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September 3, 2013

**MEMORANDUM TO:** Paul Piquado  
Assistant Secretary  
for Import Administration

**FROM:** Gary Taverman *GT*  
Senior Advisor  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Certain Frozen Fish Fillets from the Socialist Republic of Vietnam:  
Decision Memorandum for the Preliminary Results of the 2011-  
2012 Antidumping Duty Administrative Review and New Shipper  
Review

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## SUMMARY

The Department of Commerce (“the Department”) is conducting the ninth administrative review and eleventh new shipper review (“NSR”) of the antidumping duty (“AD”) order on certain frozen fish fillets (“fish fillets”) from the Socialist Republic of Vietnam (“Vietnam”).<sup>1</sup> The Department has preliminarily determined that An Giang Fisheries Import and Export Joint Stock Company (“Agifish”), Golden Quality Seafood Corporation (“Golden Quality”), and Vinh Hoan Corporation (“Vinh Hoan”)<sup>2</sup> sold merchandise below normal value (“NV”) during the period of review (“POR”) August 1, 2011, through July 31, 2012. The Department also preliminarily has determined that certain companies are entitled to a separate rate and that other companies had no shipments during the POR.

If we adopt these preliminary results in the final results of the reviews, we will instruct U.S. Customs and Border Protection (“CBP”) to assess ADs on all appropriate entries of subject merchandise during the POR.

We invite interested parties to comment on these preliminary results. We expect to issue final results no later than 120 days from the date of publication of this notice pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (“the Act”).

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<sup>1</sup> See *Notice of Antidumping Duty Order: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 47909 (August 12, 2003).

<sup>2</sup> Vinh Hoan includes Vinh Hoan Corporation and its affiliates Van Duc Food Export Joint Company (“Van Duc”) and Van Duc Tien Giang (“VDTG”).



### ***Case History***

On September 26, 2012, the Department initiated the ninth administrative review of fish fillets from Vietnam with respect to 45 companies.<sup>3</sup> On October 4, 2012, the Department initiated the eleventh NSR of fish fillets from Vietnam with respect to Golden Quality.<sup>4</sup> On February 22, 2013, the Department aligned the NSR with the administrative review.<sup>5</sup> On April 29, 2013, the Department extended the time limits for these aligned reviews until August 19, 2013.<sup>6</sup> On August 13, 2013, the Department extended the time limits for these aligned reviews until September 3, 2013.<sup>7</sup>

Because of the large number of exporters involved in the administrative review, the Department limited the number of respondents individually examined pursuant to section 777A(c)(2) of the Act and selected Agifish and Vinh Hoan as mandatory respondents (collectively referred to as the “Respondents”).<sup>8</sup> The Department sent AD questionnaires to Agifish and Vinh Hoan, as well as to Golden Quality, to which they responded in a timely manner. Between April 2013 and July 2013, the Department issued supplemental questionnaires to the Respondents to which they responded in a timely manner. On November 8, 2012, the Department sent interested parties a letter inviting comments on surrogate country selection and surrogate value (“SV”) data.<sup>9</sup> Between May 24, 2013, and June 14, 2013, the Department received surrogate country and SV comments and rebuttal comments from interested parties.

### ***Scope of the Order***

The product covered by the order is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti*, *Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*) and *Pangasius Micronemus*. Frozen fish fillets are lengthwise cuts of whole fish. The fillet products covered by the scope include boneless fillets with the belly flap intact (“regular” fillets), boneless fillets with the belly flap removed (“shank” fillets), boneless shank fillets cut into strips (“fillet strips/finger”), which include fillets cut into strips, chunks, blocks, skewers, or any other shape. Specifically excluded from the scope are frozen whole fish (whether or not dressed), frozen steaks and frozen belly-flap nuggets. Frozen whole dressed fish are deheaded, skinned, and eviscerated. Steaks are

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<sup>3</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 77 FR 59168 (September 26, 2012) (“*Initiation*”).

<sup>4</sup> See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Review*, 77 FR 60675 (October 4, 2012).

<sup>5</sup> See Memorandum to the File, from Alexander Montoro, Case Analyst, “Alignment of New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam with the concurrent Ninth Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,” dated February 22, 2012.

<sup>6</sup> See Memorandum to Gary Taverman, Senior Advisor, from Julia Hancock, Case Analyst, “Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Deadline for Preliminary Results of the Ninth Antidumping Duty Administrative Review and Aligned New Shipper Review,” dated April 29, 2013.

<sup>7</sup> See Memorandum to Edward Yang, Senior Director, from Paul Walker, Case Analyst, “Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Deadline for Preliminary Results of the Ninth Antidumping Duty Administrative Review and Aligned New Shipper Review,” dated August 13, 2013.

<sup>8</sup> See Memorandum to James Doyle, Office Director, from Paul Walker, Case Analyst, “Ninth Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Selection of Respondents for Individual Review,” dated February 27, 2013.

<sup>9</sup> See the Department’s Letter to All Interested Parties, “9<sup>th</sup> Administrative Review of Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Country List,” dated November 8, 2012 (“*Surrogate Country Memo*”).

bone-in, cross-section cuts of dressed fish. Nuggets are the belly-flaps. The subject merchandise will be hereinafter referred to as frozen “basa” and “tra” fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under tariff article codes 1604.19.4000, 1604.19.5000, 0305.59.4000, 0304.29.6033 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the Harmonized Tariff Schedule of the United States (“HTSUS”).<sup>10</sup> The order covers all frozen fish fillets meeting the above specification, regardless of tariff classification. Although the HTSUS subheading is provided for convenience and Customs purposes, our written description of the scope of the order is dispositive.

## DISCUSSION OF THE METHODOLOGY

### *Preliminary Determination of No Shipments*

Between April 20 and May 29, 2012, the following companies filed no-shipment certifications indicating that they did not export subject merchandise to the United States during the POR: An Giang Agriculture and Food Import-Export Joint Stock Company, An Phu Seafood Corporation (“An Phu”), Bien Dong Seafood Co., Ltd. (“Bien Dong”), Nam Viet Corporation (“Navico”), and Thuan An Production Trading & Services Co., Ltd. Between April 20 and May 29, 2012, the following companies filed no-shipment certifications indicating that they did not export subject merchandise to the United States during the period February 1, 2012 through July 31, 2012: Dai Thanh Seafoods Company Limited, Fatifish Company Limited, and Hoang Long Seafood Processing Co., Ltd.<sup>11</sup> In order to examine these claims, we sent inquiries to CBP requesting that CBP inform the Department if it had any information contrary to the no-shipment claims.

We received one such response from CBP with respect to An Phu. An Phu responded to the Department’s supplemental questionnaire, and indicated that the entry was a sample sale.<sup>12</sup> In addition to An Phu, Bien Dong and Navico indicated that they had sample sales.<sup>13</sup> Because these companies indicated that their sales were sample sales, *i.e.*, that these entries were not sales in the United States, and these companies have stated that they received no compensation for these entries, we preliminarily determine that An Phu, Bien Dong, and Navico had no sales in the United States during the POR. We note that Bien Dong and Navico submitted separate rate certifications as well as no-shipment responses, which we discuss below in the “Separate Rate” section.

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<sup>10</sup> Until July 1, 2004, these products were classifiable under tariff article codes 0304.20.6030 (“Frozen Catfish Fillets”), 0304.20.6096 (“Frozen Fish Fillets, NESOI”), 0304.20.6043 (“Frozen Freshwater Fish Fillets”) and 0304.20.6057 (“Frozen Sole Fillets”) of the HTSUS. Until February 1, 2007, these products were classifiable under tariff article code 0304.20.6033 (“Frozen Fish Fillets of the species *Pangasius* including basa and tra”) of the HTSUS.

<sup>11</sup> Because these companies were Respondents in the semi-annual NSRs (8/1/11 – 1/31/12), and the Department has already reviewed their entries in that time period, their no-shipment certifications covered six months. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty New Shipper Reviews; 2011-2012*, 78 FR 39708 (July 2, 2013).

<sup>12</sup> *See* An Phu’s July 31, 2013 submission at 7.

<sup>13</sup> *See* An Phu’s July 31, 2013 submission at 7; Bien Dong’s November 16, 2012 submission at 5; Navico’s July 24, 2013 submission at 9.

