SV for this

²⁹ The Department’s detailed calculation can be found in Exhibit 11 of the Vinh Hoan Analysis memo.

³⁰ The POR is August 1, 2010, to July 31, 2011. Thus the year ending in July 2011, corresponds to the POR, and the other years ending in July correspond to prior PORs.

³¹ See, e.g., Vinh Hoan’s January 3, 2012 submission at 38.

³² See Vinh Hoan’s Supplemental SV Data at Attachment 1.

³³ *Id.* at Attachment 3.

³⁴ See Vinh Hoan’s January 3, 2012 submission at 38.

input is described as “other coal” and is not specific to bituminous or anthracite.³⁵ Without information specific to the coal consumed by Vinh Hoan, we cannot make a comparison to sawdust.

Moreover, Vinh Hoan has provided no information with respect to the prices of various fuel sources as they relate to the energy they provide. For example, Vinh Hoan’s data indicate that rice husk produces approximately half the energy per pound than bituminous coal.³⁶ Yet Vinh Hoan’s proposed SV for rice husk is not half the price of the coal SV -- it is in fact 20 times smaller. Without a basis for comparison on the record, we cannot determine whether it is appropriate to compare potential SVs to the energy they produce. Moreover, Vinh Hoan implies that it would consume the most economical energy source, but this did not appear to affect its own energy choices.³⁷ If true, Vinh Hoan would have sought out the cheapest energy source available to it; however, Vinh Hoan also reported consuming sawdust, coal, rice husk and electricity as energy sources, rather than just the single, cheapest energy source.³⁸ Finally, as noted below, Vinh Hoan did not consume plain sawdust, it consumed a value-added product -- pressed sawdust. Accordingly, we find comparisons concerning heat values are not appropriate. Lastly, Vinh Hoan provided Indonesian export data for HTS 4401.30, which indicate that exports under this HTS are cheaper than imports. Vinh Hoan contends that it does not make sense that Indonesia would import the same product at a much higher price than it exports the product. We note that HTS 4401.30, “Sawdust and Wood Waste and Scrap,” is a basket category, as evidenced by its description and the CBP Rulings Vinh Hoan placed on the record of the

³⁵ See Final SV Memo at Exhibit 1.

³⁶ See Vinh Hoan’s Supplemental SV Data at Attachment 14.

³⁷ *Id.* at Attachment 3.

³⁸ *Id.*

administrative review.³⁹ It would make sense, then, that the import and export values could differ, as the data are made up of differing products. As noted below, we agree with Vinh Hoan that this HTS may include higher priced value-added products, which is precisely why we find it specific to Vinh Hoan's "pressed sawdust" FOP.

C. *Specificity of HTS 4401.30*

Vinh Hoan points to four CBP Rulings to demonstrate that imports into Bangladesh and Indonesia, for HTS 4401.30, are not specific to the sawdust it consumes. The CBP Rulings cover the following products: (a) sawdust and wood waste pressed into pellets for use as a cat litter; (b) wooden fire starters made from sawdust; (c) sawdust and wood waste pressed into pellets for use as a second type of cat litter; and, (d) bisquettes made from wood chips.⁴⁰ As HTS numbers are harmonized at the six digit level, we agree with Vinh Hoan that HTS 4401.30 from Bangladesh and Indonesia may contain value-added products, which is precisely why the Department finds GTA data to be more specific than the proffered price quotes.

Vinh Hoan reported that it consumes "pressed sawdust," which is burned as an energy source.⁴¹ However, although Vinh Hoan has expressed to the Court that it consumes "simple sawdust," record information belies this description. Vinh Hoan reported consuming "pressed sawdust" in its production of fish oil and fish meal.⁴² As such, the sawdust Vinh Hoan consumed has been processed into a value-added product that is closer in form to HTS 4401.30 than it is to the Bangladeshi price quotes for unprocessed sawdust. Moreover, Vinh Hoan reported that its pressed sawdust is used a heat source, *i.e.*, it is burned.⁴³

We note that two of the CBP Rulings, for example, indicate that sawdust products used as

³⁹ See Vinh Hoan's November 20, 2012 submission at Exhibit 3.

⁴⁰ See Vinh Hoan's November 20, 2012 submission at Exhibit 3.

⁴¹ See Vinh Hoan's January 3, 2012 submission at 38; Vinh Hoan's May 7, 2012 submission at 13.

⁴² See Vinh Hoan's January 3, 2012 submission at 38.

⁴³ See Vinh Hoan's May 7, 2012 submission at 13.

heat sources are covered by HTS 4401.30.⁴⁴ Furthermore, in concurrent litigation covering the ninth review of this order, the Court found that the Department’s selection of HTS 4401.30 to value sawdust was supported by substantial evidence.⁴⁵ In sum, based upon Vinh Hoan’s reported consumption of pressed sawdust and the description of HTS 4401.30, we find that values of imports of sawdust into Indonesia under this HTS to be specific to the pressed sawdust consumed by Vinh Hoan.

D. *Reliability of GTA Data*

The source of the Indonesian GTA import data is Statistics Indonesia, an Indonesian government agency. The Department typically finds that official government publications are reliable and credible sources of information.⁴⁶ Where price data are official government statistics, the Department has relied upon those data to value FOPs.⁴⁷ We, therefore, find the GTA data submitted in this review to be a reliable source of SV information.

E. *Whether GTA Data for HTS 4401.30 is Aberrational*

As noted above, when determining whether prices are aberrational, the Department has found that the existence of higher prices alone does not necessarily indicate that the prices are distorted or misrepresentative, and thus, it is not a sufficient basis upon which to exclude a

⁴⁴ See Vinh Hoan’s November 20, 2012 submission at Exhibit 3.

⁴⁵ See *An Giang Fisheries Import and Export Joint Stock Company et al., v. United States*, Consol. Court No. 14-00109, Slip Op. 16-55 (June 7, 2016) (with very similar fact patterns, the Court found that the respondent “offers no evidence that the HTS import data significantly consisted of non-specific merchandise whose prices differed significantly from the pressed sawdust used by respondents”).

⁴⁶ See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2012-2013*, 80 FR 33241 (June 11, 2015) and accompanying Issues and Decision Memorandum at Comment 2; *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) (“Garlic”) and accompanying Issues and Decision Memorandum at Comment 2.B.

⁴⁷ See, e.g., *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 2011”) and accompanying Issues and Decision Memorandum at Comment 13.

particular surrogate value.⁴⁸ Rather, interested parties must provide specific evidence showing whether the value is aberrational. In testing the reliability of SVs which were valued using import statistics alleged to be aberrational, the Department's practice is to examine GTA import data from the same HTS number for: (a) the surrogate country over multiple years to determine if the current data appear aberrational compared to historical values; or (b) potential surrogate countries for a given case covering the POR.⁴⁹ When determining whether data are aberrational, the Department has found that evidence of a high or low AUV does not necessarily establish that the GTA data are unreliable, distorted or misrepresentative.⁵⁰ To determine whether a SV is aberrational, the SV must be substantially higher than the benchmark data on the record. For example, in *Pencils*, the Department did not exclude certain surrogate values which were over four times the overall average surrogate value for a particular input.⁵¹ In another example, *Wire Rope*, the Department stated that it would determine whether unit values are aberrational if they are substantially higher than the import values from other countries.⁵² For this remand, the Department has examined historical GTA data for Indonesia to determine whether the POR value is aberrational.⁵³

Upon examining the sawdust benchmark data on the record, we continue to find that the sawdust SV used in the *Final Results* is not aberrational. Examining the historical Indonesia

⁴⁸ See, e.g., *Hangers* at Comment 5.

⁴⁹ *Id.*; *Violet Pigment* at Comment 6.

