

**Final Results of Redetermination Pursuant to *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)**

**I. SUMMARY**

The U.S. Department of Commerce (the “Department”) has prepared these results of redetermination pursuant to the remand order of the U.S. Court of International Trade (“CIT” or the “Court”) in *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) (“*An Giang Fisheries*”). This remand addresses several issues in the ninth administrative review of the antidumping duty order on certain frozen fish fillets (“fish fillets”) from the Socialist Republic of Vietnam (“Vietnam”).<sup>1</sup>

In accordance with the Court’s instructions, the Department reconsidered its selection of the surrogate value (“SV”) for rice husk and provided further explanation concerning the “cap” to the fish oil by-product in Vinh Hoan Corporation’s (“Vinh Hoan”) margin calculation.<sup>2</sup> Additionally, and in accordance with the Court’s instructions, the Department made changes to Vinh Hoan’s margin calculation, specifically, by adjusting the denominators for Vinh Hoan’s factors of production (“FOPs”) to exclude water weight, and recalculating Vinh Hoan’s net U.S. price of sales for subject merchandise on a net weight basis exclusive of water weight.<sup>3</sup>

The Department has accounted for all changes in Vinh Hoan’s margin calculation pursuant to this remand redetermination.<sup>4</sup> No changes in this remand determination affect the

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<sup>1</sup> See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2011-2012*, 79 FR 19053 (April 7, 2014) (“9<sup>th</sup> AR Final Results”); amended in *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Amended Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 37714 (July 2, 2014).

<sup>2</sup> See *An Giang Fisheries*, Slip Op. 16-55 at 50. 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”).

<sup>3</sup> *Id.*, at 50.

<sup>4</sup> See Memorandum to the File, from Julia Hancock, Senior International Trade Compliance Analyst, entitled, “Ninth 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 notice (“Vinh Hoan Final Analysis Memo”).

margin for Anvifish Joint Stock Company, the other mandatory respondent in this administrative review. For these final remand results, the Department finds that sales by Vinh Hoan were not made for less than normal value (“NV”) during the period of review (“POR”) and, therefore, we have recalculated the margin for all the separate rate respondents based on the change to Vinh Hoan’s margin.<sup>5</sup>

## II. ANALYSIS

### A. Rice Husk Surrogate Value

The CIT remanded the issue of the rice husk SV to the Department.<sup>6</sup> The Court determined that the Department failed to address Vinh Hoan’s arguments that the Indonesian import data are not specific, contains aberrational price data, and is not a broad-market average.<sup>7</sup>

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.<sup>8</sup> 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 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) potential surrogate countries for a given case.<sup>9</sup> Regarding rice husk,

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<sup>5</sup> *Id.*

<sup>6</sup> *See An Giang Fisheries*, Slip Op. 16-55 at 33.

<sup>7</sup> *Id.*, at 31-3.

<sup>8</sup> *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.

<sup>9</sup> *See id.*; *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 Comment 6.

interested parties had ample opportunity to place this type of SV benchmark information on the record, 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 rice husk, *i.e.*, historic Indonesia GTA data for these HTS numbers.<sup>10</sup> Due to the limited nature of historic rice husk information available from GTA, we also placed rice husk GTA data on the record from other countries on the surrogate country list.<sup>11</sup> We invited parties to comment on these data. On August 8, 2016, we received timely comments from Petitioners<sup>12</sup> and from Vinh Hoan.<sup>13</sup>

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 is from Seraph International, selling rice husk at \$0.18/kilograms ("kg"); and (b) one from SR Apparels, selling rice husk at \$0.11/kg.<sup>14</sup> In the *9<sup>th</sup> AR Final 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's SV criteria.<sup>15</sup> As a general policy, the Department is cautious in using selective 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.<sup>16</sup> The Department often does not

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<sup>10</sup> See the Department's letter to All Interested Parties, dated July 19, 2016 ("Rice Husk Benchmark and SV Data").

<sup>11</sup> *Id.*

<sup>12</sup> Catfish Farmers of America and individual U.S. catfish processors, America's Catch, Alabama Catfish, Inc. d/b/a Harvest Select Catfish, Inc., Consolidated Catfish Companies, LLC d/b/a Country Select Catfish, Delta Pride Catfish, Inc., Guidry's Catfish, Inc., Heartland Catfish Company, Magnolia Processing, Inc. d/b/a Pride of the Pond, and Simmons Farm Raised Catfish, Inc. (collectively, "Petitioners").

<sup>13</sup> 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").

<sup>14</sup> See VASEP's December 11, 2013, Surrogate Value Submission, at Exhibit 7.

<sup>15</sup> See *9<sup>th</sup> AR Final Results* at Comment V.