Based on the certifications submitted by the above companies, and our analysis of the CBP information, we preliminarily determine that An Giang Agriculture and Food Import-Export Joint Stock Company, An Phu, Bien Dong, Navico, and Thuan An Production Trading & Services Co., Ltd. did not have any reviewable transactions during the POR. Also, based on the certifications submitted by the above companies, and our analysis of the CBP information, we preliminarily determine that Dai Thanh Seafoods Company Limited, Fatifish Company Limited, and Hoang Long Seafood Processing Co., Ltd. did not have any reviewable transactions during the period February 1, 2012 through July 31, 2012. In addition, the Department finds that consistent with its recently announced refinement to its assessment practice in non-market economy (“NME”) cases, it is appropriate not to rescind the review in part in this circumstance but, rather, to complete the review with respect to the above named companies and issue appropriate instructions to CBP based on the final results of the review.<sup>14</sup>

### ***Bona Fides Analysis***

Consistent with the Department’s practice, we examined the *bona fides* of the sale under review for Golden Quality. Evaluating whether a sale in an NSR is commercially reasonable or typical of normal business practices, and therefore *bona fide*, the Department considers, *inter alia*, such factors as (a) the timing of the sale, (b) the price and quantity, (c) the expenses arising from the transaction, (d) whether the goods were resold at a profit, and (e) whether the transaction was made on an arm’s-length basis.<sup>15</sup> Accordingly, the Department considers a number of factors in its *bona fides* analysis, “all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise.”<sup>16</sup> In *TTPC*, the Court also affirmed the Department’s decision that any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant,<sup>17</sup> and found that the weight given to each factor investigated will depend on the circumstances surrounding the sale.<sup>18</sup> Finally, in *New Donghua*, the Court affirmed the Department’s practice of evaluating the circumstances surrounding an NSR sale, so that a respondent does not unfairly benefit from an atypical sale and obtain a lower dumping margin than the producer’s usual commercial practice would dictate.<sup>19</sup> Where the Department finds that a sale is not *bona fide*, the Department will exclude the sale from its dumping margin calculations.<sup>20</sup>

We found that the sale by Golden Quality was made on a *bona fide* basis. Based on our investigation into the *bona fide* nature of the sale, the questionnaire responses submitted by Golden Quality, and its eligibility for a separate rate (see the “Separate Rates” section of this memo, below), we preliminarily determine that Golden Quality has met the requirements to

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<sup>14</sup> See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694, 65694-65695 (October 24, 2011).

<sup>15</sup> See *Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1249-1250 (CIT 2005) (“*TTPC*”).

<sup>16</sup> See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (“*New Donghua*”) (citing *Fresh Garlic from the People’s Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002), and accompanying Issues and Decision Memorandum: New Shipper Review of Clipper Manufacturing Ltd.).

<sup>17</sup> See *TTPC*, 366 F. Supp. 2d at 1250.

<sup>18</sup> *Id.*, 366 F. Supp. 2d at 1263.

<sup>19</sup> See *New Donghua*, 374 F. Supp. 2d at 1344.

<sup>20</sup> See *TTPC*, 366 F. Supp. 2d at 1249.

qualify as a new shipper during this POR. Because much of the factual information used in our analysis of the *bona fides* of Golden Quality's transaction involves business proprietary information, the full discussion of the basis for our preliminary finding is set forth in the Golden Quality *Bona Fide* Memo.<sup>21</sup>

### ***NME Country Status***

In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the Department. The Department considers Vietnam to be an NME country.<sup>22</sup> Therefore, we continue to treat Vietnam as an NME country for purposes of these preliminary results.

### ***Collapsing***

Pursuant to 19 CFR 351.401(f)(1), the Department will treat producers as a single entity, or "collapse" them, where: (1) those producers are affiliated; (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (3) there is a significant potential for manipulation of price or production.<sup>23</sup> In determining whether a significant potential for manipulation exists, 19 CFR 351.401(f)(2) states that the Department may consider various factors, including: (1) the level of common ownership; (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (3) whether the operations of the affiliated firms are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.<sup>24</sup>

Section 771(33) of the Act identifies persons that shall be considered "affiliated" or "affiliated persons," including, *inter alia*: "{t}wo or more persons directly or indirectly controlling, controlled by, or under common control with, any person."<sup>25</sup> This provision further states that a person shall be considered to control another person "if the person is legally or operationally in a position to exercise restraint or direction over the other person."<sup>26</sup> 19 CFR 351.102(b)(3) states that in determining whether control over another person exists within the meaning of section 771(33) of the Act, the Department will not find that control exists unless the relationship, *e.g.*, a corporate grouping, "has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product." This regulation states that the

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<sup>21</sup> See Memorandum to the File, from Alexander Montoro, Case Analyst, "Antidumping Duty New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: *Bona Fide* Nature of the Sale under Review for Golden Quality Seafood Corporation," dated concurrently with this memorandum ("Golden Quality *Bona Fide* Memo").

<sup>22</sup> See, *e.g.*, *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of Administrative Review*, 77 FR 13547, 13550 (March 7, 2012), unchanged in *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 77 FR 55800 (September 11, 2012).

<sup>23</sup> See, *e.g.*, *Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 12764, 12774-12775 (March 16, 1998).

<sup>24</sup> See, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan*, 62 FR 51427, 51436 (October 1, 1997).

<sup>25</sup> See section 771(33)(F) of the Act.

<sup>26</sup> *Id.*

Department “will consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control.”<sup>27</sup> In proceedings involving NME countries, the Department has recognized that NME companies separate from the NME entity may be connected and that such connections could provide a potential for manipulation affecting dumping margins.<sup>28</sup> Thus, to the extent that section 771(33) of the Act does not conflict with the Department’s application of separate rates and enforcement of the NME provision of section 773(c) of the Act, the Department’s practice has been to determine whether affiliated NME companies separate from the NME entity should be treated as a single entity.<sup>29</sup> Evidence of significant ownership ties or control between or among affiliated companies may lead the Department to apply the collapsing criteria in an NME context in order to determine whether all, or some, of those affiliates should be treated as one entity.<sup>30</sup> 19 CFR 351.401(f) specifically addresses treating producers as a single entity. However, the Department has determined that the factors listed in 19 CFR 351.401(f)(2) are not exhaustive and, in the context of an NME proceeding, other factors unique to the relationships between business entities within the NME country may lead the Department to determine that collapsing is warranted. The Court has upheld the Department’s practice of taking into account one such unique factor, namely export decisions, in applying the collapsing provisions in NME proceedings.<sup>31</sup> Thus, although the Department’s regulations do not address the treatment of non-producing entities (e.g., exporters), where non-producing entities are affiliated, and there exists a significant potential for manipulation of prices and/or export decisions, the Department has considered such entities, as well as any other affiliated entities (where appropriate), as a single entity.<sup>32</sup>

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<sup>27</sup> See 19 CFR 351.102(b)(3).

<sup>28</sup> See *Certain Steel Nails from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances and Postponement of Final Determination*, 73 FR 3928, 3932 (January 23, 2008), unchanged in *Certain Steel Nails from the People’s Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 7254 (February 7, 2008) and *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) (“Nails”).

<sup>29</sup> See *Certain Preserved Mushrooms from the People’s Republic of China: Preliminary Results of Sixth New Shipper Review and Preliminary Results and Partial Rescission of Fourth Antidumping Duty Administrative Review*, 69 FR 10410, 10413 (March 5, 2004), unchanged in *Certain Preserved Mushrooms from the People’s Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review*, 69 FR 54635 (September 9, 2004) (“4<sup>th</sup> Mushrooms AR”).

<sup>30</sup> See 4<sup>th</sup> Mushrooms AR, and accompanying Issues and Decision Memorandum at Comment 1.

<sup>31</sup> See *Hontex Enterprises v. United States*, 342 F. Supp. 2d 1225, 1230-34 (CIT 2004) (“Hontex”), in which the Court of International Trade (“CIT”) affirmed the Department’s ability to expand the NME inquiry into the potential for manipulation to include NME exporters’ export decisions, rather than whether or not the companies share production facilities.