⁵⁰ See, e.g., *Hangers* at Comment 5; *Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Results of Administrative Review; 2011-2012*, 78 FR 15696 (March 12, 2013), unchanged in *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results of Administrative Review; 2011-2012*, 78 FR 56209 (September 12, 2013).

⁵¹ See *Certain Cased Pencils from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 33,406 (July 13, 2009) ("*Pencils*") and accompanying Issues and Decision Memorandum at Comment 6.

⁵² See *Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rope from India and the People's Republic of China; Notice of Final Determinations of Sales at Not Less Than Fair Value: Steel Wire Rope from Malaysia*, 66 FR 12759 (February 28, 2001) ("*Wire Rope*") and accompanying Issues and Decision Memorandum at Comments 1 and 6.

⁵³ See *Sawdust/Rice Husk Benchmark Data*.

GTA data for HTS 4401.30 (*see* chart below) indicates that, while the POR SV (year ending July 2011) is the highest AUV in recent years, it is only eight percent higher than the previous year and only three times higher than the lowest AUV in 2009. In past cases, the Department has found that merely appearing on the low or high end of a range of values is not enough to make data aberrational.⁵⁴ The 2011 AUV appears to a part of a continuum of prices which may rise or fall depending on market fluctuations, and while higher than the 2009 value, we do not find the price difference to be so substantial as to constitute evidence of aberrationality. Based on this analysis, we find that it is not evident that the POR Indonesian GTA data for HTS 4401.30 is so much higher than the historical values on the record that the SV for sawdust used in the *Final Results* would be considered aberrationally high.

| Chart 2 | | | | |
|---|------|------|------|------|
| Indonesian GTA Import Statistics | | | | |
| Commodity: 4401.30, Sawdust And Wood Waste And Scrap, Whether Or Not Agglomerated In Logs, Briquettes, Pellets Or Similar Forms | | | | |
| Year Ending in July | | | | |
| | 2008 | 2009 | 2010 | 2011 |
| AUV (USD/kg) | 0.99 | 0.45 | 1.31 | 1.43 |

F. *Conclusion*

In sum, we find HTS 4401.30 to be specific because this HTS appears to contain value-added sawdust products, similar to the pressed sawdust consumed by Vinh Hoan, and thus, would be the HTS under which pressed sawdust pellets would enter. We find GTA to be a reliable source of SV data, consistent with our practice and for the reasons detailed above. In addition, the POR data for Indonesian HTS 4401.30 is reasonable because, based on a

⁵⁴ *See, e.g., Wood Flooring 2014* and accompanying IDM at Comment 6 (“Merely being at the low end, or the high end of a range, for that matter, does not render a data point as an outlier”).

comparison methodology consistent with the Department's practice; it is not substantially higher than other benchmark data on the record.

Rice Husk

The CIT remanded the issue of the rice husk SV to the Department.⁵⁵ The Court determined that the Department failed to address evidence that detracted from its finding that Indonesian import data is specific and non-aberrational.⁵⁶

A. *Evidence on the Record of the Administrative Review*

The record contains several rice husk SVs. There are two Bangladeshi price quotes for rice husk: (a) one from Seraph International, selling rice husk at \$0.18/kg; and, (b) one from SR Apparels, selling rice husk at \$0.11/kg.⁵⁷ In the First Remand Results, we found these price quotes were not contemporaneous, that they do not represent broad market averages, that the record does not demonstrate that they were tax- and duty-exclusive, that the SR Apparels quote was unreliable and that these price quotes meet few of the Department SV criteria.⁵⁸ As noted above, and as a general policy, the Department is cautious in using price quotes, as a party could, for example, receive ten quotes, and provide the Department with only the two it prefers, or potentially influence the quotes it receives from a company.⁵⁹ The Department often does not know the conditions under which price quotes were solicited and whether or not these were self-selected from a broader range of quotes.⁶⁰ Unlike the SR Apparels quote, we note the Seraph quote is accompanied by an affidavit indicating how it was obtained.⁶¹ The affidavit indicates that the entity gathering this information had numerous discussions with various rice processors

⁵⁵ See *Vinh Hoan* at 34-37.

⁵⁶ *Id.*

⁵⁷ See VASEP's November 20, 2012 submission at Exhibit 2.B.

⁵⁸ See First Remand Results at 25 – 27.

⁵⁹ See, e.g., *Wood Flooring 2014* at Comment 4; *PET Resin* at Comment 2.

⁶⁰ See *Vietnam Shrimp 2009* at Comment 7.B.

⁶¹ See VASEP's November 20, 2012 submission at Exhibit 2.c.

and rice husk traders, but in the end only submitted one price quote; thus, we do not know if the price quotes submitted were self-selected.⁶² For the above-stated reasons, we do not find these price quotes to be suitable sources to value rice husk.

The record also contains GTA data for HTS 1213.00.0000, “Cereal Straw and Husks, Unprepared, Whether or Not Chopped, Ground, Pressed or in the Form of Pellets,” from the Philippines valued at \$2.07/kg, and from Indonesian valued at \$10.50/kg.⁶³

B. *Evidence Added to the Record for the Remand*

The Court has requested the Department examine the aberrationality of the rice husk SV; however, because the record lacked the requisite information to complete this analysis, the Department placed benchmark/SV information for rice husk on the record for the purposes of this remand, specifically, Indonesian historical data for HTS 1213.00.0000.⁶⁴ Petitioners and Vinh Hoan provided comments on these data.⁶⁵ As noted below, we find certain of Vinh Hoan’s arguments and data concerning the rice husk SV to be compelling.

Vinh Hoan provided information which indicates that coal produces more energy than rice husk, and notes that the SV for coal is much lower than that of rice husk.⁶⁶ The information Vinh Hoan provided is specific to anthracite and bituminous coal;⁶⁷ however, it only reported “coal” as an FOP.⁶⁸ Moreover, Vinh Hoan has provided no information with respect to the prices of various fuel sources as they relate to the energy they provide. For example, Vinh Hoan’s data

⁶² *Id.*

⁶³ We note the Indonesian and Philippine values are denominated in the local currencies (Rupiah and Pesos, respectively), but for ease of reference we have converted them to USD. *See* Prelim SV Memo at Exhibit 1.

⁶⁴ *See* Sawdust/Rice Husk Benchmark and SV Data. The surrogate country lists the following countries as being at a level of economic development comparable to Vietnam in terms of per capita gross national income being at a level of economic dev: Bangladesh, India, Indonesia, Nicaragua, Pakistan and the Philippines. *See* the Department’s Letter to All Interested Parties, dated November 22, 2011 (“Surrogate Country List”).

⁶⁵ *See* Vinh Hoan’s Supplemental Benchmark and SV Data; Petitioners’ Supplemental Benchmark and SV Data.

⁶⁶ *See* Vinh Hoan’s Supplemental SV Data at Attachment 14.

⁶⁷ *Id.*

⁶⁸ *See* Vinh Hoan’s January 3, 2012 submission at 38; Final SV Memo at Exhibit 1.

indicates that rice husk produces approximately half the energy per pound than bituminous coal.⁶⁹ Yet Vinh Hoan's proposed SV for rice husk is not half the price of the coal SV -- it is 20 times smaller. Without these types of information, we cannot determine whether it is appropriate to compare potential SVs to the energy they produce.

Vinh Hoan provided PIERS data, which purport to show that the imports from the United States during the POR were fescue straw and not rice husk.⁷⁰ The GTA data for HTS 1213.00.0000 list a quantity of 1,700 kilograms imported into Indonesia for 2011; however, Vinh Hoan's PIERS data indicate a quantity of 97 metric tons.⁷¹ The record does not indicate why there is such a large difference between PIERS data and the official Indonesian government data. It is because of discrepancies like this that the Department does not prefer to use PIERS data because it is a secondary source, whereas GTA data represents data directly provided by governments, *i.e.*, it is a primary source.⁷² Therefore, we have not relied upon Vinh Hoan's PIERS data in determining whether HTS 1213.00.0000 is aberrational.