<sup>16</sup> 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

know the conditions under which price quotes were solicited and whether or not these were self-selected from a broader range of quotes.<sup>17</sup> 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 Apparels quote, we note the Seraph quote is accompanied by an affidavit indicating how it was obtained.<sup>18</sup> The affidavit indicates that the entity gathering this information had numerous discussions with various rice processors and rice husk traders, but, in the end, only submitted one price quote.<sup>19</sup> However, there is also contradictory information on the record for whether Seraph produces and sells rice husks, because the hard copy printout of Seraph's website does not list rice or rice husk as one of the many agricultural products that Seraph offers for sale.<sup>20</sup> For these reasons, we do not find these Bangladeshi price quotes to be suitable sources to value rice husk.<sup>21</sup>

The record also contains an Indonesian rice husk price quote (\$0.11/kg) from Pt. Vitafarm Indonesia ("Vitafarm rice husk price quote").<sup>22</sup> Similar to the Bangladeshi price quotes, in the 9<sup>th</sup> AR Final Results, we found that this price quote is not a broad-market average, but a single transaction price from an individual company.<sup>23</sup> Additionally, we found that the record evidence does not demonstrate that the Vitafarm rice husk price quote is tax-exclusive or on an ex-factory basis. Accordingly, for these reasons, and for the same reasons concerning the

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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) and accompanying Issues and Decision Memorandum at Comment 2.

<sup>17</sup> 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) and accompanying Issues and Decision Memorandum at Comment 7B.

<sup>18</sup> See VASEP's December 11, 2013, Surrogate Value Submission at Exhibit 7.

<sup>19</sup> *Id.*

<sup>20</sup> See Petitioner's Rebuttal Surrogate Value Comments, (January 2, 2014) at Exhibit 61.

<sup>21</sup> See *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.

<sup>22</sup> See VASEP's December 6, 2013, Surrogate Value Submission at Exhibit 11D.

<sup>23</sup> See 9<sup>th</sup> AR Final Results at Comment 5.

self-selection problem we note above for the Bangladeshi price quotes, we do not find that the Vitafarm rice husk price quote fulfills the Department's SV criteria, and thus, is not a suitable source to value rice husk.

The record also contains Philippine GTA data for HTS 1213.00.0000, "Cereal Straw and Husks, Unprepared, Whether or Not Chopped, Ground, Pressed or in the Form of Pellets," valued at \$1.85/kg and Indonesian GTA data for HTS 1213.00.0000, valued at \$0.68/kg.<sup>24</sup>

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

The Court requested that 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.<sup>25</sup> Petitioners and Vinh Hoan provided comments on these data.<sup>26</sup> 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.<sup>27</sup> The information Vinh Hoan provided is specific to anthracite and bituminous coal;<sup>28</sup> however, as Vinh Hoan only reported "coal" as an FOP,<sup>29</sup> the SV for this input is described as "other coal" and is not specific to bituminous or anthracite.<sup>30</sup> Without this information specific to the coal consumed by Vinh

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<sup>24</sup> 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 Final SV Memo at Exhibit 1. See also Petitioners' Surrogate Country Comments/Factor Values Data, (May 24, 2013) at Exhibit 36.

<sup>25</sup> See 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, Bolivia, India, Nicaragua, Pakistan and the Philippines. See the Department's Letter to All Interested Parties, dated November 8, 2012 ("Surrogate Country List").

<sup>26</sup> See Vinh Hoan's Supplemental Benchmark and SV Data; Petitioners' Supplemental Benchmark and SV Data.

<sup>27</sup> See Vinh Hoan's Supplemental Benchmark and SV Data at Attachment 8.

<sup>28</sup> *Id.*

<sup>29</sup> See Vinh Hoan's January 3, 2012 submission at 38.

<sup>30</sup> See Final SV Memo at Exhibit 1.

Hoan, we cannot make a comparison to rice husks. Moreover, Vinh Hoan has provided no information with respect to the relationship between prices of various fuel sources as they relate to the energy those sources provide. For example, Vinh Hoan's data indicate that rice husk produces approximately half the energy per pound than bituminous coal.<sup>31</sup> However, Vinh Hoan's proposed SV for rice husk is not half the price of the coal SV -- it is, in fact, 10 times smaller. Without this type 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.<sup>32</sup> The GTA data for HTS 1213.00.0000 list a quantity of 21 metric tons imported in to Indonesia for 2012; however, Vinh Hoan's PIERS data indicate a quantity of 97 metric tons for 2011.<sup>33</sup> The Department does not prefer to use PIERS data because they are a secondary source, whereas GTA data represent data directly provided by governments, *i.e.*, they are a primary source. Moreover, the PIERS data provided by Vinh Hoan are not contemporaneous, because they do not cover the POR. 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.<sup>34</sup> We find several of these articles to be from particularly 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

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<sup>31</sup> See Vinh Hoan's Supplemental Benchmark and SV Data at Attachment 8.

<sup>32</sup> See Vinh Hoan's Supplemental Benchmark and SV Data at Attachment 7.

<sup>33</sup> See Vinh Hoan's Supplemental Benchmark and SV Data at Attachment 13.