<sup>32</sup> See, e.g., *Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil; Notice of Final Determination at Sales at Less Than Fair Value*, 65 FR 5554 (February 4, 2000); *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 63 FR 55578 (October 16, 1998), and accompanying Issues and Decision Memorandum at Comment 2; *Automotive Replacement Glass Windshields from the People’s Republic of China; Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 25545 (May 7, 2004); *Automotive Replacement Glass Windshields from the People’s Republic of China; Final Results of Antidumping Duty Administrative Review*, 69 FR 61790 (October 21, 2004); 4<sup>th</sup> Mushrooms AR, and accompanying Issues and Decision Memorandum at Comment 1; see also *Hontex*, 248 F. Supp. 2d at 1343.

In proceedings involving NMEs, the Department begins with the rebuttable presumption that the export activity of all companies within the country are subject to government control.<sup>33</sup> Companies subject to government control are treated as part of the NME entity and assigned the same dumping rate.<sup>34</sup> The Department, however, recognizes that NME companies may also be connected to each other by means other than government control, and it may be appropriate to treat such companies that are separate from the NME entity as a single entity and to determine a single dumping margin for the entity.<sup>35</sup> Evidence of significant ownership ties, or control between or among affiliates which produced merchandise similar or identical to subject merchandise, whether or not such merchandise was exported to the United States, may lead the Department to apply the collapsing criteria in an NME context to determine whether all, or some, of those affiliates should be treated as one entity.<sup>36</sup>

We preliminarily determine that (1) Agifish, (2) Asia Pangasius Company Limited, (3) Europe Joint Stock Company, (4) Hung Vuong Joint Stock Company, (5) Hung Vuong Mascato Company Limited, (6) Hung Vuong – Vinh Long Co., Ltd., and (7) Hung Vuong – Sa Dec Co., Ltd. (hereafter collectively referred to as “the Hung Vuong Group” or “HVG”) are affiliated pursuant to section 771(33)(F) of the Act; that these companies have production facilities for producing similar or identical products that would not require substantial retooling of their facilities to restructure manufacturing priorities; and that there is a significant potential for the manipulation of price or production among these companies. Thus, we are preliminarily treating these companies as a single entity. Portions of the information relied upon in making this determination are proprietary and cannot be discussed in this memorandum. For a full discussion of our single entity determination, *see* the Hung Vuong Group Collapsing Memo.<sup>37</sup>

### ***Separate Rates***

Pursuant to section 771(18)(C)(i) of the Act, a designation of a country as an NME remains in effect until it is revoked by the Department. Accordingly, there is a rebuttable presumption that all companies within an NME are subject to government control, and thus, should be assessed a single AD rate.<sup>38</sup> In the *Initiation*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.<sup>39</sup> It is the

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<sup>33</sup> *See, e.g., Certain New Pneumatic Off-The-Road Tires from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485, 40487 (July 15, 2008).

<sup>34</sup> *Id.* (citing *Final Determination of Sales at Less Than Fair Value: Sparklers from the People’s Republic of China*, 56 FR 20588 (May 6, 1991) (“*Sparklers*”), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People’s Republic of China*, 59 FR 22585 (May 2, 1994) (“*Silicon Carbide*”), and 19 CFR 351.107(d)).

<sup>35</sup> *See Nails*, 73 FR 33977.

<sup>36</sup> *See 4<sup>th</sup> Mushrooms AR*, and accompanying Issues and Decision Memorandum at Comment 1.

<sup>37</sup> *See* Memorandum to Gary Taverman, Senior Advisor, from Paul Walker, Case Analyst, “Ninth Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Affiliation and Collapsing of An Giang Fisheries Import and Export Joint Stock Company and Hung Vuong Joint Stock Company and its Affiliates,” dated August 27, 2013 (“Hung Vuong Group Collapsing Memo”).

<sup>38</sup> *See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People’s Republic of China*, 71 FR 53079, 53082 (September 8, 2006) (“*Lined Paper*”); *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People’s Republic of China*, 71 FR 29303, 29307 (May 22, 2006) (“*Sawblades*”).

<sup>39</sup> *See Initiation*, 77 FR at 59168-69.

Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Sparklers*,<sup>40</sup> as amplified by *Silicon Carbide*.<sup>41</sup> However, if the Department determines that a company is wholly foreign-owned by individuals or companies located in a market economy ("ME"), then a separate rate analysis is not necessary to determine whether it is independent from government control.<sup>42</sup>

In addition to HVG, Golden Quality, and Vinh Hoan, the Department received separate rate applications or certifications, between October 12 and November 27, 2012, from the following 23 companies ("Separate-Rate Applicants"):

1. An My Fish Joint Stock Company
2. Anvifish Co., Ltd.<sup>43</sup>
3. Asia Commerce Fisheries Joint Stock Company
4. Binh An Seafood Joint Stock Co.
5. Cadovimex II Seafood Import-Export and Processing Joint Stock Company
6. Cantho Import-Export Seafood Joint Stock Company (also known as CASEAMEX)
7. Cuu Long Fish Joint Stock Company (aka CL-Fish)
8. Cuu Long Fish Import-Export Corporation (aka CL Panga Fish)<sup>44</sup>
9. East Sea Seafoods Limited Liability Company (aka East Sea Seafoods LLC or ESS)
10. Green Farms Seafood Joint Stock Company
11. Hiep Thanh Seafood Joint Stock Company
12. Hoa Phat Seafood Import-Export and Processing JSC
13. International Development & Investment Corporation (also known as IDI)
14. NTSF Seafoods Joint Stock Company
15. QVD Food Company, Ltd.
16. Saigon Mekong Fishery Co., Ltd.
17. Seafood Joint Stock Company No.4 Branch Dongtam Fisheries Processing Company
18. Southern Fishery Industries Company, Ltd. (also known as South Vina)
19. Sunrise Corporation
20. Thien Ma Seafood Co., Ltd. (also known as THIMACO)
21. To Chau Joint Stock Company
22. Viet Phu Food & Fish Corporation
23. Vinh Quang Fisheries Corporation

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<sup>40</sup> See *Sparklers*, 56 FR at 20588.

<sup>41</sup> See *Silicon Carbide*, 59 FR at 22585.

<sup>42</sup> See, e.g., *Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011*, 78 FR 9493 (February 6, 2013), and accompanying *Decision Memorandum at p.9*, unchanged in final results, 78 FR 35249 (June 12, 2013); *Certain Pneumatic Off-the-Road Tires from the People's Republic of China, Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 9278, 9284 (February 20, 2008), unchanged in final affirmative determination, 73 FR 40485 (July 15, 2013).

<sup>43</sup> Also known as Anvifish Joint Stock Company (also known as Anvifish JSC).

<sup>44</sup> See CL Panga Fish's September 10, 2012, submission.



As noted above, we have made a preliminary finding of no-shipments for Bien Dong and Navico. Despite their no-shipments submissions, these companies submitted separate rate certifications.<sup>45</sup> Bien Dong and Navico received a separate rate in prior reviews,<sup>46</sup> and, due to our preliminary finding of no-shipments in this review, have retained their separate rate.

Seven companies did not submit either a separate-rate application or certification.<sup>47</sup> Therefore, because these companies did not demonstrate their eligibility for separate rate status, they remain preliminarily included as part of the Vietnam-wide entity.

Additionally, we note that some of the Separate-Rate Applicants requested separate rate status for various names which were not included on their business license. Further, we note that the *Initiation* included a variation of company names not included in either the separate-rate applications or certifications of the Separate-Rate Applicants.<sup>48</sup> Because these names (1) have not been granted separate-rate status in a previous granting period and (2) do not appear on the business license submitted to the Department, and, therefore, are not recognized as representing the same entity, consistent with our practice, we are preliminarily not including these names on the lists of those for which separate rate status applies.<sup>49</sup>

a. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.<sup>50</sup> The evidence provided by Golden Quality, HVG, Vinh Hoan, and the Separate-Rate Applicants supports a preliminary finding of *de jure* absence of government control based on the following: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of companies.<sup>51</sup>

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<sup>45</sup> See Bien Dong's November 17, 2012, submission; Navico's November 27, 2012, submission.

<sup>46</sup> In the 8<sup>th</sup> AR Final Navico received a separate rate. 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, 17352 (March 21, 2013) ("8<sup>th</sup> AR Final"). In the 7<sup>th</sup> AR Final Bien Dong received a separate rate. See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results and Partial Rescission of the Seventh Antidumping Duty Administrative Review*, 77 FR 15039, 15041 (March 14, 2012) ("7<sup>th</sup> AR Final").

<sup>47</sup> See Appendix.