Vinh Hoan provided numerous articles which indicate that the imports of HTS 1213.00.0000 into the Philippines from Germany is not rice husk.⁷³ We find several of these articles to be from credible sources – the United States Department of Commerce's Commercial Service, the International Rice Research Institute, and the United States Department of Agriculture's Foreign Agricultural Service – all of which indicate that Germany does not have any domestic production of rice.⁷⁴ The Department typically finds official government data, and

⁶⁹ See Vinh Hoan's Supplemental SV Data at Attachment 14.

⁷⁰ See Vinh Hoan's Supplemental SV Data at Attachment 13.

⁷¹ See Vinh Hoan's Supplemental SV Data at Attachment 13.

⁷² See, *e.g.*, *Honey* at Comment 3; *Wuhu Fenglian*, 899 F. Supp. 2d at 1366.

⁷³ See Vinh Hoan's Supplemental SV Data at Attachments 17 - 20.

⁷⁴ See Vinh Hoan's Supplemental SV Data at Attachments 17, 19 & 20.

data from international organizations, to be reliable.⁷⁵ While these articles do not cover the POR, they do provide an indication that the imports from Germany into the Philippines may not have been rice husk, because the record demonstrates that Germany does not produce rice.⁷⁶

Vinh Hoan provided evidence that Indonesia is a large producer of rice, and argues it would have no need to import rice husk.⁷⁷ Vinh Hoan also provided data from the Indonesian Central

Bureau of Statistics (“ICBS”) on historic rice prices in Indonesia covering a multiyear period.⁷⁸

In examining the ICBS data submitted by Vinh Hoan, we find that the value of rice in Indonesia during the POR was approximately \$0.40/kg and the price of rice husk was approximately \$0.05/kg.⁷⁹ Just as the Department determined that by-products such as fish oil and fish meal should not be valued more highly than that of whole live fish, so too rice husk, a by-product of rice production, should not be valued more highly than rice. Unlike the sawdust FOP, there is no record evidence that indicates that Vinh Hoan consumed a value-added rice husk FOP. We have relied upon Vinh Hoan’s ICBS data, below, in determining whether HTS 1213.00.0000 is aberrational.

Petitioners submitted United Nations Food and Agriculture Organization data which indicate the price of rice, specifically paddy rice which includes the husks,⁸⁰ was valued at \$0.88/kilogram in 2011.⁸¹ Petitioners submitted several articles concerning the rising price of

⁷⁵ See, e.g., *Garlic* at Comment 2.B (where the Department notes we typically find official government publications to be reliable and credible sources of information); *Certain Polyester Staple Fiber from the People’s Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review*, 76 FR 2886 (January 18, 2011) and accompanying Issues and Decision Memorandum at Comment 1 (where the Department found data by an international organization to be reliable).

⁷⁶ The reliability of this information contrasts sharply with the information Vinh Hoan provided for sawdust.

⁷⁷ See Vinh Hoan’s Supplemental SV Data at Attachments 9 - 12.

⁷⁸ See Vinh Hoan’s Supplemental SV Data at Attachment 8.

⁷⁹ *Id.*

⁸⁰ See Petitioners’ Supplemental SV Data at Exhibits 3 & 4 (paddy rice is known as “rice in the husk”).

⁸¹ *Id.* at Exhibit 3.

rice in Indonesia, though none cover the POR.⁸² Petitioners also submitted the ICBS data submitted by Vinh Hoan.⁸³ Although we have not evaluated post-POR pricing data submitted by parties because we have sufficient POR data, we find that even using the latest ICBS data submitted by Petitioners (June 2013), the price of rice is approximately \$0.50/kg, and is many times smaller than the value for HTS 1213.00.0000 used in the *Final Results*.

C. *Specificity of HTS 1213.00.00*

We continue to find, as we did in the *Final Results*, that this HTS number 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,” contains one of the items covered by the plain terms of the HTS description.⁸⁴ The courts have upheld the Department’s use of broad import categories when the category’s selection was supported by substantial evidence.⁸⁵ In this review, for example, we found that the SV for fish meal is specific to the input at issue because the HTS heading from which the data are 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,⁸⁶ a finding which Vinh Hoan⁸⁷ did not challenge.

D. *Whether GTA Data for HTS 1213.00.00 is Aberrational*

⁸² *Id.* at Exhibits 5 & 6.

⁸³ *Id.* at Exhibit 5.

⁸⁴ *See Final Results* at Comment V.

⁸⁵ *See, e.g., Writing Instrument Mfrs. Ass’n, Pencil Section v. United States*, 984 F. Supp. 629, 640 (CIT 1997) (“*Writing Instruments*”); *Guangdong Chems. Imp. & Exp. Corp. v. United States*, 460 F. Supp. 2d 1370-71 (CIT 2006); *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).

⁸⁶ *See Final Results* at Comment VII.B.

⁸⁷ *Id.*

As noted above, when determining whether prices are aberrational, the Department has found that the existence of higher prices alone does not necessarily indicate that the prices are distorted or misrepresentative, and thus, it is not a sufficient basis upon which to exclude a particular surrogate value.⁸⁸ Rather, interested parties must provide specific evidence showing whether the value is aberrational. In testing the reliability of surrogate values alleged to be aberrational, also as noted above, the Department's practice is to: (a) examine data from the same HTS number for the surrogate country whose data are allegedly aberrational over multiple years to determine if the current data appear aberrational compared to historical values, or (b) to examine GTA import data for potential surrogate countries for a given case, to the extent such import data are available.⁸⁹ To determine whether a SV is aberrational, the SV must be substantially higher than the benchmark data on the record.⁹⁰

For this remand, the Department first examined historical GTA data for Indonesia.⁹¹ There were few imports of rice husk into Indonesia between 2008 and 2011. In fact, there were only imports into Indonesia one other year in this time period, 2008, and those imports totaled 204 kg. As such, we find the historical GTA data for Indonesia to be sporadic and, therefore, of limited use in determining a benchmark to ascertain whether the POR value is so much higher than the historical values on the record that the SV for rice husk used in the *Final Results* would be considered aberrationally high. Because the Indonesian historical data for HTS 1213.00.00 were limited, we examined POR GTA data for other countries on the surrogate country list, where available.

⁸⁸ See, e.g., *Hangers* at Comment 5.

⁸⁹ *Id.*; *Violet Pigment* at Comment 6.

⁹⁰ See *Pencils* at Comment 6; *Wire Rope* at Comments 1 and 6.

⁹¹ See Sawdust/Rice Husk Benchmark Data.

Upon examining the rice husk benchmark data on the record, we find that the rice husk SV used in the *Final Results* is aberrational. Examining POR GTA data for HTS 1213.00.00 for other countries on the surrogate country list (*see* chart below), indicates that the Indonesian POR SV (year ending July 2011) is substantially higher than other values. We note that the Indonesian value is over five times higher than the Philippine value, and over 150 times higher than the Indian value for HTS 1213.00.00, and the ICBS data. However, we note that the Philippine value is derived from a quantity of only 975 kg imported from Germany, which record evidence indicates does not have a rice industry.⁹² Therefore, similar to the historic Indonesia GTA data, we find the Philippine data to be of limited use in determining a benchmark because the quantity appears to be an unrepresentative outlier compared to the 7,000 metric tons represented by the Indian data, and the national data represented by ICBS. Consistent with *Pencils* and *Steel Rope*, we find in these remand results that the POR Indonesian GTA data used to value for rice husk are so much higher than the benchmark data, that we consider them to be aberrationally high.

| Chart 3 | | | |
|--|------------------|--------------|------------------|
| GTA Import Statistics | | | |
| Commodity: 1213.00.00, Cereal Straw And Husks Unprpd W/N Chopped Ground Pressed/In The Form Of Pellets | | | ICBS Data |
| Year Ending in July 2011 | | | |
| Country | Indonesia | India | Indonesia |
| AUV (USD/kg) | 10.50 | 0.06 | 0.05 |

⁹² *See* Sawdust/Rice Husk Benchmark Data.