<sup>34</sup> See Vinh Hoan's Supplemental Benchmark and SV Data at Attachments 10 - 14.

any domestic production of rice.<sup>35</sup> The Department typically finds official government data, and data from international organizations, to be reliable.<sup>36</sup> 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. In addition, we note that historical Philippine GTA data indicate that imports into the Philippines from Germany under HTS 1213.00.0000 are not normal commercial quantities, measuring a few hundred kilograms per year.<sup>37</sup>

Vinh Hoan provided evidence that Indonesia is a large producer of rice, and argues it would have no need to import rice husk.<sup>38</sup> Vinh Hoan also provided data from the Indonesian Central Bureau of Statistics (“ICBS”) on historic rice prices in Indonesia covering a multiyear period.<sup>39</sup> 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.<sup>40</sup> 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. We have relied upon Vinh Hoan’s ICBS data, below, in determining whether HTS 1213.00.0000 is aberrational.

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<sup>35</sup> *Id.*

<sup>36</sup> *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) (“*Garlic*”) 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); *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).

<sup>37</sup> *See* Vinh Hoan’s Supplemental Benchmark and SV Data at Attachment 9.

<sup>38</sup> *See* Vinh Hoan’s Supplemental Benchmark and SV Data at Attachments 2 - 6.

<sup>39</sup> *See* Vinh Hoan’s Supplemental Benchmark and SV Data at Attachment 1.

<sup>40</sup> *Id.*

Petitioners submitted United Nations Food and Agriculture Organization data which indicate the price of rice, specifically paddy rice, which includes the husks,<sup>41</sup> was valued at \$0.88/kg in 2012.<sup>42</sup> Petitioners submitted several articles concerning the rising price of rice in Indonesia, though none cover the POR.<sup>43</sup> Petitioners also submitted the ICBS data submitted by Vinh Hoan.<sup>44</sup> 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 *9th AR Final Results*.

C. *Specificity of HTS 1213.00.00*

We continue to find, as we did in the *Final Results*, that this HTS is specific to the input at issue, because the HTS heading from which the data are 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.<sup>45</sup> The courts have upheld the Department’s use of broad import categories when the category’s selection was supported by substantial evidence.<sup>46</sup> In this review, for example, we found that the SV for fish meal is specific to the input at issue, because the basket 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

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<sup>41</sup> See Petitioners’ Supplemental Benchmark and SV Data at Exhibits 3 & 4 (paddy rice is known as “rice in the husk”).

<sup>42</sup> *Id.*, at Exhibit 3.

<sup>43</sup> *Id.*, at Exhibits 5 & 6.

<sup>44</sup> *Id.*, at Exhibit 4.

<sup>45</sup> See *Final Results* at Comment XXIII.

<sup>46</sup> 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) (“*Guangdong*”); *Peer Bearing Co. Changshan v. United States*, 752 F. Supp. 2d 1333, 1335 (CIT 2011) (“*Peer Bearing*”); and *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) (“*Dorbest*”).



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,<sup>47</sup> a finding which Vinh Hoan<sup>48</sup> did not challenge.

D. *Whether GTA Data for HTS 1213.00.00 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 particular surrogate value.<sup>49</sup> 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.<sup>50</sup> 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.<sup>51</sup> In another example, in *Wire Rope*, the Department stated that it would determine whether unit values are aberrational if they are many times higher than the import values from other countries.<sup>52</sup>

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<sup>47</sup> See 9<sup>th</sup> AR Final Results at Comment IX.

<sup>48</sup> *Id.*

<sup>49</sup> See, e.g., *Hangers* at Comment 5.

<sup>50</sup> See *id.*; *Violet Pigment* at Comment 6.

<sup>51</sup> 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.

<sup>52</sup> 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.

For this remand, the Department first examined historical GTA data for Indonesia.<sup>53</sup> There were few imports of rice husk into Indonesia between 2009 and 2012. In fact, there were only imports into Indonesia in 2011 and 2012 in this time period; however, the 2012 data were not within the POR.<sup>54</sup> 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.<sup>55</sup>

The Philippine value is derived from a quantity of only 981 kg imported from Germany, which record evidence indicates does not have a rice industry.<sup>56</sup> 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 4,200 metric tons represented by the Indian data, and the national data represented by ICBS. As such, we have not used the Philippine GTA data for benchmarking purposes.

Further, we find that that the rice husk SV used in the *Final Results* is aberrational. Examining the benchmark data summarized in the chart below indicates that the Indonesian SV is much higher than other values. We note that the Indonesian value is almost seven times higher than the Indian value for HTS 1213.00.00, and the ICBS data. Consistent with *Pencils and Wire Rope*, we find for these final remand results that the POR Indonesian GTA data used to value for

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<sup>53</sup> See Rice Husk Benchmark and SV Data.

<sup>54</sup> There were no entries of HTS 1213.00.00 into Indonesia during the POR. In the 9<sup>th</sup> AR *Final Results* we used October 2012 data, and deflated it to be contemporaneous.