<sup>48</sup> *Id.*; see also *Initiation*, 77 FR at 59169.

<sup>49</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 17.

<sup>50</sup> See *Sparklers*, 56 FR at 20589.

<sup>51</sup> See, e.g., Vinh Hoan's April 4, 2013 submission at Exhibit 3; see HVG's March 28, 2013 submission at Exhibit 3.

b. Absence of *De Facto* Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices (“EPs”) are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.<sup>52</sup> The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.<sup>53</sup>

The evidence provided by Golden Quality, HVG, Vinh Hoan, and the Separate-Rate Applicants supports a preliminary finding of *de facto* absence of government control based on the following: (1) the companies set their own EPs independent of the government and without the approval of a government authority; (2) the companies have authority to negotiate and sign contracts and other agreements; (3) the companies have autonomy from the government in making decisions regarding the selection of management; and (4) there is no restriction on any of the companies’ use of export revenue.<sup>54</sup> Therefore, the Department preliminarily finds that Golden Quality, HVG, Vinh Hoan, and the Separate-Rate Applicants have established that they qualify for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers*.

***Separate Rate Calculation for Companies Not Individually Examined***

As noted above, we stated that the Department employed a limited examination methodology, as it did not have the resources to examine all companies for which a review request was made, and selected two exporters as mandatory respondents in this review. HVG and Vinh Hoan participated in the administrative review as mandatory respondents. As noted above, twenty three additional companies submitted timely information and remained subject to review as separate rate respondents.

The statute and the Department’s regulations do not directly address the establishment of a rate to be applied to individual companies not selected for individual examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Section 735(c)(5)(A) of the Act instructs that we do not calculate an all-others rate using any zero or *de minimis* weighted-average dumping margins or any weighted-average dumping margins based entirely on facts available. Accordingly, the Department’s usual

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<sup>52</sup> See *Silicon Carbide*, 59 FR at 22586-87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People’s Republic of China*, 60 FR 22544, 22545 (May 8, 1995) (“*Furfuryl Alcohol*”).

<sup>53</sup> See *Furfuryl Alcohol*, 60 FR 22544, 22544.

<sup>54</sup> See, e.g., Vinh Hoan’s April 4, 2013 submission at 11-12; see also the Separate-Rate Applicants’ submissions dated from October 12, 2012 - November 27, 2012.

practice has been to average the rates for the selected companies excluding rates that are zero, *de minimis*, or based entirely on facts available.<sup>55</sup>

In this review, we have calculated weighted-average dumping margins for both mandatory respondents, which are above *de minimis* and are not based entirely on facts available. Accordingly, for the preliminary results, consistent with the Act and the Department's practice, the Department has preliminarily determined that the margin to be assigned to the Separate Rate Applicants is the weighted average of the calculated margins of the mandatory respondents.<sup>56</sup>

### ***Vietnam-Wide Entity***

Upon initiation of the administrative review, as explained above, we provided the opportunity for all companies upon which we initiated the review to complete either the separate-rates application or certification.<sup>57</sup> We have preliminarily determined that 14 companies did not demonstrate their eligibility for a separate rate and are properly considered part of the Vietnam-wide entity. In NME proceedings, "rates may consist of a single dumping margin applicable to all exporters and producers."<sup>58</sup> As explained above in the "Separate Rates" section, all companies within Vietnam are considered to be subject to government control unless they are able to demonstrate an absence of government control with respect to their export activities. Such companies are thus assigned a single AD rate distinct from the separate rate(s) determined for companies that are found to be independent of government control with respect to their export activities. We consider the influence that the government has been found to have over the economy to warrant determining a rate for the entity that is distinct from the rates found for companies that have provided sufficient evidence to establish that they operate freely with respect to their export activities.<sup>59</sup> In this regard, we note that no party has submitted evidence to demonstrate that such government influence is no longer present or that our treatment of the NME entity is otherwise incorrect. Therefore, we are assigning the entity a per-unit rate of \$2.11 U.S. Dollars ("USD")/kilogram ("kg"), the only rate ever determined for the Vietnam-wide entity in this proceeding.

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<sup>55</sup> See *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Review in Part*, 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16.

<sup>56</sup> We note that it is the Department's practice to calculate the rate based on the average of the margins calculated for those companies selected for individual review, weighted by each company's publicly-ranged quantity of reported U.S. transactions. See *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53663 (September 1, 2010). For further discussion of this calculation, see Memo to the File, from Paul Walker, Case Analyst, "Ninth Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Calculation of the Separate Rate," dated concurrently with this memo.

<sup>57</sup> See *Initiation*, 77 FR at 59168-69. The separate-rate certification and separate-rate applications were available at: <http://ia.ita.doc.gov/nme/nme-sep-rate.html>.

<sup>58</sup> See 19 CFR 351.107(d).

<sup>59</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).

### *Surrogate Country*

As noted above, on November 8, 2012, the Department sent interested parties a letter inviting comments on surrogate country selection and SV data.<sup>60</sup> Also as noted above, between May 24 and June 14, 2013, interested parties submitted comments and rebuttal comments on surrogate country selection and SVs.

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production ("FOP"), valued using the best available information in a surrogate ME country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (a) at a level of economic development comparable to that of the NME country; and (b) significant producers of comparable merchandise.<sup>61</sup> Reading sections 773(c)(1) and (c)(4) of the Act in concert, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data.<sup>62</sup> Accordingly, we examine each factor below.

#### a. Comparable Level of Economic Development

Pursuant to section 773(c)(4) of the Act, the Department has determined that Bangladesh, Bolivia, India, Nicaragua, Pakistan, and the Philippines are countries at a level of economic development comparable to Vietnam.<sup>63</sup> Section 773(c)(4)(A) of the Act is silent with respect to how or on what basis the Department may make this determination, but it is the Department's long standing practice to use per capita gross national income ("GNI") data reported in the World Bank's World Development Report.<sup>64</sup>

According to the Petitioners, although Indonesia is not on the surrogate country list in the current review, it has appeared on the surrogate country list in every past review, and should be selected.<sup>65</sup> The Petitioners argue that: (a) Indonesia continues to be at a level of economic development comparable to that of Vietnam because its GNI has remained about twice that of Vietnam's for the past several reviews; (b) using purchasing power parity ("PPP") is a better measure of countries' economic development, and using this method places Indonesia within the countries identified on the surrogate countries list; and, (c) given the limited number of significant producers of live *pangasius* worldwide, the Department should first give priority to the significant producer prong of the surrogate country selection process before economic

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<sup>60</sup> See Surrogate Country Memo.

<sup>61</sup> See *Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process* (March 1, 2004) ("Policy Bulletin").

<sup>62</sup> See, e.g., *Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 41364 (July 10, 2013), and accompanying Preliminary Decision Memorandum at 7; see also *Policy Bulletin*.

<sup>63</sup> See Surrogate Country Memo.

<sup>64</sup> See, e.g., *8<sup>th</sup> AR Final*, and accompanying Issues and Decision Memorandum at Comment I.a.

<sup>65</sup> See 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 Value Source Documents," dated concurrently with this notice.

comparability.<sup>66</sup> In the event that the Department does not select Indonesia as the surrogate country, the Petitioners contend the Philippines is economically comparable to Vietnam, is on the surrogate country list, and should be selected.<sup>67</sup>

The Respondents assert that the *Policy Bulletin* indicates that the Department will use the most recent GNI data in selecting economically comparable countries; thus, the reliance of the Petitioners on GNI data from prior reviews is inappropriate.<sup>68</sup> The Respondents allege further that the use of PPP to measure GNI is distortive and that the Department has rejected its use in past cases.<sup>69</sup>

As explained in our Surrogate Country Memo, on a *per capita* income basis, the Department considers Bangladesh, Bolivia, India, Nicaragua, Pakistan, and the Philippines all to be at Vietnam's level of economic development for surrogate country-selection purposes. This list is, of course, not exhaustive; there are certainly other countries that could be reasonably viewed as being at Vietnam's level of economic development. Of course, the number of such countries is potentially large depending on how broadly the term "level" in the Act is considered and could be very large, *e.g.*, over 50 countries, under an expansive consideration of "level." It is not administratively feasible for the Department to manage such a long initial list of potential surrogate countries, so the Department considers "level" relatively narrowly and limits the initial list to five or six countries, with two important caveats explained in the *Policy Bulletin*.