Accordingly, notwithstanding our finding that HTS 1213.00.00 is specific, we have determined that the Indonesian GTA rice husk value is aberrational and have not used it in Vinh Hoan's margin calculation for these final remand results.⁹³

E. *Conclusion*

Having found the SV used in the *Final Results* to value rice husk aberrational, we examined the record for other possible SVs with which to value this FOP. When selecting SVs with which to value FOPs, the Department is directed to use the "best available information" on the record, and is statutorily required to obtain accurate dumping margins.⁹⁴ After finding the Indonesia HTS data covering the POR to be aberrational, and finding the Philippine data to be of a lesser quality, we are left with two sources, Indian GTA data and ICBS data. We have found in past cases that GTA data meet the Department's SV criteria.⁹⁵ For the ICBS data, we typically find official government data to be reliable as they represent an official statement of the governments as to the price of a certain commodity.⁹⁶ Vinh Hoan provided ICBS data covering the POR; thus, they are contemporaneous. The ICBS data are national Indonesian data which represent a broad market and are publicly available, because they are found on the internet. There is no record information which indicates whether these data are inclusive of taxes and duties. In sum, we find the Indian GTA data and Indonesian ICBS data equally meet our SV criteria.

⁹³ We have also found it to be aberrational in the concurrent litigation concerning the ninth review of this order.

⁹⁴ See *Writing Instruments*, 984 F. Supp. at 637 ("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").

⁹⁵ See, e.g., *Lightweight Thermal Paper from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 57329 (October 2, 2008) and accompanying Issues and Decision Memorandum Comment 9.

⁹⁶ See, e.g., *Garlic* at Comment 2.B (where the Department notes we typically find official government publications to be reliable and credible sources of information).

However, although both data meet our surrogate value criteria, the ICBS data are from the primary surrogate country, Indonesia. 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.⁹⁷ 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.⁹⁸ The CIT has upheld the Department's preference for deriving surrogate data from a single country.⁹⁹ As the court pointed out in *Peer Bearing Co-Chongshan v. United States*, 804 F. Supp 2d 1338, 1353 (CIT 2011), "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."¹⁰⁰ As a consequence, because the record contains prices for rice husk from Indonesia and India which are otherwise equal, we have not departed from the

⁹⁷ 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) and accompanying Issues and Decision Memorandum at Comment 10.

⁹⁸ 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.

⁹⁹ See, e.g., *Clearon Corporation and Occidental Chemical Corp. v. United States*, Slip Op. 13-22 (CIT 2013) ("*Clearon*") at 13.

¹⁰⁰ See *Peer Bearing Co-Chongshan v. United States*, 804 F. Supp 2d 1338, 1353 (CIT 2011), citing to *Peer Bearing*, 752 F. Supp. 2d at 1353, 1373.

surrogate country to value rice husk, and find the best information on the record to value this FOP is Indonesian ICBS data.¹⁰¹

B. Fish Oil

In the *Final Results*, we examined the SVs proposed by parties to value Vinh Hoan’s unrefined fish oil by-product, an Indonesian price quote and Indonesian Global Trade Atlas (“GTA”) data, HTS 1504.20.9000, and found that the Indonesian price quote proposed by Petitioners was neither reliable, nor contemporaneous.¹⁰² In the first remand, the Department also found this price quote was not a broad-market average, and record evidence did not demonstrate that it was tax- and duty-exclusive.¹⁰³ In the *Final Results*, we found that the plain terms of HTS 1504.20.9000, “Fish Fats & Oils & Their Fractions Exc Liver, Refined or Not, Not Chemically Mod,” cover both refined and unrefined fish oil. Because Vinh Hoan produced unrefined fish oil, and the HTS category for fish oil covers refined and unrefined fish oil, we capped HTS 1504.20.9000 at a value for unrefined fish oil, using Vinh Hoan’s data.

On remand, the Court ordered the Department explain how the fish oil cap is not just a rejection of the import data in favor of a “constructed value,” as well as why it is reasonable to depart from the normal methodology of choosing the best SV data to value Vinh Hoan’s unrefined fish oil by-product.¹⁰⁴ The Department’s decision to cap a by-product is based on an examination of the SVs on the record versus the value of the by-product, and whether the value of the by-product would lead to an unreasonable result.¹⁰⁵ As the Court notes, the fish oil

¹⁰¹ 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.

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

¹⁰³ See *Final Remand* at 29.

¹⁰⁴ See *Vinh Hoan* at 23 and 26.

¹⁰⁵ See, e.g., *Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 20197 (April 15, 2015) and accompanying Issues and Decision Memorandum at Comment 20; *Monosodium Glutamate from the People’s Republic of China: Final*

produced and sold by Vinh Hoan is a low value product.¹⁰⁶ To determine whether a cap is appropriate, we first examined the value of HTS 1504.20.9000, \$3.10/kilogram, versus the value of the main input, whole live fish, as reported in Indonesia Aquaculture Statistics, \$1.79/kilogram. Because the fish oil HTS was valued significantly higher than the main input, we determined a cap was necessary, because not to cap this by-product SV would lead to an unreasonable result.¹⁰⁷ We also conducted this exercise with respect Vinh Hoan’s fish meal by-product, and found that the HTS for that by-product was valued lower, \$0.63/kilogram, than that of the main input, \$1.79/kilogram, and therefore, we did not consider a cap for that by-product. In past cases, the Department has capped by-product SVs at the value of the main input.¹⁰⁸

When selecting SVs with which to value FOPs, the Department is directed to use the “best available information” on the record, and is statutorily required to obtain accurate dumping margins.¹⁰⁹ While the Department has a preference to value FOPs by using an SV for that factor, in this case, because the by-product in question is further processed, Vinh Hoan reported all of the FOPs it consumed in producing unrefined fish oil. The Department notes that Vinh Hoan reported these data in response to the Department’s ordinary requests for information, and that

Determination of Sales at Less Than Fair Value and the Final Affirmative Determination of Critical Circumstances, 79 FR 58326 (September 29, 2014) 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 byproduct a value that is higher than the value of the input from which it is derived is unreasonable”).

¹⁰⁶ See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2013-2014*, 80 FR 55328 (September 15, 2015) (“*Vietnam Shrimp 2015*”) and accompanying Issues and Decision Memorandum at Comment 7 (Where the Department capped a by-product surrogate value because, consistent with our practice, “we find it unreasonable to assign a higher value to a waste product, such as heads and shells, than to its input product, a whole shrimp”).

¹⁰⁷ In the Final Remand for *Paslode Division of Illinois Tool Works, Inc. v. United States*, Ct. No. 9712-02161 (January 15, 1999), the Department found that valuing a by-product higher than the main input would produce an unreasonable result.

¹⁰⁸ See, e.g., *Certain Steel Nails from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008) and accompanying Issues and Decision Memorandum at Comment 12; *Wood Flooring 2011* at Comment 24; *Vietnam Shrimp 2015* at Comment 7.