<sup>55</sup> The only countries with entries of HTS 1213.00.00 during the POR were India and the Philippines.

<sup>56</sup> See Rice Husk Benchmark and SV Data.

rice husk are so much higher than the benchmark data, that we consider them to be aberrationally high.<sup>57</sup>

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 2012			
Country	<b>Indonesia</b>	<b>India</b>	<b>Indonesia</b>
AUV (USD/kg)	0.68	0.10	0.05

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.<sup>58</sup>

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.<sup>59</sup> 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.<sup>60</sup> For the ICBS data, we typically find official government data to be reliable as they represent an official statement of the

<sup>57</sup> See *Pencils* at Comment 6; *Wire Rope* at Comments 1 and 6.

<sup>58</sup> We have also found it to be aberrational in the concurrent litigation concerning the eighth review of this order.

<sup>59</sup> See *Writing Instruments*, 984 F. Supp. 629, 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.).

<sup>60</sup> 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.

government's as to the price of a certain commodity.<sup>61</sup> Vinh Hoan provided ICBS data covering the POR; thus, it is contemporaneous. The ICBS data appear to be 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.

However, although both data sources meet our surrogate value criteria, the ICBS data is 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.<sup>62</sup> 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.<sup>63</sup> The CIT has upheld the Department's preference for deriving surrogate data from a single country.<sup>64</sup> As the

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<sup>61</sup> 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).

<sup>62</sup> See, e.g., *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.

<sup>63</sup> 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.

<sup>64</sup> See, e.g., *Clearon Corporation and Occidental Chemical Corp. v. United States*, Slip Op. 13-22 (CIT 2013) ("*Clearon*") at 13.

court pointed out in *Peer Bearing 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.”<sup>65</sup> 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 surrogate country to value rice husk, and find the best information on the record to value this FOP is Indonesian ICBS data.<sup>66</sup>

## **B. Fish Oil Surrogate Value**

In the *9<sup>th</sup> AR Final Results*, we examined the SVs proposed by parties to value Vinh Hoan’s unrefined fish oil by-product, which included six possible SV sources: (1) the Yadhi fish oil price quote from Indonesia; (2) the Indonesian Muncar fish oil prices; (3) a fish oil price quote from Arbee Biomarine Extracts Pvt Ltd. (“Arbee”), an Indian company (“Arbee fish oil price quote”); (4) a fish oil price quote from the Yashaswi Fish Meal & Oil Company (“Yashaswi”), an Indian company (“Yashaswi fish oil price quote”); (5) a fish oil price quote from Asian Seafood Limited (“Asian”), a Bangladeshi company (“Asian price quote for fish oil”); and (6) the Indonesian GTA import data under HTS 1504.20.9000, “Fish Fats & Oils & Their Fract, Excl Liver, O/T Rou.”<sup>67</sup> As explained in the *9<sup>th</sup> AR Final Results*, the five price quotes (*i.e.*, the Yadhi fish oil price quote from Indonesia, the Indonesian Muncar fish oil prices, the Arbee fish oil price quote, the Yashaswi fish oil price quote, and the Asian price quote for fish oil) are not suitable for valuing Vinh Hoan’s unrefined fish oil, because the prices are representative of a single company or single district’s experience and, thus, not a broad-market

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<sup>65</sup> See *Peer Bearing Co-Chongshan v. United States*, 804 F. Supp 2d 1338, 1353 (CIT 2011) (“*Peer Bearing 2011*”), citing to *Peer Bearing*, 752 F. Supp. 2d at 1353, 1373.

<sup>66</sup> 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.

<sup>67</sup> See *9<sup>th</sup> AR Final Results* at Comment XXIII.

average, not contemporaneous, and record evidence does not demonstrate whether these prices are tax- and duty-exclusive.<sup>68</sup> Also, the Department found for some of these price quotes that there were additional concerns, because the accompanying affidavits submitted for some of the price quotes were not on official company letterhead, did not list the payment terms of the price offer, and for one price quote, indicated that these sales were not typical of the company's business practices.<sup>69</sup> Moreover, the plain terms of HTS 1504.20.9000, "Fish Fats & Oils & Their Fractions Exc Liver, Refined or Not, Not Chemically Mod," covers unrefined fish oil.<sup>70</sup> This decision was similar to the decision to value Vinh Hoan's fish meal by-product, which was valued using Indonesian HTS 2301.20 "Flours, Meals & Pellets Of Fish, Crust, Mol Or Other Aqua Invert, Unfit Human Cons," because, although a basket category covering many products, the plain terms of the HTS covered fish meal.<sup>71</sup> On many occasions, the Court sustained the Department's use of broader basket HTS categories for SVs as supported by substantial evidence.<sup>72</sup> Thus, the Department finds there is only one SV source on the record of this review to value Vinh Hoan's unrefined fish oil by-product, Indonesian HTS data, that meets the Department's surrogate value criteria, pursuant to section 773(c) of the Act.