First, as explained above, the initial list of surrogate country candidates is *not* exhaustive; it is only a starting point. Interested parties are free to identify other countries at the same level of economic development, consistent with the Department's more limited consideration of "level," and argue that significant production of comparable merchandise and data sources in those countries warrant the selection of one of those countries for factor valuation purposes. The Department will examine whether countries identified by interested parties are at a level of economic development comparable to the NME, and considers all countries on the initial list as all equally satisfying the statutory requirement regarding the level of economic development, and selects the surrogate country from among them on the basis of significant production of comparable merchandise and data quality and availability.

Second, as a general rule, the Department looks to select the surrogate country from the candidate countries in this group, unless (1) we find that none of them are significant producers of comparable merchandise or provide adequate and reliable sources of publicly available factor price data, or (2) there is a compelling reason not to, even if condition (1) above does not hold and some degree of comparability of the level of economic development or the extent of production of comparable merchandise must be sacrificed. These conditions (2) reflect the fact that the two statutory requirements for a surrogate country must be satisfied only "to the extent

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<sup>66</sup> See Petitioners' May 24, 2013, submission at Exhibit 2.b.

<sup>67</sup> *Id.*

<sup>68</sup> See Respondents' June 14, 2013, submission at 2-5.

<sup>69</sup> See, *e.g.*, *Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Manganese Metal from the People's Republic of China*, 60 FR 56045, 56048 (November 6, 1995) ("PRC Manganese").

possible,”<sup>70</sup> and concerns about the valuation of special or unique FOPs can outweigh the economic development comparability requirement.<sup>71</sup>

In the context of the second caveat, Indonesia’s *per capita* GNI places it at a level of economic development at a higher and, thus, less comparable level of economic development than that represented by the six countries on the initial surrogate country candidate list, but still comparable to that of Vietnam.

Regarding the Petitioners’ argument that the Department adopt the PPP method for surrogate country selection, we note that 19 CFR 351.408 makes no reference to relying on PPP as the appropriate measure of economic comparability; it simply references per capita GDP.<sup>72</sup> The Department has a long practice of relying on per capita GNI, *i.e.*, the Atlas Method.<sup>73</sup> Going back to 1995, the Department also has on numerous occasions explicitly rejected parties’ arguments to rely on alternative measures of economic comparability, including PPP measures.<sup>74</sup>

#### b. Significant Producers of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department’s regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as the *Policy Bulletin* for guidance on defining comparable merchandise. The *Policy Bulletin* states that “in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise.”<sup>75</sup> Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.<sup>76</sup> Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.<sup>77</sup> “In cases where the identical merchandise is not produced, the Department must determine if other merchandise that is comparable is produced. How the Department does this depends on the subject merchandise.”<sup>78</sup> In this regard, the Department recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

In other cases, however, where there are major inputs, *i.e.*, inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, *e.g.*, processed agricultural, aquatic and mineral products,

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<sup>70</sup> See section 773(c)(4) of the Act.

<sup>71</sup> See Surrogate Country Memo.

<sup>72</sup> See 19 CFR 351.408(b).

<sup>73</sup> See, *e.g.*, *PRC Manganese*, 60 FR at 56048.

<sup>74</sup> *Id.*

<sup>75</sup> See *Policy Bulletin*, at 2.

<sup>76</sup> The *Policy Bulletin* also states that “if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise.” *Id.*, at note 6.

<sup>77</sup> See *Sebacic Acid from the People’s Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 65674, 65675-76 (December 15, 1997) (“{T}o impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.”).

<sup>78</sup> See *Policy Bulletin*, at 2.

comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.<sup>79</sup>

Further, the statute grants the Department discretion to examine various data sources for determining the best available information.<sup>80</sup> Moreover, while the legislative history provides that the term “significant producer” includes any country that is a significant “net exporter,”<sup>81</sup> it does not preclude reliance on additional or alternative metrics.

The Petitioners assert that Indonesia has a significant fish fillet industry, is the largest producer of *pangasius* outside of Vietnam, and the most recent FAO data indicates that Indonesia exported frozen fish fillets.<sup>82</sup> The Petitioners claim that the most recent Food and Agriculture Organization of the United Nations (“FAO”) data indicates that the Philippines is a producer of comparable merchandise.<sup>83</sup> The Respondents contend that Bangladesh is a significant producer of subject merchandise.<sup>84</sup>

In this case, we obtained fish fillet export information from *Fisheries Statistics*, an online data source published by the Food and Agriculture Organization of the United Nations.<sup>85</sup> Consistent with the 8<sup>th</sup> AR Final, after an examination of this information based on the latest *Fisheries Statistics*, we find that Bangladesh, India, Indonesia, Nicaragua, Pakistan, and the Philippines are exporters of fish fillets, and thus, significant producers of comparable merchandise.<sup>86</sup>

We note that the *Fisheries Statistics* indicate that there were no exports of fish fillets from Bolivia.<sup>87</sup> No party has provided evidence that Bolivia is a producer of fish fillets and, thus, we find that it is not a producer of comparable merchandise and has not been considered for the purposes of surrogate country selection purposes.

### c. Data Availability

The *Policy Bulletin* states that, if more than one country is at a level of economic development comparable to that of the NME and is a significant producer, “then the country with the best factors data is selected as the primary surrogate country.”<sup>88</sup> Importantly, the *Policy Bulletin* explains further that “data quality is a critical consideration affecting surrogate country selection” and that “a country that perfectly meets the requirements of economic comparability

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<sup>79</sup> *Id.*, at 3.

<sup>80</sup> See section 773(c) of the Act; see also *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1990).

<sup>81</sup> See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).

<sup>82</sup> See Petitioners’ May 24, 2013, submission at Exhibit 5.

<sup>83</sup> *Id.*

<sup>84</sup> See Respondents’ May 24, 2013, submission at Exhibit 23.

<sup>85</sup> See 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,” dated concurrently with this memo (“Prelim SV Memo”).

<sup>86</sup> See 8<sup>th</sup> AR Final, and accompanying Issues and Decision Memorandum at Comment 1.b.

<sup>87</sup> See Petitioners’ May 24, 2013, submission at Exhibit 5.

<sup>88</sup> See *Policy Bulletin*.

and significant producer is not of much use as a primary surrogate if crucial factor price data from that country are inadequate or unavailable.”<sup>89</sup>

Section 773(c)(1) of the Act instructs the Department to value the FOPs based upon the best available information from an ME country or a countries that the Department considers appropriate. When considering what constitutes the best available information, the Department considers several criteria, including whether the SV data is contemporaneous, publicly available, tax and duty exclusive, represents a broad market average, and is specific to the input.<sup>90</sup> The Department’s preference is to satisfy the breadth of the aforementioned selection criteria.<sup>91</sup> Moreover, it is the Department’s practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the FOPs.<sup>92</sup> The Department must weigh the available information with respect to each input value and make a product-specific and case-specific decision as to what constitutes the “best” available SV for each input.<sup>93</sup>

No party has placed FOP information on the record for India, Nicaragua, or Pakistan, nor has any party argued that one of these countries be selected as the surrogate country. As a result, we have not considered India, Nicaragua, or Pakistan for surrogate country selection purposes.

Interested parties have placed SV data on the record for Bangladesh, Indonesia, and the Philippines. We have examined the available data with respect to Bangladesh, Indonesia, and the Philippines to determine which contained the best available information for valuing FOPs.

In the last administrative review, the Department found that the contemporaneous nature of SVs other than the live whole fish SV was an important factor in surrogate country selection because one of the companies was an integrated company, *i.e.*, because it grew its own fish, thus, causing factors other than live whole fish to constitute an increasing portion of its NV.<sup>94</sup> In this review, unlike the last review where only one company was integrated, both mandatory respondents are significantly integrated, as are many separate rate respondents.<sup>95</sup> Consequently, the Department has continued to place increased emphasis on the importance of the contemporaneous nature of SVs other than the live whole fish SV in the surrogate country selection process. A review of the record indicates that, with few exceptions, SVs submitted for Indonesia and the Philippines are

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<sup>89</sup> *Id.*

<sup>90</sup> *See, e.g., Lined Paper*, and accompanying Issues and Decision Memorandum at Comment 3.