¹⁰⁹ See *Writing Instruments*, 984 F. Supp. at 637.

we verified Vinh Hoan's FOPs.¹¹⁰ The verified FOPs consumed by Vinh Hoan to produce unrefined fish oil during the POR were applied to POR-specific SVs from the primary surrogate country, Indonesia, in the SAS program.¹¹¹ Moreover, the SVs applied to the fish oil FOPs represent tax- and duty-exclusive broad market average values contemporaneous with the POR. Thus, we find the cap for fish oil to be contemporaneous. To account for the fact that Vinh Hoan's fish oil by-product was sold to unaffiliated parties, the Department added surrogate ratios for overhead, SG&A, and profit to the value, to approximate as closely as possible Vinh Hoan's experience.¹¹² As such, we find the use of Vinh Hoan's own information in its production of fish oil is necessarily the most representative, and specific, value. The Department finds that the use of the contemporaneous, verified FOP data to produce unrefined fish oil provided by Vinh Hoan, provides a more accurate cap than the SV for live whole fish, improves the accuracy of the Department's dumping calculation, and represents the best available information.

C. Absolute Value for By-products

The CIT remanded the issue of using the absolute value of the by-product offset to the Department.¹¹³ The Court determined that the Department must reconsider its by-product offset calculation when it results in a negative number or provide a reasonable explanation why granting such an offset is reasonable in such circumstances.¹¹⁴

In the *Final Results*, the Department used its standard calculation methodology to calculate the by-product offset, *i.e.*, we deducted the absolute value of the calculated offset from

¹¹⁰ See, e.g., Vinh Hoan's January 3, 2012 Section D submission at 35 – 38; Memorandum to the File, through Scot T. Fullerton, Program Manager, Office 9, from Susan Pulongbarit, International Trade Analyst, 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").

¹¹¹ See First Remand Results at 44 – 46.

¹¹² *Id.*

¹¹³ See *Vinh Hoan* at 28.

¹¹⁴ *Id.*

normal value. After the *Final Results*, parties argued that our by-product offset methodology should be revised when the costs for producing the by-products are greater than the revenues for these by-products.¹¹⁵ However, in the *Amended Final Results*, we stated that, because we intended to calculate Vinh Hoan's by-products offset in this manner, it was an intentional methodological decision, and therefore, did not constitute a ministerial error pursuant to section 751(h) of the Act and 19 CFR 351.224(f).¹¹⁶

An examination of the Vinh Hoan margin calculation output for the *Final Results* indicates that the SV for rice husk resulted in costs for producing by-products being greater than the revenues for the by-products, *i.e.*, that Vinh Hoan sold its by-products at a loss.¹¹⁷ However, as noted above, for these final remand results, the Department has valued rice husk using ICBS data, and an examination of the Vinh Hoan margin calculation output indicates that Vinh Hoan's by-product revenue is greater than its costs. As such, this particular situation regarding a negative by-product offset no longer exists for us to address.¹¹⁸

III. COMMENTS FROM INTERESTED PARTIES

The Department released the draft remand results on November 8, 2016. Interested parties submitted comments on November 23, 2016.¹¹⁹

A. Surrogate Value for Pressed Sawdust

Vinh Hoan's Comments

- The draft remand results focus on whether HTS 4401.30 is "specific" to the item being valued and whether the value derived is "aberrational."¹²⁰ With respect to specificity, the

¹¹⁵ See Ministerial Error Memorandum at 6. We also addressed this error allegation in the First Remand Results at 82.

¹¹⁶ *Id.*

¹¹⁷ See Memorandum to the File, 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.

¹¹⁸ See Draft Analysis Memo.

¹¹⁹ See Petitioners' and Vinh Hoan's November 23, 2016 submissions.

Department appears to find that if the HTS provision contains the name of the item being valued in its description, it is *ipso facto* specific. If that is the Department's position, Vinh Hoan respectfully requests that the Department clearly state this in the final remand results.¹²¹

- With respect to whether a sawdust value of \$1.43/kg is aberrational, we believe that the Department's position in the draft remand results is contrary to the requirement that the Department select the "best information available."
- The Department's position appears to be that as long as the value source meets the criteria of: specificity, broad market average, contemporaneous, tax & duty exclusive, and single surrogate country, then it need not *sua sponte* examine whether the value is aberrational unless an interested party makes a *prima facie* case that the value is aberrational. If that is the Department's position, Vinh Hoan respectfully requests that the Department clearly state this in the final remand results.¹²²

Petitioners' Comments

- The Department properly valued pressed sawdust using Indonesian import data because the GTA import data for Indonesian subheading 4401.30 provides the most appropriate data and is the only surrogate source on the record that is both specific to Vinh Hoan's by-product energy input and satisfies all other surrogate value criteria.¹²³

Department's Position: We have addressed each of the parties' concerns below, but agree with Petitioners that Indonesian subheading 4401.30 represents the best available information to value Vinh Hoan's pressed sawdust FOP.

¹²⁰ See Vinh Hoan's Comments to Draft Remand Results at 2.

¹²¹ *Id.*

¹²² *Id.* at 3-4.

¹²³ See Petitioners' Comments to Draft Remand Results at 2.

Regarding Vinh Hoan’s assertion that the Department appears to conclude that, if the HTS provision contains the name of the item being valued in its description, it is *ipso facto* specific, we disagree. When valuing an FOP using import statistics, the description of the HTS is an important factor in determining specificity, especially when it is the only descriptive record information for the data in question. However, each administrative review stands on its own, and depending on the facts of each review, different decisions maybe made with respect to the same SV sources.¹²⁴ To not analyze record evidence in this manner would ignore the “best available information” criteria for each review.¹²⁵ It is for this reason that we carefully consider the available evidence with respect to the particular facts of each case and evaluate the suitability of each SV source on a case-by-case basis.¹²⁶

To provide one example, in the *Sixth PRC Mushrooms* review, the Department valued an important FOP, described by the respondent as “mushroom spawn,” using an HTS number described simply as “mushroom spawn,” because it matched the description of the input in question.¹²⁷ Vinh Hoan might state this was a case of the Department finding the HTS provision containing the name of the item being valued in its description, and is therefore, *ipso facto* specific. However, in the *Seventh PRC Mushrooms* review, the respondent provided information which indicated that this HTS, while fitting the description of the input, contained different species of mushroom spawn, and the Department reconsidered its conclusion with respect to this

¹²⁴ See *Peer-Bearing Co.-Changshan v. United States*, 587 F. Supp. 2d 1319, 1325 (CIT 2008) (“Indeed, if the facts remained the same from period to period, there would be no need for administrative reviews” (quoting *Shandong Huarong Mach. Co. v. United States*, 29 CIT 484, 491 (CIT 2005)).

¹²⁵ See section 773(c)(1) of the Act.

¹²⁶ See *Utility Scale Wind Towers from the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 77 FR 75984, (December 26, 2012) (“*Wind Towers*”) and accompanying Issues and Decision Memorandum at Comment 2.

¹²⁷ See *Certain Preserved Mushrooms from the People’s Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) (“*Sixth PRC Mushrooms*”) and accompanying Issues and Decision Memorandum at Comment 2. In that review, we found that there was no record evidence that the HTS was a basket category or contained differing species of mushroom spawn. *Id.*

SV, and determined that the HTS was not specific to the input in question. The Department, therefore, determined to use a different SV for this FOP in the *Seventh PRC Mushrooms* review.¹²⁸ We provide this illustrative example to indicate that HTS descriptions are important in selecting SVs, but depending on the record evidence, are not always indicative of the best available information or *ipso facto* specific.