However, because Vinh Hoan produced unrefined fish oil, and the HTS category for fish oil yielded a higher value (\$1.73/kg) than that of the whole live fish input used to make fish fillets (\$1.63/kg), and covered refined fish oil, we capped HTS 1504.20.9000 at the value for

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<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> See Vinh Hoan's Supplemental Section D Response, (July 12, 2013) at 21; Memorandum to the File, from Paul Walker, Case Analyst, "Ninth Administrative Review, and Aligned New Shipper Review, of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results," (September 3, 2013) at 6-7 ("9<sup>th</sup> AR Prelim SV Memo"). In *9<sup>th</sup> AR Final Results*, the Department found that Vinh Hoan produced and sold unrefined fish oil because the fish oil was not packaged and the production process was not capital intensive, which was consistent with the verification findings from the previous review. See *9<sup>th</sup> AR Final Results* at Comment XXIII.

<sup>71</sup> See *9<sup>th</sup> AR Final Results* at Comment IX; 9<sup>th</sup> AR Prelim SV Memo at 6-7.

<sup>72</sup> See, e.g., *Writing Instruments*, 984 F. Supp. at 640; *Guangdong*, 460 F. Supp. 2d at 1370-71; *Peer Bearing*, 752 F. Supp. 2d at 1335; and *Dorbest*, 462 F. Supp. 2d at 1289-90.

unrefined fish oil, calculated using Vinh Hoan's data.<sup>73</sup> It is the Department's practice of rejecting or capping the by-product SV based on the premise that the by-product should not be priced in excess of the value of the product from which it was derived. This decision was consistent with the Department's long-standing practice of rejecting or capping the by-product SV in instances where the by-product SV exceeds the SV of the product from which it was derived, because not capping the by-product SV would produce an unreasonable result.<sup>74</sup>

However, on remand, the Court ordered the Department explain how its fish oil cap is not just a rejection of the import data in favor of a constructed value, and if it is, the reasonableness of that decision.<sup>75</sup> 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.<sup>76</sup> As the Court notes, the fish oil produced and sold by Vinh Hoan is a low value product.<sup>77</sup> To determine whether a cap is appropriate, we first examined the value of HTS 1504.20.9000, \$1.73/kg, versus the value of the main input, whole live fish sourced from Indonesia Aquaculture Statistics, \$1.63/kg. Because the fish oil HTS was

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<sup>73</sup> See 9<sup>th</sup> AR Final Results at Comment XXIII.

<sup>74</sup> 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 ("Nails 2008"); *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) and accompanying Issues and Decision Memorandum at Comment 24 ("Wood Flooring 2011"); and *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) and accompanying Issues and Decision Memorandum at Comment 7 ("Vietnam Shrimp 2015").

<sup>75</sup> See *An Giang Fisheries* at 44-5.

<sup>76</sup> 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 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.").

<sup>77</sup> See *Vietnam Shrimp 2015* 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.")

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.<sup>78</sup> 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, \$1.21/kg, than that of the main input, \$1.63/kg, and therefore, we did not consider a cap for that by-product.<sup>79</sup>

In past cases, the Department has capped by-product SVs at the value of the main input.<sup>80</sup> 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.<sup>81</sup> While the Department has a preference to value FOPs by using a 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 we verified the FOPs consumed in the production of fish oil in the immediately preceding segment.<sup>82</sup> The FOPs used to produce fish oil during the POR were applied to POR-specific SVs from the primary surrogate country, Indonesia, in the SAS program.<sup>83</sup> 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

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<sup>78</sup> 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.

<sup>79</sup> See Final SV Memo at Exhibit 1.

<sup>80</sup> See, e.g., *Nails 2008* at Comment 12; *Wood Flooring* at Comment 24; and *Vietnam Shrimp 2015* at Comment 7.

<sup>81</sup> See *Writing Instruments*, 984 F. Supp. at 637 (The Court held 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).

<sup>82</sup> See, e.g., *9<sup>th</sup> AR Final Results* at Comment XXIII.

<sup>83</sup> See Vinh Hoan Draft Analysis Memo at Attachment 1.



Department added surrogate ratios for overhead, SG&A (*i.e.*, selling, general, and administrative expenses), and profit to the value, to, as closely as possible, approximate Vinh Hoan's experience.<sup>84</sup> 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, recently 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. Recalculation of NV and U.S. Price.**

The Court ordered us to reconsider our dumping margin calculation, including the calculation of export price and NV comparisons, for Vinh Hoan, and to reopen the record, if necessary, for this issue.<sup>85</sup> Based on the Court's order, we reconsidered our use of Vinh Hoan's gross weight denominator for Vinh Hoan's export price and NV comparisons in the dumping margin calculation. Upon 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.