<sup>91</sup> *See, e.g., Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 51940, 51943 (August 19, 2011), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>92</sup> *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) (“6<sup>th</sup> Mushrooms AR”), and accompanying Issues and Decision Memorandum at Comment 1; *see also Freshwater Crawfish Tail Meat from the People’s Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>93</sup> *See, e.g., 6<sup>th</sup> Mushrooms AR*, and accompanying Issues and Decision Memorandum at Comment 1.

<sup>94</sup> *See 8<sup>th</sup> AR Final*, and accompanying Issues and Decision Memorandum at Comment 1.b.

<sup>95</sup> *See, e.g., Vinh Hoan’s* January 22, 2013, submission at 1.



contemporaneous with the POR, whereas, the majority of Bangladeshi SVs are not contemporaneous.<sup>96</sup>

As indicated above, another fact, albeit ancillary, supports choosing Indonesia. There are a limited number of significant producers of live *pangasius* worldwide. As a result, in this unique industry, the Department necessarily is faced with a limited pool of potential countries at a level of economic development comparable to that of the NME with which to value the Respondents' FOPs. Due to this limited pool, data quality becomes an even more critical factor in our surrogate country selection, and consistent with the Act, the Department will use the best available information as long as it satisfies the requirements articulated in section 773(c)(4) of the Act, including being at a level of economic development comparable to that of the NME.

Interested parties have proposed three data sources to value the live whole *pangasius* fish: online data from the Bangladeshi Department of Agriculture Marketing ("*DAM Data*"), a publication by the Indonesian government *Indonesian Aquaculture Statistics* ("*Indonesian AS*"), and a publication by the Philippine government *Philippines Fisheries Statistics* ("*Philippines FS*"). We note that the values submitted in these reviews are identical to the values submitted in the last administrative review, with the exception of the online DAM data, which have been updated to correspond to the POR.

With regard to the Philippines data, consistent with the last review, we note that *Philippines FS* are not as robust as *Indonesian AS* because the quantity of *pangasius* data they represent are small by comparison (72 metric tons ("mt") for the *Philippines FS* data source versus 197,000 mt for the *Indonesian AS* data source, respectively, in 2011), that the data contain few data points, and the data may represent further processed fish.<sup>97</sup> As a result, we find that the *Philippines FS* do not represent a broad market average similar to *Indonesian AS* and because the data include further processed fish, they are not as specific to the input, live whole fish, as *Indonesian AS*.<sup>98</sup>

With regard to the updated Bangladeshi online *DAM Data*, we note that data are missing for the largest *pangasius* producing district in Bangladesh, Mymensingh, and only 37 percent of districts reported pricing data.<sup>99</sup> Consequently, we continue to find that the *DAM Data* represent even less of a broad market average than they did in the last review. Further, credible information has been placed on the record which indicates that a significant portion of the *pangasius* sold in Bangladeshi wholesale markets are dead, and prices for live fish are greater than that of dead fish, which would undervalue the live whole fish SV.<sup>100</sup> Given the large volume of dead fish sold in Bangladeshi markets, and the existence of admitted errors in the data, it is highly probable that dead fish are in the *DAM Datmona* prices. Record evidence indicates that live whole *pangasius* fish is a completely different product from dead *pangasius* fish, the inclusion of which in the DAM Data severely undercuts their specificity to the Respondents' live *pangasius*

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<sup>96</sup> See Petitioners' May 24, 2013, submission at Exhibits 7 & 24; Respondents' May 24, 2013, submission at 2.a.

<sup>97</sup> See Petitioners' May 24, 2013, submission at Exhibit 25.

<sup>98</sup> See Respondents' June 14, 2013, submission at Exhibit 2.a.

<sup>99</sup> See Respondents' May 24, 2013, submission at 14.a.

<sup>100</sup> See, e.g., Petitioners' June 14, 2013, submission at Exhibits 24 & 32. We note that the Respondents have stated that they do not purchase dead fish. See, e.g., HVG's July 8, 2013, submission at 13; Vinh Hoan's July 12, 2013 submission at 22. Moreover, as noted in the 8<sup>th</sup> AR Final, Vinh Hoan reported that it pays less for fish which are sluggish, or near dead. See 8<sup>th</sup> AR Final, and accompanying Issues and Decision Memorandum at Comment 1.c.

fish input. Thus, we find that the *DAM Data*, through their likely inclusion of dead fish, do not represent data that are specific to the Respondents main input, live whole fish. Finally, we do not know how DAM collects or vets the information it publishes, and as admitted by the Respondents, the *DAM Data* contain errors.<sup>101</sup> As a result, we find the *DAM Data* to be unreliable. For the reasons noted above, we regard the Bangladeshi and Philippine data as grossly inadequate.

In contrast to *Philippines FS* and the *DAM Data*, we note that the 2011 *Indonesian AS* data contain data points for 27 of 33 districts in Indonesia, including the largest, which represent a significant quantity of *pangasius*, 197,000 mt. The data are gathered with customized national questionnaires which requests information on specific species, including *pangasius*, and are meant to capture all-encompassing whole country data.<sup>102</sup> Therefore, we find that the *Indonesian AS* represent a broad-market average. *Indonesian AS* also represent quantities and values of live whole fish because data collectors take specific steps to ensure that the *Indonesian AS* data are specific to whole live fish, which are corroborated by a statement from its director.<sup>103</sup> Moreover, *Indonesian AS* state that they use statistically valid sampling procedures, and that revisions and corrections are made when errors are found.<sup>104</sup> As a result, we find the *Indonesian AS* to be reliable. As we concluded in the 8<sup>th</sup> *AR Final*, we similarly find that the *Indonesian AS* represent the best available information with which to value the live whole fish input, as well as the other SVs due to the contemporaneity for almost all of the SV data.

In sum, in light of the record evidence, the Department finds Indonesia to be a reliable source for SVs because Indonesia is at a level of economic development comparable to Vietnam, based on GNI, is a significant producer of comparable merchandise, and has contemporaneous, publicly available, and reliable data. Given the above facts, the Department has selected Indonesia as the primary surrogate country for this review. A detailed explanation of the SVs appears below in the “Normal Value” section of this notice.

#### ***Date of Sale***

Pursuant to 19 CFR 351.401(i), the Department starts with a presumption that invoice date is the correct date of sale unless record evidence indicates that the material terms of sale such as price and quantity are established on another date. Golden Quality, HVG, and Vinh Hoan reported the invoice date as the date of sale because they claim that, for their U.S. sales of subject merchandise made during the POR, the material terms of sale were established based on the invoice date. In this case, as the Department found no evidence contrary to their claims that invoice date was the appropriate date of sale, the Department used invoice date as the date of sale for these preliminary results in accordance with 19 CFR 351.401(i).<sup>105</sup>

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<sup>101</sup> See 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 Value Source Documents,” dated concurrently with this notice.

<sup>102</sup> See Petitioners’ May 24, 2013, submission at Exhibit 9.a.

<sup>103</sup> *Id.* at Exhibit 9.c.

<sup>104</sup> *Id.* at Exhibit 9.

<sup>105</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10.

### ***Determination of Comparison Method***

Pursuant to 19 CFR 351.414(c)(1), the Department calculates individual dumping margins by comparing weighted-average NVs to weighted-average EPs or constructed export prices (“CEPs”) (the average-to-average (“A-A”) method) unless the Secretary determines that another method is appropriate in a particular situation. In AD investigations, the Department examines whether to compare weighted-average NVs to the EPs or CEPs of individual transactions (the average-to-transaction (“A-T”) method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department’s examination of this question in the context of administrative reviews, the Department finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in AD investigations.<sup>106</sup> In recent investigations, the Department applied a “differential pricing” analysis for determining whether application of A-T comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.<sup>107</sup> The Department finds the differential pricing analysis used in those recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department’s additional experience with addressing the potential masking of dumping that can occur when the Department uses the A-A method in calculating weighted-average dumping margins.<sup>108</sup>

The differential pricing analysis used in these preliminary results requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differs significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the A-A method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer code. Regions are defined using the reported destination code (*e.g.*, zip codes or cities) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR being examined

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<sup>106</sup> See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012).