As noted above, for these remand results, we went beyond the HTS description to determine whether Indonesian HTS 4401.30 is specific to sawdust. We examined CBP Rulings which indicate that this HTS number may contain value-added pressed sawdust products which can be used as an energy source.¹²⁹ It is for this reason that we find HTS 4401.30 specific, as Vinh Hoan reported that it consumes “pressed sawdust,” which is burned as an energy source.¹³⁰

Regarding Vinh Hoan’s request that the Department clearly state that it need not *sua sponte* examine whether the value is aberrational unless an interested party makes a *prima facie* case that the value is aberrational, again, we disagree with this assessment of the Department’s practice. The Department’s responsibility is to evaluate the record evidence and investigate any claims of aberrational data submitted by interested parties. When confronted with a claim or data that suggest the potential surrogate values on the record are aberrational, the Department has a responsibility to evaluate the record evidence (as it does below) and assess whether those data are aberrational, and whether a selected value is the best available information.¹³¹

Nonetheless, we remind Vinh Hoan that that it is a well-established principle that it is the interested parties’ responsibility to contribute to the administrative record in each proceeding,

¹²⁸ See *Certain Preserved Mushrooms from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 72 FR 44827 (August 9, 2007) (“*Seventh PRC Mushrooms*”) and accompanying Issues and Decision Memorandum at Comment 3.

¹²⁹ See Vinh Hoan’s November 20, 2012 submission at Exhibit 3.

¹³⁰ See Vinh Hoan’s January 3, 2012 submission at 38; Vinh Hoan’s May 7, 2012 submission at 13.

¹³¹ See, e.g., *Blue Field Sichuan v. United States*, 949 F. Supp. 2d 1311, 1327-28 (CIT 2013).

and this includes a responsibility to provide support for claims that there are aberrational data on the record.¹³² Furthermore, the Department also may provide information on the administrative record, and often does so in NME AD proceedings when there is no usable surrogate value information on the record for a particular FOP.¹³³ However, the Department is under no obligation to provide information on the record that supports unsubstantiated claims by a party.

Here, and as noted above, the record contained four potential sawdust SVs submitted by interested parties: two Bangladeshi price quotes (\$0.13/kg and \$0.065/kg),¹³⁴ Bangladeshi UNComTrade data for HTS 4401.30 (\$2.45/kg),¹³⁵ and Indonesian GTA data for HTS 4401.30 (\$1.43/kg).¹³⁶ As noted above, 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.¹³⁷ 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.¹³⁸ Also as noted above, we found the two Bangladeshi price quotes unusable as SVs. After examining the

¹³² See, e.g., *QVD Food Co. v. United States*, 658 F.3d 1318, 1324 (Fed. Cir. 2011) (“[A]lthough Commerce has authority to place documents in the administrative record that it deems relevant, ‘the burden of creating an adequate record lies with [interested parties] and not with Commerce.’”) (quoting *Tianjin Mach. Imp. & Exp. Corp. v. United States*, 806 F. Supp. 1008, 1015 (CIT 1992)).

¹³³ See, e.g., *PET Resin* at Comment 2.

¹³⁴ See Vinh Hoan’s November 20, 2102 submission at Exhibit 4; the Vietnam Association of Seafood Exporters and Producers’ (“VASEP”) November 20, 2012 submission at Exhibits 2.b. and 2.c.

¹³⁵ This value is from 2006, and is \$1.70/kg, but after we inflated it to be contemporaneous with the POR, it is \$2.45/kg. 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 Preliminary Results,” dated August 30, 2012 at Exhibit 1.

¹³⁶ This was valued in Indonesian Rupiah, 12,656, but for ease of reference have converted it to U.S. Dollars. 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 1.

¹³⁷ 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.

¹³⁸ See, e.g., *Sixth PRC Mushrooms* at Comment 1.

remaining SVs on the record, we found that the Indonesian GTA data met all of the Department's SV criteria, and were from the primary surrogate country. As such, the record contained usable SV information, and therefore, there was no need for the Department to supplement the record with additional SV data.¹³⁹

As noted above, it is the Department's practice that interested parties must provide support for their claim that a value is aberrational. In testing the reliability of SVs which were valued using import statistics alleged to be aberrational, the Department's practice is to examine GTA import data from the same HTS number for: (a) the surrogate country over multiple years to determine if the current data appear aberrational compared to historical values; or (b) POR-specific data for potential surrogate countries for a given case.¹⁴⁰ Interested parties had ample opportunity to place this type of SV benchmark information on the record, *i.e.*, from May 23 to December 4, 2012, but failed to do so. Even in the *Final Results*, no party argued that Indonesian HTS 4401.30 was aberrational.¹⁴¹ In its comments on the draft remand results, Vinh Hoan did not find any specific issues with the Department's analysis of the sawdust data placed on the record to determine the aberrationality of Indonesian HTS 4401.30, and in fact agreed with the identical analysis with respect to rice husk, below. Accordingly, the Department finds that Vinh Hoan's claims that the sawdust data are aberrational is unsupported.

B. Surrogate Value for Rice Husk

Vinh Hoan's Comments

¹³⁹ See, e.g., *PET Resin* at Comment 2.

¹⁴⁰ *Id.*; *Violet Pigment* at Comment 6.

¹⁴¹ See *Final Results* at Comment IV. Although one interested party argued that Bangladeshi HTS 4401.30 was aberrational because it was valued higher than whole, live fish, Indonesian HTS 4401.30 was not valued higher than whole, live fish. *Id.*

- The draft remand results focus on whether HTS 1213.00.0000 is “specific” to the item being valued and whether the value derived is “aberrational.”¹⁴²
- With respect to specificity, it is noted that the Department continues to find that HTS 1213.00.0000 is specific to rice husk, because the HTS heading name includes the word “husks.” The Department also noted that it valued Vinh Hoan’s fish meal under a tariff provision that covers “Flours, Meals & Pellets of Fish, Crust. Mol or Other Aqua Invert, Unfit Human Cons,” and because the HTS provision includes “Meals,” it is specific.¹⁴³
- If the Department has a rule that if an HTS provision has in its name the item being valued that it is *ipso facto* specific, then it should clearly state this rule in the final remand results.¹⁴⁴
- With respect to the aberrational nature of the value derived from HTS 1213.00.0000, Vinh Hoan believes that the Department’s draft remand results fully demonstrate why that value is aberrational, and why the Indonesian ICBS data represent the best available information.¹⁴⁵

Petitioners’ Comments

- The Department properly maintained that Bangladeshi price quotes for rice husks advocated by respondents are not suitable for surrogate valuation purposes. However, the Department did not continue to rely on Indonesian import data because it found such data to be aberrational based on record evidence.¹⁴⁶
- Petitioners do not agree with the Department’s determination, because the record includes additional, albeit non-contemporaneous, import data that better reflect the value of the rice husk. However, Petitioners do not object to the Department’s choice of surrogate value for rice husk for purposes of these remand results and reserve our right to comment on this issue

¹⁴² See Vinh Hoan’s Comments to Draft Remand Results at 3.

¹⁴³ *Id.* at 4.

¹⁴⁴ *Id.* at 4.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 6.

further, should the Department's determination change in the final remand results or as a result of an additional remand from the Court.¹⁴⁷

Department's Position: In the draft remand results, we found that the rice husk SV used in the *Final Results* was aberrational, and examined the record for other possible SVs with which to value this FOP. After finding the Indonesia HTS data covering the POR to be aberrational, and finding the Philippine data to be of a lesser quality, we were left with two sources, Indian GTA data and ICBS data. While we have found in past cases that GTA data meet the Department's SV criteria, the ICBS data meet all of the Department's SV criteria, are official government data, and importantly, from the primary surrogate country. In the draft remand results, we concluded that Indonesian ICBS data represent the best available information to value Vinh Hoan's rice husk FOP.