In the less-than-fair-value ("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 LTFV investigation, 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

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<sup>84</sup> *Id.*

<sup>85</sup> *See An Giang Fisheries* at 49.

glazing or ice.<sup>86</sup> 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.<sup>87</sup>

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, under unusual circumstances for the first time in this case, Vinh Hoan reported its U.S. sales database on a mixture of a net weight and gross weight basis, because its U.S. sales database included primarily sales of unglazed frozen fish fillets, but also some sales of glazed frozen fish fillets.<sup>88</sup> Vinh Hoan reported that the denominator for its FOPs is on a gross weight basis but, in the 9<sup>th</sup> *AR Final Results*, the Department found that Vinh Hoan's FOPs were reported using a denominator that was also a mixture of sales of glazed and unglazed merchandise.<sup>89</sup>

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."<sup>90</sup> In order to make a fair comparison between Vinh Hoan's U.S. prices and NV so that all data are on the same weight basis, 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 most of its

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<sup>86</sup> 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) ("*LTFV Fish Fillet Determination*") and accompanying Issues and Decision Memorandum at footnote 7.

<sup>87</sup> See *LTFV Fish Fillet Determination* at 4 (Discussion of Issues at I.A.).

<sup>88</sup> See 9<sup>th</sup> *AR Final Results* at Comment XXII; Vinh Hoan's Second Supplemental Section C Questionnaire Response (June 28, 2013) at Exhibit 1.

<sup>89</sup> See 9<sup>th</sup> *AR Final Results* at Comment XXII.

<sup>90</sup> See section 773(a) of the Act.

U.S. sales on a net weight basis, both Vinh Hoan's U.S. sales database and FOP database should be adjusted to an exclusively net weight basis.<sup>91</sup>

In order to make this adjustment, the Department re-opened the record and requested that Vinh Hoan submit a revised U.S. sales database and revised FOP database on a net weight basis. 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. Vinh Hoan resubmitted its U.S. sales and FOPs databases using a net weight quantity denominator and a net weight U.S. price.<sup>92</sup> Using Vinh Hoan's revised U.S. sales and FOP databases, the Department recalculated Vinh Hoan's margin by comparing a net weight U.S. price, including movement and selling expenses on a net weight basis, with a net weight NV.<sup>93</sup> After Vinh Hoan recalculated its U.S. sales and FOP databases on a net weight basis, the Department still finds that Vinh Hoan's sales of subject merchandise were not made for less than NV during the POR.<sup>94</sup>

### **III. COMMENTS ON DRAFT RESULTS OF REDETERMINATION**

The Department released the draft remand results on November 8, 2016. Interested parties submitted comments on November 23, 2016.<sup>95</sup>

#### **A. Rice Husk Surrogate Value**

##### *Vinh Hoan's Comments*

- The draft remand focuses on whether HTS 1213.00.0000 is "specific" to the item being valued and whether the value derived is "aberrational."

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<sup>91</sup> See Vinh Hoan's Second Supplemental Section C Questionnaire Response at Exhibit 1.

<sup>92</sup> See Vinh Hoan's Response to Slip Op. 16-55 Supplement Request, (August 22, 2016).

<sup>93</sup> See Vinh Hoan Draft Analysis Memo.

<sup>94</sup> *Id.*, at Attachment II.

<sup>95</sup> See Petitioners' and Vinh Hoan's Draft Remand Comments, dated November 23, 2016.

- With respect to specificity, the Department appears 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.<sup>96</sup>
- If the Department has a rule that if an HTS provision has in its name the item being valued it is *ipso facto* specific, then it should clearly state this rule in the final remand results.<sup>97</sup>
- 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.<sup>98</sup>

*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.<sup>99</sup>
- Petitioners do not agree with the Department’s determination, because the record includes additional, albeit non-contemporaneous, Indonesian 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 this remand and reserve their right to comment on this

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<sup>96</sup> See Vinh Hoan’s Draft Remand Comments at 3-4.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> See Petitioners’ Draft Remand Comments at 6.

issue further should the Department’s determination change in the final remand results or as a result of an additional remand from the Court.<sup>100</sup>

**Department’s Position:** In the draft remand results, we found that the rice husk SV used in the 9<sup>th</sup> AR 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, Indonesia. We continue to conclude that Indonesian ICBS data represent the best available information to value Vinh Hoan’s rice husk FOP.

With respect to Vin Hoan’s argument, we recognize that HTS descriptions are important in selecting SVs, but depending on the record evidence, they 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.<sup>101</sup> To not analyze record evidence in this manner would ignore the “best available information” criteria for each review.<sup>102</sup> It is for this reason that we carefully consider the available evidence with respect to the particular facts of each case and

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<sup>100</sup> *Id.* at 6-7.

<sup>101</sup> 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” (citing *Shandong Huarong Mach. Co. v. United States*, 29 CIT 484, 491 (CIT 2005)).

<sup>102</sup> See section 773(c)(1) of the Act.

evaluate the suitability of each SV source on a case-by-case basis.<sup>103</sup>

## **B. 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 value-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 undervalues Vinh Hoan's fish oil and does not adequately explain why it chose to use a SV that values this by-product well below that of the main input.<sup>104</sup>
- 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.<sup>105</sup>

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<sup>103</sup> 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) and accompanying Issues and Decision Memorandum at Comment 2.