<sup>107</sup> Public versions of the following memoranda have been added to the record of this case: Memoranda to Paul Piquado, Assistant Secretary for Import Administration, from Abdelali Elouaradia, Director of AD/CVD Operations Office 4, “Less Than Fair Value Investigation of Xanthan Gum from Austria: Post-Preliminary Analysis and Calculation Memorandum;” “Less Than Fair Value Investigation of Xanthan Gum from the People’s Republic of China: Post-Preliminary Analysis and Calculation Memorandum for Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., T Jd.) and Shandong Fufeng Fermentation Co., Ltd.,” and “Less Than Fair Value Investigation of Xanthan Gum from the People’s Republic of China: Post-Preliminary Analysis and Calculation Memorandum for Deosen Biochemical Ltd,” all dated March 4, 2013. See 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 Value Source Documents,” dated concurrently with this notice.

<sup>108</sup> As noted above, differential pricing was used in recent investigations. It was also used in the recent AD administrative review of polyester staple fiber from Taiwan. See *Polyester Staple Fiber from Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012*, 78 FR 17637 (March 22, 2013).

based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.<sup>109</sup>

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen’s *d* test is applied when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is calculated to evaluate the extent to which the net prices to a particular purchaser, region or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the A-T method to all sales as an alternative to the A-A method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an A-T method to those sales identified as passing the Cohen’s *d* test as an alternative to the A-A method, and application of the A-A method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the A-A method.

If both tests in the first stage (*i.e.*, the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, we examine whether using only the A-A method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the A-A method only. If the difference between the two calculations is meaningful, this demonstrates that the A-A

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<sup>109</sup> See 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 Value Source Documents,” dated concurrently with this notice.

method cannot account for differences such as those observed in this analysis, and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if (1) there is a 25 percent relative change in the weighted-average dumping margin between the A-A method and the appropriate alternative method where both rates are above the *de minimis* threshold, or (2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

Interested parties may present arguments in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

### ***Results of the Differential Pricing Analysis***

For HVG, based on the results of the differential pricing analysis, the Department finds that the value of U.S. sales passing the Cohen's *d* test is pervasive (*i.e.*, greater than 66 percent) such that we should consider as an alternative comparison method applying the average-to-transaction method to a portion of U.S. sales.<sup>110</sup> However, the Department determines that the A-A method can appropriately account for such differences because there is no meaningful difference between the weighted-average dumping margin calculated using the A-A method and when using the alternative method.<sup>111</sup> Accordingly, the Department has determined to use the A-A method in making comparisons of EP (or CEP) and NV for HVG.<sup>112</sup>

For Golden Quality, because it only had one sale under review, there are no comparisons to be made with regard to the differential pricing analysis.<sup>113</sup>

For Vinh Hoan, based on the results of the differential pricing analysis, the Department finds that the value of U.S. sales passing the Cohen's *d* test is substantial (*i.e.*, between 33 percent and 66 percent) such that we should consider as an alternative comparison method applying the average-to-transaction method to a portion of U.S. sales.<sup>114</sup> However, the Department determines that the A-A method can appropriately account for such differences because there is no meaningful difference between the weighted-average dumping margin calculated using the A-A method and when using the alternative method.<sup>115</sup> Accordingly, the Department has determined to use the A-A method in making comparisons of EP (or CEP) and NV for Vinh Hoan.<sup>116</sup>

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<sup>110</sup> See Hung Vuong Group Preliminary Analysis Memorandum, dated concurrently with this notice ("HVG Analysis Memo") at 18-20.

<sup>111</sup> *Id.*

<sup>112</sup> In these preliminary results, the Department applied the weighted-average dumping margin calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) ("*Final Modification for Reviews*"). In particular, the Department compared monthly weighted-average CEPs with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

<sup>113</sup> See Golden Quality Preliminary Analysis Memorandum, dated concurrently with this notice ("Golden Quality Analysis Memo") at 9.

<sup>114</sup> See Vinh Hoan Preliminary Analysis Memorandum, dated concurrently with this notice ("Vinh Hoan Analysis Memo") at 13-14.

<sup>115</sup> *Id.* at 1.

<sup>116</sup> See *Final Modification for Reviews*, 77 FR at 8101.

### ***Comparisons to Normal Value***

To determine whether the Respondents' sales of subject merchandise were made at less than fair value, we compared their EP, or CEP, to NV in accordance with section 777A(d)(2) of the Act as described below in the "Export Price" and "Constructed Export Price" and "Normal Value" sections of this memorandum. In these preliminary results, the Department applied the A-to-A comparison methodology adopted in the *Final Modification for Reviews*. In particular, the Department compared monthly, weighted-average EPs with monthly, weighted-average NVs, and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

### ***U.S. Price***

#### **a. Export Price**

Pursuant to section 772(a) of the Act, EP is "the price at which subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States," as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, the Department calculated EP for all sales to the United States for Golden Quality, and EP for some sales by HVG, and Vinh Hoan because the first sale to an unaffiliated party was made before the date of importation and the use of CEP was not otherwise warranted on those sales. The Department calculated EP based on the sales price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, as appropriate, the Department deducted from the sales price certain foreign inland freight, brokerage and handling ("B&H"), and international movement costs. Because the inland freight and B&H services were either provided by a NME vendor or paid for using an NME currency, the Department based the deduction of these charges on SVs.<sup>117</sup> For international freight provided by an ME provider and paid in U.S. dollars, the Department used the actual cost per kg of the freight.<sup>118</sup>

#### **b. Constructed Export Price**

Pursuant to section 772(b) of the Act, CEP is "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter," as adjusted under section 772(c) and (d) of the Act. For some of HVG's and Vinh Hoan's sales, the Department based U.S. price on CEP in accordance with section 772(b) of the Act, because sales were made on behalf of the Vietnam-based company by a U.S. affiliate to unaffiliated purchasers in the United States. For these sales, the Department based CEP on prices to the first unaffiliated purchaser in the United States. Where appropriate, the Department made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, U.S. movement expenses, and appropriate selling adjustments, in accordance with section 772(c)(2)(A) of the Act.

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<sup>117</sup> See Prelim SV Memo for details regarding the SVs for movement expenses.

<sup>118</sup> See Vinh Hoan's April 22, 2013, submission at 2.

In accordance with section 772(d)(1) of the Act, the Department also deducted those selling expenses associated with economic activities occurring in the United States. The Department deducted, where appropriate, commissions, inventory carrying costs, interest revenue, credit expenses, warranty expenses, and indirect selling expenses. Where foreign movement expenses, international movement expenses, or U.S. movement expenses were provided by NME service providers or paid for in an NME currency, the Department valued these services using SVs (*see* “Factor Valuations” section below for further discussion). For those expenses that were provided by an ME provider and paid for in an ME currency, the Department used the reported expense. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for each company, *see* the company-specific analysis memoranda, dated concurrently with these preliminary results.

### ***Normal Value***

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(e) of the Act. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. The Department’s questionnaire requires that the respondents provide information regarding the weighted-average FOPs across all of the companies’ plants and suppliers that produce the merchandise under consideration, not just the FOPs from a single plant or supplier.<sup>119</sup> This methodology ensures that the Department’s calculations are as accurate as possible.<sup>120</sup>

The Department calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). Under section 773(c)(3) of the Act, FOPs used by the Respondents in the production of frozen fish fillets include, but are not limited to, (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs.<sup>121</sup> The Department based NV on the Respondents’ reported FOPs for materials, energy, and labor.

### ***Factor Valuations***

In accordance with section 773(c) of the Act, for subject merchandise produced by the Respondents, the Department calculated NV based on the FOPs reported by these companies for the POR. The Department used Indonesian import data and other publicly available Indonesian sources in order to calculate SVs. To calculate NV, the Department multiplied the reported per-unit FOP quantities by publicly available SVs. The Department’s practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are

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<sup>119</sup> *See* the Department’s original antidumping duty questionnaire, dated February 27, 2013, at Section D.

<sup>120</sup> *See, e.g., Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings from the People’s Republic of China*, 68 FR 61395 (October 28, 2003), and accompanying Issues and Decision Memorandum at Comment 19.

<sup>121</sup> *See, e.g., Golden Quality’s* December 10, 2012, submission at Exhibit d-1.

product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.<sup>122</sup>

As appropriate, the Department adjusted input prices by including freight costs to render them delivered prices. Specifically, the Department added to Indonesian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where it relied on an import value. This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997). Additionally, where necessary, the Department adjusted SVs for inflation and exchange rates, taxes, and converted all applicable FOPs to a per-kg basis.