We reiterate our position with regard to sawdust, above, that descriptions are important in selecting SVs, but depending on the record evidence, are not always indicative of the best available information, and not always *ipso facto* specific. When valuing an FOP using import statistics, the description of the HTS is an important factor in determining specificity when it is the only descriptive record information for the data in question. Each administrative review stands on its own, and depending on the facts of each review, different decisions may be made with respect to the same SV sources.¹⁴⁸ To not analyze record evidence in this manner would ignore the "best available information" criteria for each review.¹⁴⁹ It is for this reason that we

¹⁴⁷ *Id.* at 6-7.

¹⁴⁸ See *Peer-Bearing Co.-Changshan v. United States*, 587 F. Supp. 2d 1319, 1325 (CIT 2008) ("Indeed, if the facts remained the same from period to period, there would be no need for administrative reviews" (quoting *Shandong Huarong Mach. Co. v. United States*, 29 CIT 484, 491 (CIT 2005))).

¹⁴⁹ See section 773(c)(1) of the Act.

carefully consider the available evidence with respect to the particular facts of each case and evaluate the suitability of each SV source on a case-by-case basis.¹⁵⁰

C. Appropriateness of the Fish Oil Cap

Vinh Hoan's Comments

- The Department used a SV to value Vinh Hoan's fish oil, but Vinh Hoan's fish oil is a value-added by-product and there is no reason it could not be valued more highly than the main input or subject merchandise. The Department should not cap the value of Vinh Hoan's fish oil because the Department has not demonstrated that it has a practice of capping valued-added by-products. Even if capping does apply to value-added by-products, the Department deviated from its practice of valuing the fish oil by-product at the value of the main input, whole, live fish. The Department woefully undervalues Vinh Hoan's fish oil and does not adequately explain why it chose to use an SV that values this by-product well below that of the main input.¹⁵¹
- If the HTS provisions for sawdust and rice husk are specific to those inputs because the items are specifically listed in the title of the HTS provisions, then this logic should be applied to fish oil, as well, and the Department should use HTS 1504.20.9000 to value Vinh Hoan's fish oil by-product. If the Department finds that the inclusion of refined fish oil in the coverage of HTS 1504.20.9000 makes this provision "not specific" to Vinh Hoan's fish oil, then the Department should explain why and reconcile that decision with its statements regarding the specificity of the tariff provisions considered for rice husk.¹⁵²

Petitioners' Comments

- Petitioners did not comment on this issue.

¹⁵⁰ See *Wind Towers* at Comment 2.

¹⁵¹ *Id.* at 9-11.

¹⁵² *Id.*

Department's Position: With regard to Vinh Hoan's argument that its fish oil is a value-added product which could be more valuable than the main input (whole, live fish), or even the subject merchandise, we disagree. Vinh Hoan does not produce its fish oil in sanitary conditions under HACCP standards, or any other standards, which would make it fit for human consumption. The verification report describes fish oil production in the following manner:

We observed the incoming area for the scrap, and noted there was scrap waiting to be processed. A conveyor belt takes the scrap into a chopping machine. After chopping, it is transported to another machine where it is cooked. After cooking, it is transferred to another machine where it is pressed. From this process, the fish oil drips down into a tube, which leads to the storage tanks outside. The meal is transported into a cooling machine. After this process, it falls through a sieve (larger pieces can be sent back through). At the end of the production line, the meal is placed into bags. At the end of the tour of this facility, we asked to return to the fish oil storage tanks, where we asked company officials to have employees open the valves to observe the actual fish oil. We observed employees open the valves on one of the fish oil tanks, and fish oil was released through the spigot into a container.¹⁵³

Although Vinh Hoan claims its fish oil is a highly valued by-product, the Department observed at verification that its fish oil appears to be drippings from pressed fish meal. Moreover, the Court agreed in this case that Vinh Hoan's fish oil is not a high value by-product.¹⁵⁴

Vinh Hoan states that the Department does not have a practice of capping value-added by-products. In the *PRC Isos Remand* the Department capped a value-added by-product, ammonium sulfate.¹⁵⁵ While the facts of that case differ somewhat from this one, in both cases, the Department was faced with SVs for by-products that would lead to an unreasonable result, and based on the facts of the records, the Department employed an individualized capping methodology different than merely capping the by-product at the value of the main input. In

¹⁵³ See Vinh Hoan Verification Report at 40.

¹⁵⁴ See *Vinh Hoan* at 25.

¹⁵⁵ See *Clearon Corp. and Occidental Chemical Corp., et. al., v. United States*, CIT Consolidated Court No. 13-00073, "Final Results of Redetermination Pursuant to Remand," dated March 21, 2016 ("*PRC Isos Remand*"), at 7-11, and Comment 2.

sustaining the Department’s alternate methodology for by-product capping in *PRC Isos*, the Court noted that it was “not an unreasonable solution to the problem Commerce identified.”¹⁵⁶ Here, as in *PRC Isos*, we find it reasonable to use the data that Vinh Hoan reported and the Department verified,¹⁵⁷ coupled with POR-specific SVs from the primary surrogate country and adjusted by surrogate ratios, to calculate a fully loaded unrefined fish oil SV.¹⁵⁸ Further, we find that this methodology provides a more accurate cap than merely using the SV for live whole fish, improves the accuracy of the Department’s dumping calculation, and represents the best available information.

Moreover, the Department has constructed SVs in past cases using an identical methodology to that used in this case. For example, in *Drill Pipe*, when faced with a variety of HTS and price quote choices, the Department valued an FOP, tool joints, using a constructed value methodology, because it represented the best available information, as it does in this case.¹⁵⁹ In fact, in this review, we used Vinh Hoan’s reported farming FOPs in the normal value calculation, rather than beginning with the value of the main input, to construct a value for the whole, live fish farmed by Vinh Hoan. Vinh Hoan has not argued that this methodology leads to an inaccurate result with respect to its farming FOPs.

We do not find that the SV used in this review undervalues Vinh Hoan’s unrefined fish oil. Unlike the HTS Vinh Hoan proposes to use, which includes refined fish oil, Vinh Hoan’s fish oil production process does not include any pH balancing, filtration, coloring, or odor neutralization that would be found in internationally traded, refined fish oils. Vinh Hoan did not

¹⁵⁶ See *Clearon Corp. and Occidental Chemical Corp. v. United States*, Consol. Court No. 13-00073 Slip Op. 16 - 110 (November 23, 2016) at 39.

¹⁵⁷ See, e.g., Vinh Hoan’s January 3, 2012 Section D submission at 35 – 38; Vinh Hoan Verification Report.

¹⁵⁸ *Id.*

¹⁵⁹ See *Drill Pipe from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances*, 76 FR 1966 (January 11, 2011) (“*Drill Pipe*”) and accompanying Issues and Decision Memorandum at Comment 6.

report any FOPs for refining fish oil, nor did it report any packing FOPs; instead customers fill their own containers when purchasing Vinh Hoan's fish oil.¹⁶⁰ As such, Vinh Hoan's fish oil is not sold on the same basis as the fish oil contained in the HTS number, which includes international movement expenses, packing costs and packaging costs.¹⁶¹

Regarding specificity, as we stated in the draft remand results, we agree with Vinh Hoan that the Indonesian HTS tariff provisions at issue in this remand cover fish oil, sawdust and rice husk. All three HTS numbers are basket categories which, based on the HTS descriptions, cover the FOPs in question, as well as other products. Above, we analyzed the specificity and aberrationality of the sawdust and rice husk FOPs. There is a key difference between fish oil and sawdust/rice husk, which is that Vinh Hoan is a fish fillets producer and unrefined fish oil is one of the by-products it chooses to produce from fish fillet production. When calculating NV, the Department may offset production costs incurred by a respondent with the sale of by-products generated during the production process.¹⁶² Therefore, because the by-product in question is produced from the processing of fish fillets, there is a connection between the value of the fish fillets and fish oil. It is for this reason we analyzed the SVs for fish oil and fish meal to determine whether employing the normal SV selection criteria for these by-products would lead to an unreasonable result. As we noted above, it does not lead to an unreasonable SV for fish meal, as that value is smaller than that of the main input, whole, live fish.¹⁶³ Sawdust and rice husk are not by-products of fish fillet production, and therefore, we did not need to conduct this analysis with respect to those FOPs.