<sup>104</sup> See Vinh Hoan's Draft Remand Comments at 5-7.

<sup>105</sup> *Id.*, at 8-11.

*Petitioners' Comments*

- Petitioners did not comment on this issue.

**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 any health and product safety standards, with the result that its fish oil is not fit for human consumption.<sup>106</sup> The verification report of Vinh Hoan from the immediately preceding AR 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.<sup>107</sup>

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.<sup>108</sup> Moreover, the Court agreed in this case that Vinh Hoan's fish oil is not a high value by-product.<sup>109</sup>

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,

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<sup>106</sup> See, e.g., Petitioners' May 2, 2013, submission at Exhibit 7 (Memorandum to the File, from Susan Pulongbarit, International Trade Compliance Analyst, "Verification of the Sales and Factors of Production Response of Vinh Hoan Corporation," dated December 14, 2010 ("Vinh Hoan Verification Report") at 16; *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) and accompanying Issues and Decision Memorandum.

<sup>107</sup> See Vinh Hoan Verification Report at 40.

<sup>108</sup> *Id.*

<sup>109</sup> See *An Giang Fisheries* at 45.

ammonium sulfate.<sup>110</sup> 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 a capping methodology different than capping the by-product at the value of the main input. In sustaining the Department’s alternate methodology for by-product capping in *PRC Isos Remand*, the Court noted that it was “not an unreasonable solution to the problem Commerce identified.”<sup>111</sup> Here, as in *PRC Isos Remand*, we find it reasonable to use the data that Vinh Hoan reported and the Department verified,<sup>112</sup> coupled with POR-specific SVs from the primary surrogate country and adjusted by surrogate ratios, to calculate a fully loaded unrefined fish oil SV.<sup>113</sup> Further, we find that this methodology 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.

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 similar methodology as used here, because it represented the best available information, as it does in this case.<sup>114</sup> In fact, in this review, we used Vinh Hoan’s reported farming FOPs in the NV calculation, rather than beginning with the value of the main input, to calculate a value for the live, whole fish farmed by Vinh Hoan. Vinh Hoan has not argued that this methodology leads to an inaccurate result with respect to its farming FOPs.

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<sup>110</sup> 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.

<sup>111</sup> See *Clearon* at 39.

<sup>112</sup> See, e.g., Vinh Hoan Verification Report.

<sup>113</sup> *Id.*

<sup>114</sup> 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) and accompanying Issues and Decision Memorandum at Comment 6.



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.<sup>115</sup> Vinh Hoan did not report any FOPs for refining fish oil, nor did it report any packing FOPs; instead, customers fill their own containers at the fish oil processing facility when purchasing Vinh Hoan's fish oil.<sup>116</sup> 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.<sup>117</sup>

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 description, 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 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.<sup>118</sup> 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

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<sup>115</sup> See Vinh Hoan Verification Report at 33, 39-40; Petitioners' Surrogate Value Rebuttal Data at Exhibit 4.

<sup>116</sup> See Vinh Hoan Verification Report.

<sup>117</sup> See Prelim SV Memo at 2.

<sup>118</sup> See section 773(c) of the Act; *accord Guangdong*, 460 F. Supp. 2d at 1373.

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.<sup>119</sup> Sawdust and rice husk are not by-products of fish fillet production and, therefore, we did not conduct this analysis with respect to those FOPs.<sup>120</sup>

### **C. Calculation Errors in Fish Oil Calculation**

#### *Vinh Hoan's Comments*

- 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) the main input into producing fish oil should be whole, live fish, and not fish waste; (b) the calculation was made on a gross weight basis when a net weight should have been used; (c) 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; and (d) the basis for the fish waste consumed should start with revised figures provided by Vinh Hoan.<sup>121</sup>

#### *Petitioners' Comments*

- Petitioners did not comment on this issue.

**Department's Position:** The Department agrees with Vinh Hoan that some adjustments to the fish oil calculation should be made. Specifically, the Department agrees that the assumption in the fish oil calculation used in the draft remand results that one kilogram of fish waste produced one kilogram of fish oil is not mathematically correct.<sup>122</sup> It is the Department's practice to

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<sup>119</sup> The HTS for fish meal is also a basket category covering other products.

<sup>120</sup> See Vinh Hoan's Section D Response, (April 12, 2013) at 10-30; Vinh Hoan Verification Report.

<sup>121</sup> See Vinh Hoan's Draft Remand Comments at 11-12.

<sup>122</sup> See Memo to the File, from Julia Hancock, Senior International Trade Compliance Analyst, "Ninth

perform a margin calculation using the most complete and accurate information provided by respondents.<sup>123</sup> 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.<sup>124</sup> 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 kilogram of raw materials to produce one kilogram of output).<sup>125</sup> As such, the Department agrees with Vinh Hoan’s argument, and has adjusted 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).<sup>126</sup>

The Department also agrees with Vinh Hoan that the allocation of FOPs between fish oil and fish meals starts with dividing the numerators for these FOPs by the ratio of fish oil to fish meal, and has made this change for the final remand results.<sup>127</sup> However, the Department disagrees 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.

The Department also disagrees with Vinh Hoan’s argument that the main input into producing fish oil should be whole, live fish, and not fish waste. As previously explained in the *9<sup>th</sup> AR Final Results*, fish waste, not whole, live fish, as argued by Vinh Hoan, is the relevant

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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 (“Vinh Hoan Draft Analysis Memo”) at Attachment III.

<sup>123</sup> 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 (“*Hangers*”).

<sup>124</sup> See *Hangers* at Comment 1.

<sup>125</sup> *Id.*

<sup>126</sup> For further discussion of our calculation, please see Vinh Hoan Final Analysis Memo at Attachment III.

<sup>127</sup> *Id.*

input for valuing fish oil.<sup>128</sup> As described by Vinh Hoan, fish oil is produced from fresh head, bone, gut, and fat, which is fish waste collected at the filleting stage.<sup>129</sup> 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 remand results were 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 U.S. sales database and revised FOP database on a net weight basis.<sup>130</sup> Vinh Hoan resubmitted its U.S. sales and FOPs databases using a net weight quantity denominator and a net weight U.S. price, including supporting worksheets showing the calculation of each FOP using a net production quantity as the denominator.<sup>131</sup> 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 1 kg equals the resulting fish waste FOP) derived is also on a net weight basis and has not make any changes for the final remand results of redetermination.<sup>132</sup>

Furthermore, while Vinh Hoan submitted a revised net weighted-average whole, live FOP calculation in its comments on the draft remand results, the Department finds that there are no supporting citations on the record for these figures.<sup>133</sup> Thus, the Department did not apply these figures to its calculations of the weighted-average whole, live fish FOP and resulting fish waste on a net weight basis.

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<sup>128</sup> See *9<sup>th</sup> AR Final Results* at Comment XXIII.

<sup>129</sup> See Vinh Hoan's Section D Response at 46.

<sup>130</sup> See Vinh Hoan's Response to Slip Op. 16-55 Supplement Request, (August 22, 2016).

<sup>131</sup> See Vinh Hoan's Response to Slip Op. 16-55 Supplement Request, (August 22, 2016) and Exhibits 2, 3, 4, 5, and 6.

<sup>132</sup> See Vinh Hoan Final Analysis Memo.

<sup>133</sup> See Vinh Hoan's Draft Remand Comments at Attachment 2.

## D. Calculation of Vinh Hoan's Dumping Margin

### *Vinh Hoan's Comments*

- The Department's draft remand results incorrectly listed Vinh Hoan's rate as \$0.02/kg, instead of the correct *de minimis* margin.<sup>134</sup>
- When calculating the dumping margin, if the net sales value passes the differential pricing test and is between 33 and 66 percent, the Department will use the "mixed methodology" results (*i.e.*, that average-to-transaction (A-to-T) for sales that passed the differential pricing test).<sup>135</sup>
- However, the Department incorrectly selected the A-to-T methodology for all sales and not the correct mixed methodology for Vinh Hoan's margin based on the differential pricing test (*i.e.*, 33 to 66 percent of net sales value passing).<sup>136</sup>
- Because Vinh Hoan's mixed methodology margin is *de minimis*, Vinh Hoan's margin should be reported as *de minimis* for the final results of redetermination.

### *Petitioner's Comments*

- Did not comment on this issue.

**Department's Position:** Because of the calculation changes that the Department is adopting for Vinh Hoan's margin for the final results of redetermination, the Department is now calculating a *de minimis* margin for Vinh Hoan using the average-to-average comparison method.<sup>137</sup> As such, the Department finds that Vinh Hoan's differential pricing arguments are moot.

## IV. CONCLUSION

Pursuant to the Court's order, and based on the analysis of the issues the Department was

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<sup>134</sup> See Vinh Hoan's Draft Remand Comments at 2.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*, at 3.

<sup>137</sup> See Vinh Hoan Final Analysis Memo.

instructed to reconsider, the Department conducted an examination as to whether the rice husk SV is aberrational, provided more explanation as to our capping methodology for the fish oil SV, made certain changes to the fish oil SV cap calculation, and recalculated Vinh Hoan's dumping margin using its U.S. sales and FOP usage ratios reported on a net weight basis. After accounting for all calculation changes, the margins are as follows: (a) Vinh Hoan changed to \$0.00/ kg, (b) Anvifish remained unchanged at \$1.20/ kg, and (c) the separate rate respondents changed to \$1.20/kg.<sup>138</sup>

2/9/2017

X *Ronald K. Lorentzen*

Signed by: RONALD LORENTZEN

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Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

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<sup>138</sup> *Id.*