Furthermore, with regard to the Indonesian import-based SVs, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from India, South Korea, and Thailand may have been subsidized because we have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies.<sup>123</sup> Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.<sup>124</sup> Further, guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized.<sup>125</sup> Rather, the Department bases its decision on information that is available to it at the time it makes its determination. Additionally, consistent with our practice, we disregarded prices from NME countries and excluded imports labeled as originating from an "unspecified" country from the average value because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.<sup>126</sup> Therefore, we have not used prices from these countries either in calculating the Indonesian import-based SVs or in calculating ME input values.

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (*i.e.*, not insignificant quantities) and pays in an ME currency, the Department uses the actual price paid by the respondent to value those inputs, except when

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<sup>122</sup> See, e.g., *Electrolytic Manganese Dioxide from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>123</sup> See, e.g., *Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4-5; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19-20.

<sup>124</sup> See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People's Republic of China*, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 7.

<sup>125</sup> See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988); see also *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758, 30763 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 60632 (October 25, 2007).

<sup>126</sup> See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates from the People's Republic of China*, 69 FR 75294, 75300 (December 16, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 24502 (May 10, 2005) ("Isos").



prices may have been distorted by findings of dumping and/or subsidization.<sup>127</sup> Where the Department finds ME purchases to be of significant quantities (*i.e.*, 33 percent or more), in accordance with our statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs*,<sup>128</sup> the Department uses the actual purchase prices to value the inputs. Information reported by Vinh Hoan and HVG demonstrate that certain inputs were sourced from an ME country and paid for in ME currencies.<sup>129</sup> The information reported by Vinh Hoan and HVG also demonstrates that such inputs were purchased in significant quantities (*i.e.*, 33 percent or more) from ME suppliers.<sup>130</sup> As a consequence, the Department has used the Respondents' actual ME purchase prices to value these inputs. Where appropriate, freight expenses were added to the ME price of the input.<sup>131</sup>

The Department used Indonesian Import Statistics from the *Global Trade Atlas* ("GTA") to value certain raw materials, certain energy inputs, and packing material inputs that the Respondents used to produce subject merchandise during the POR, except where listed below.

We valued electricity and water using values from Indonesian utilities. Specifically, we valued electricity using an average value from an Indonesian electricity company, PT PLN (Persero). We valued water using a value from an Indonesian water utility, Pam Jaya, specifically tariff IV-B for food factories.<sup>132</sup>

We valued brokerage and handling ("B&H") using a price list of export procedures necessary to export a standardized cargo of goods in Indonesia. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in Indonesia that is published in *Doing Business 2012: Indonesia* by the World Bank.<sup>133</sup>

We used Indonesian transport information in order to value the freight-in cost of the raw materials. The Department determined the best available information for valuing truck freight to be from *Doing Business 2012: Indonesia*. This World Bank report gathers information concerning the distance and cost to transport products in a 20-foot container from the largest city in Indonesia to the nearest seaport. We calculated the per-unit inland freight costs using the distance from Jakarta, to the nearest seaport. We calculated a per-kg, per-kilometer surrogate inland freight rate based on the methodology used by the World Bank. The Department determined the best available information for valuing boat freight to be a rate published by the Indonesian freight forwarder, PT. Mantap Abiah Abadi. Rates were given on a per cubic meter

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<sup>127</sup> See, e.g., *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997).

<sup>128</sup> See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717-61718 (October 19, 2006) ("*Antidumping Methodologies: Market Economy Inputs*").

<sup>129</sup> See, e.g., Vinh Hoan's April 22, 2013, Section D submission at 11 and Exhibit 9.

<sup>130</sup> *Id.* Because this case was initiated before September 3, 2013, the ME input threshold is 33 percent. In future reviews, this threshold will be 85 percent. See *Use of Market Economy Input Prices in Nonmarket Economy Proceedings*, 78 FR 46799 (August 2, 2013).

<sup>131</sup> See Vinh Hoan's April 22, 2013, Section D submission at 11 and Exhibit 9.

<sup>132</sup> For more information on the electricity and water SV calculations, see the Prelim SV Memo.

<sup>133</sup> For more information on the B&H SV calculation, see the Prelim SV Memo.

basis, by city. We calculated a per-kg, per-kilometer surrogate boat freight rate using this data.<sup>134</sup>

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME AD proceedings.<sup>135</sup> In *Labor Methodologies*, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A from the International Labor Organization's ("ILO") *Yearbook of Labor Statistics* ("*ILO Yearbook*"), however, the Department notes that Chapter 6A does not contain recent Indonesian labor data from the *ILO Yearbook*. Therefore, for the preliminary results, the Department relied on 2008 data reported by Indonesia in Chapter 5B of the *ILO Yearbook*.<sup>136</sup> In other proceedings where the Department selected Indonesian as the primary surrogate country, we similarly have relied upon data from Chapter 5B of the *ILO Yearbook*.<sup>137</sup> The Department further finds the two-digit description under ISIC-Revision 3 ("15-Manufacture of Food Products and Beverages") to be specific to the industry being examined and is, therefore, derived from industries that produce comparable merchandise. Accordingly, relying on Chapter 5B of the *ILO Yearbook*, the Department calculated the labor input using total labor data reported by Indonesia to the ILO, in accordance with section 773(c)(4) of the Act.<sup>138</sup> Because these data reflect direct compensation and bonuses and none of the indirect costs reflected in the Chapter 6A data, we found that the facts and information on the record do not warrant or permit an adjustment to the surrogate financial statements.<sup>139</sup>

The Department's criteria for choosing surrogate financial statements from which we derive the financial ratios are the availability of contemporaneous financial statements, comparability to the respondent's experience, and publicly available information.<sup>140</sup> Moreover, for valuing factory overhead, selling, general and administrative expenses ("SG&A"), and profit, the Department normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.<sup>141</sup> In addition, the CIT has held that in the selection of surrogate producers, the Department may consider how closely the surrogate

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<sup>134</sup> For more information on the truck and boat freight SV calculations, see the Prelim SV Memo.

<sup>135</sup> See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) ("*Labor Methodologies*").

<sup>136</sup> For more information on the labor SV calculations, see the Prelim SV Memo.

<sup>137</sup> See *Certain Oil Country Tubular Goods from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 74644 (December 17, 2012), and accompanying Issues and Decision Memorandum at Comment 6.

<sup>138</sup> See *Labor Methodologies*, 76 FR at 36094, n.11; see also *Small Diameter Graphite Electrodes from the People's Republic of China: Preliminary Results and Partial Rescission of Administrative Review*, 77 FR 13284, 13292-93 (March 6, 2012) (relying upon national data reported by ILO Chapter 6A in the absence of Chapter 6A industry-specific data), unchanged in *Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of Administrative Review*, 77 FR 40854 (July 11, 2012).

<sup>139</sup> See, e.g., *Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 77 FR 21738, 21743 (April 11, 2012), unchanged in *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 64100 (October 18, 2012).

<sup>140</sup> See, e.g., *Isos*, and accompanying Issues and Decision Memorandum at Comment 3.

<sup>141</sup> See, e.g., *Sawblades*, and accompanying Issues and Decision Memorandum at Comment 2.

producers approximate the NME producer's experience.<sup>143</sup> To value factory overhead, selling, general, and administrative expenses ("SG&A"), and profit, the Department used the 2012 financial statements from an Indonesian fish fillet processor, PT Dharma Samudera Fishing Industries ("DSFI").<sup>144</sup>

### ***Currency Conversion***


Where necessary, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank. These exchange rates are available on the Import Administration website at <http://ia.ita.doc.gov/exchange/index.html>.

### **RECOMMENDATION**

We recommend applying the above methodology for these preliminary results.

Agree

Disagree

  
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Paul Piquado  
Assistant Secretary  
for Import Administration

3 SEPTEMBER 2013  
(Date)

<sup>143</sup> See *Rhodia, Inc. v. United States*, 240 F. Supp. 2d 1247, 1253-1254 (CIT 2002); see also *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>144</sup> For more information on the surrogate financial ratios calculations, see the Prelim SV Memo.

## **Appendix**

East Sea Seafood Co., Ltd.  
East Sea Seafoods Joint Venture Co., Ltd.  
GODACO Seafood Joint Stock Company  
Hung Vuong Seafood Joint Stock Company  
Nam Viet Company Limited  
Quang Minh Seafood Co., Ltd.  
Vinh Hoan Company Ltd.