¹⁶⁰ See Vinh Hoan Verification Report at 33.

¹⁶¹ See Memorandum to the File, "8th Administrative Review, and Aligned 9th New Shipper Reviews, of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results," dated August 30, 2012, at 2.

¹⁶² See section 773(c) of the Act; accord *Guangdong Chems. Imp. & Exp. v. United States*, 460 F. Supp. 2d 1365, 1373 (CIT 2006).

¹⁶³ The HTS for fish meal is also a basket category covering other products.

D. Proposed Adjustments to Improve the Accuracy of the Fish Oil Cap Calculation

Vinh Hoan's Comments

- An error was made where the incorrect Excel cell was used to calculate the electricity component of the fish oil cap.
- The assumption that less than one kilogram of fish waste produced one kilogram of fish oil is not mathematically correct. As such, several adjustments should be made to the fish oil calculation. Specifically: (a) FOPs should not be allocated between fish oil and fish meal, however if the Department continues this, the numerator of each FOP should be multiplied by the ratio of fish oil to fish meal, instead of the FOP usage ratio; (b) the main input into producing fish oil should be whole, live fish and not fish waste; (c) the calculation was made on a gross weight basis when a net weight should have been used; and (d) the basis for the fish waste consumed should start with revised figures provided by Vinh Hoan.

Petitioners' Comments

- Petitioners did not comment on this issue.

Department's Position: We agree with Vinh Hoan that some adjustments to the fish oil calculation should be made. To start, for the final remand results, we agree that we made an inadvertent error with respect to the electricity component of the fish oil cap calculation and have corrected for it.

Moreover, we agree with Vinh Hoan that the assumption in the fish oil calculation used in the draft results that one kilogram of fish waste produced one kilogram is not mathematically correct.¹⁶⁴ It is the Department's practice to perform a margin calculation using the most

¹⁶⁴ See Memo to the File, from Susan Pulongbarit, Senior International Trade Compliance Analyst, "Eighth Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Draft Remand Results Analysis Memorandum for Vinh Hoan Corporation," at Attachment III.

complete and accurate information provided by respondents.¹⁶⁵ Specifically, the Department finds for industries such as frozen fish fillets, where the production process results in yield loss, that it is mathematically impossible to create one kilogram of subject merchandise with one kilogram or less of raw materials.¹⁶⁶ Due to yield loss, the Department previously has found that it is unlikely a company making finished merchandise would consume 100 percent of its output (*i.e.*, one kg of raw materials to produce one kg of output).¹⁶⁷ As such, the Department agrees with Vinh Hoan’s argument, and will adjust the fish waste input so that more than one kilogram of fish waste is used to produce one kilogram of fish oil (*i.e.*, finished output).¹⁶⁸

We also agree with Vinh Hoan that the allocation of FOPs between fish oil and fish meal starts with dividing the numerators for these FOPs by the ratio of fish oil to fish meal, and have made this change for the final remand results.¹⁶⁹ However, we disagree that FOP ratios should not be allocated between fish oil and fish meal. These two by-products are produced simultaneously and the inclusion of FOPs used to produce fish meal in the fish oil cap calculation would render it less reliable.

We disagree with Vinh Hoan’s contention that the main input into producing fish oil should be whole, live fish, and not fish waste. As previously explained in the *9th AR Final Results*, fish waste, not whole, live fish, as argued by Vinh Hoan, is the relevant input for valuing fish oil.¹⁷⁰ As described by Vinh Hoan, fish oil is produced from fresh head, bone, gut and fat,

¹⁶⁵ See, e.g., *Helical Spring Lock Washers from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 4175 (January 24, 2008) (“*Washers*”); *Steel Wire Garment Hangers from the People’s Republic of China*, 73 FR 47587 (August 14, 2008) and accompanying Issues and Decision Memorandum at Comment 8A.

¹⁶⁶ See *Hangers* at Comment 1.

¹⁶⁷ *Id.*

¹⁶⁸ For further discussion of our calculation, please see Memo to the File, from Susan Pulongbarit, Senior International Trade Compliance Analyst, “Eighth Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Remand Results Analysis Memorandum for Vinh Hoan Corporation.”

¹⁶⁹ *Id.*

¹⁷⁰ See *9th AR Final Results* at Comment XXIII.

which is fish waste collected at the filleting stage.¹⁷¹ Therefore, the Department continues to find that fish waste is the relevant main input for the fish oil calculation.

Moreover, the Department disagrees with Vinh Hoan's argument that the fish oil calculation used in the draft results was made on a gross weight basis instead of a net weight basis. Specifically, as explained above, based on the Court's order, the Department re-opened the record and requested that Vinh Hoan submit a revised FOP database on a net weight basis.¹⁷² Vinh Hoan resubmitted its FOPs database using a net weight quantity denominator, including supporting worksheets showing the calculation of each FOP using a net production quantity as the denominator.¹⁷³ Accordingly, the Department finds that the weighted-average whole, live fish FOP was calculated on a net weight basis and the resulting fish waste FOP (whole, live fish FOP minus one kg equals the resulting fish waste FOP) derived is also on a net weight basis and will not make any changes for the final results of redetermination.¹⁷⁴

Furthermore, while Vinh Hoan submitted a revised net weighted-average whole, live fish FOP calculation in its comments on the draft results, the Department finds that there are no supporting citations to these figures.¹⁷⁵ Thus, the Department will not apply these figures to its calculations of the weighted-average whole, live fish FOP and resulting fish waste on a net weight basis.

E. Absolute Value for By-products

Petitioners' Comments

¹⁷¹ See Vinh Hoan's Section D Response at 46.

¹⁷² See Vinh Hoan's Response to Slip Op. 15-16 Supplement Request, (April 21, 2015).

¹⁷³ *Id.*

¹⁷⁴ See Vinh Hoan Final Analysis Memo.

¹⁷⁵ See Vinh Hoan's Draft Remand Comments at Attachment 2.

- In the event its final remand results are not upheld by the Court or Vinh Hoan's by-product revenue is found to be lower than its further processing costs, the Department should reconsider its by-product offset calculation pursuant to the Court's previous order.¹⁷⁶

Vinh Hoan's Comments

- Vinh Hoan did not comment on this issue.

Department's Position: In the final results of this remand, Vinh Hoan's by-product revenue is not lower than its by-product processing costs, thus, consistent with the draft remand results, we find this issue is moot.

IV. CONCLUSION

Pursuant to the Court's order, and based on an analysis of the issues the Department was instructed to reconsider, the Department conducted an examination as to whether the sawdust and rice husk SVs are aberrational, provided more explanation as to our capping methodology for the fish oil SV, and made certain changes to the fish oil SV cap calculation. After accounting for all calculation changes, the margins are as follows: (a) Vinh Hoan changed to \$0.13 per kg, (b) Anvifish remained unchanged at \$2.30 per kg, and (c) the separate rate respondents changed to \$1.26 per kilogram.¹⁷⁷

1/27/2017

X *Ronald K. Lorentzen*

Signed by: RONALD LORENTZEN

¹⁷⁶ See Petitioners' Comments on Draft Remand Results at 5-6.

¹⁷⁷ 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.

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance