

number: (866) 393-8073, conference call access code number \*3046445\*. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-977-8339 and providing the Service with the conference call number and contact name Farella E. Robinson.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Corrine Sanders of the Central Regional Office and TTY/TDD telephone number, by 4:00 p.m. on September 22, 2011.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by October 30, 2011. The address is U.S. Commission on Civil Rights, 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Comments may be e-mailed to [frobinson@usccr.gov](mailto:frobinson@usccr.gov). Records generated by this meeting may be inspected and reproduced at the Central Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, <http://www.usccr.gov>, or to contact the Central Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, September 6, 2011.

**Peter Minarik,**

*Acting Chief, Regional Programs  
Coordination Unit.*

[FR Doc. 2011-23063 Filed 9-8-11; 8:45 am]

**BILLING CODE 6335-01-P**

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the New Mexico Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the New Mexico Advisory Committee to the Commission will be held at the

Albuquerque Hispano Chamber of Commerce, Lockheed Martin Board Room, 1309 Fourth Street, SW., Albuquerque, NM 87102 and will convene at 2 p.m. on Thursday, September 29, 2011. The purpose of the meeting is to discuss civil rights issues in the state and select a project topic.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by October 31, 2011. The address is Rocky Mountain Regional Office, 999-18th Street, Suite 1380S, Denver, CO 80202. Comments may be e-mailed to [ebohor@usccr.gov](mailto:ebohor@usccr.gov). Records generated by this meeting may be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, <http://www.usccr.gov>, or to contact the Rocky Mountain Regional Office at the above e-mail or street address.

Deaf or hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, September 6, 2011.

**Peter Minarik,**

*Acting Chief, Regional Programs  
Coordination Unit.*

[FR Doc. 2011-23064 Filed 9-8-11; 8:45 am]

**BILLING CODE 6335-01-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A-552-801]**

#### Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results and Partial Rescission of the Seventh Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on certain frozen fish fillets from the Socialist

Republic of Vietnam ("Vietnam").<sup>1</sup> The Department has preliminarily determined that QVD Food Company, Ltd. ("QVD") sold subject merchandise at less than normal value ("NV") and that Vinh Hoan Corporation ("Vinh Hoan")<sup>2</sup> did not sell merchandise below NV during the period of review ("POR"), August 1, 2009, through July 31, 2010.

**DATES:** *Effective Date:* September 9, 2011.

**FOR FURTHER INFORMATION CONTACT:** Alexis Polovina or Javier Barrientos, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3927 or (202) 482-2243, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Case History

On August 2, 2010, the Department published a notice of an opportunity to request an administrative review of the *Order*.<sup>3</sup> The Department received review requests for 26 companies from Petitioners<sup>4</sup> and certain individual companies.

On September 22, 2010, the Department initiated the August 1, 2009, through July 31, 2010, antidumping duty administrative review on certain frozen fish fillets from Vietnam.<sup>5</sup> The Department initiated this review with respect to 26 companies.<sup>6</sup>

<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) ("Order").

<sup>2</sup> The Department is treating Vinh Hoan, Van Duc Food Export Joint Company ("Van Duc") and Van Duc Tien Giang ("VD TG") as a single entity. Section 19 CFR 351.401(f) of the Department's regulations define single entities as those affiliated producers who have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production. For further analysis, see *Affiliations and Collapsing section below*.

<sup>3</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 75 FR 45094 (August 2, 2010).

<sup>4</sup> This includes: Catfish Farmers of America and individual U.S. catfish processors, America's Catch, Consolidated Catfish Companies, LLC dba Country Select Catfish, Delta Pride Catfish, Inc., Harvest Select Catfish, Inc., Heartland Catfish Company, Pride of the Pond, and Simmons Farm Raised Catfish, Inc. ("Petitioners").

<sup>5</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation*, 75 FR 60076 (September 29, 2010) ("Initiation").

<sup>6</sup> This includes: (1) An Giang Fisheries Import and Export Joint Stock Company (aka Agifish or AnGiang Fisheries Import and Export) ("Agifish"); (2) Anvifish Co., Ltd.; (3) Anvifish Joint Stock

On January 7, 2011, the Department issued a letter to all interested parties informing them of its decision to select the two largest exporters of subject merchandise during the POR, based on U.S. Customs and Borders Protection ("CBP") import data, Vinh Hoan and QVD, ("Respondents"), as mandatory respondents.<sup>7</sup>

On January 7, 2011, the Department issued the antidumping questionnaire. Between January 28, 2011, and July 13, 2011, Vinh Hoan and QVD submitted responses to the original and supplemental sections A, C, and D questionnaires.

On March 29, 2011, and May 19, 2011, the Department extended the deadlines for parties to file surrogate country comments and surrogate value data.<sup>8</sup> Between May 10, 2011, and July 29, 2011, the Department received surrogate country and value comments

and rebuttal comments from interested parties.

On April 13, 2011, the Department published in the **Federal Register** a notice fully extending the time period for issuing the preliminary results in these reviews to August 31, 2011.<sup>9</sup>

On August 4, 2011, the Department partially rescinded the administrative review with respect to five companies.<sup>10</sup> Therefore, 19 companies remain in this administrative review: (1) Anvifish Co., Ltd.; (2) Anvifish JSC; (3) Acomfish; (4) Bien Dong Seafood; (5) Binh An; (6) CASEAMEX; (7) CL Fish; (8) ESS LLC; <sup>11</sup> (9) East Sea Seafoods Joint Venture Co., Ltd.; (10) Hiep Thanh; (11) IDI; (12) NTSF; (13) QVD; (14) QVD DT; (15) South Vina; (16) THIMACO; (17) Thuan Hung; (18) Vinh Hoan; <sup>12</sup> and (19) Vinh Quang.

#### Request for Revocation

On April 20, 2011, Vinh Hoan and QVD requested revocation on the basis that they did not sell subject merchandise for less than NV consecutively for three years. However, pursuant to 19 CFR 351.222(e), the request for revocation must be made during the anniversary month. The anniversary month for this review was August 2010, making these requests 232 days late. On May 4, 2011, Petitioners submitted comments urging the Department to reject these requests as untimely. On May 19, 2011, Vinh Hoan and QVD responded to Petitioners' comments. As these requests were made 232 days after the anniversary month, the Department is not considering Vinh Hoan and QVD's revocation requests.

#### Vietnam-Wide Entity

As discussed above, in this administrative review we limited the selection of respondents to be individually examined using CBP import data.<sup>13</sup> In this case, we made available to the companies who were not selected the separate rates

application and certification, which were put on the Department's Web site.<sup>14</sup> Because some parties for which a review was requested did not apply for separate rate status, the Vietnam-Wide entity is considered to be under review in this segment of the proceeding.

#### Preliminary Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(3), the Department has preliminarily determined that four companies made no shipments of subject merchandise during the POR of this administrative review, (1) IDI; (2) CL-Fish; (3) THIMACO; and (4) NTSF. On October 5, 2010, the Department received no-shipment certifications from IDI, CL-Fish, THIMACO, and NTSF. However, according to entry statistics obtained from CBP, and placed on the record, IDI and THIMACO had an entry of subject merchandise during the POR.

The Department issued no-shipment inquiries to CBP requesting any information for merchandise manufactured and shipped by either IDI or THIMACO during the POR. The Department did receive a response from CBP regarding THIMACO, however, both of IDI and THIMACO's entries have already been reviewed in the recently completed new shipper reviews.<sup>15</sup> We confirmed the entries CBP identified were the same as those reviewed in the 09-10 NSR. Consequently, we are preliminarily rescinding the reviews with respect to IDI, CL-Fish, THIMACO, and NTSF.

#### Separate Rates

A designation as a non-market economy ("NME") remains in effect until it is revoked by the Department. See section 771(18)(C) of the Tariff Act of 1930, as amended ("Act"). Accordingly, there is a rebuttable presumption that all companies within Vietnam are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's standard 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

Company (aka Anvifish JSC); (4) Asia Commerce Fisheries Joint Stock Company ("Acomfish JSC") ("Acomfish"); (5) Bien Dong Seafood Co., Ltd. ("Bien Dong Seafood"); (6) Binh An Seafood Joint Stock Co. ("Binh An"); (7) Cadovimex II Seafood Import-Export and Processing Joint Stock Company; (aka Cadovimex II) ("Cadovimex II"); (8) Cantho Import-Export Seafood Joint Stock Company ("CASEAMEX"); (9) CUU Long Fish Joint Stock Company (aka CL-Fish) ("CL Fish"); (10) East Sea Seafoods Limited Liability Company (formerly known as East Sea Seafoods Joint Venture Co., Ltd.) (ESS LLC); (11) East Sea Seafoods Joint Venture Co., Ltd.; (12) East Sea Seafoods LLC; (13) Hiep Thanh Seafood Joint Stock Co. ("Hiep Thanh"); (14) International Development & Investment Corporation (also known as IDI) ("IDI"); (15) Nam Viet Company Limited (aka NAVICO) ("Nam Viet"); (16) Nam Viet Corporation; (17) NTSF Seafoods Joint Stock Company ("NTSF"); (18) QVD Food Company, Ltd. ("QVD"); (19) QVD Dong Thap Food Co., Ltd. ("QVD DT"); (20) Saigon-Mekong Fishery Co., Ltd. (aka SAMEFICO) ("SAMEFICO"); (21) Southern Fishery Industries Company, Ltd. (aka South Vina) ("South Vina"); (22) Thien Ma Seafood Co., Ltd. ("THIMACO"); (23) Thuan Hung Co., Ltd. (aka THUFICO) ("Thuan Hung"); (24) Vinh Hoan Corporation ("Vinh Hoan"); (25) Vinh Hoan Company, Ltd.; and (26) Vinh Quang Fisheries Corporation ("Vinh Quang").

<sup>7</sup> See Memorandum to the File from Javier Barrientos, Senior Analyst, through Alex Villanueva, Program Manager, Antidumping Duty Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam ("Vietnam"): Selection of Respondents for Individual Review ("First Respondent Selection Memo"), dated January 7, 2011.

<sup>8</sup> See Memorandum to the File, from Alexis Polovina, Case Analyst, through Matthew Renkey, Acting Program Manager, Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension Request for Surrogate Country Selection Comments and Surrogate Value Submissions, dated March 29, 2011, and Memorandum to the File, from Alexis Polovina, Case Analyst, through Matthew Renkey, Acting Program Manager, Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension Request for Rebuttal Surrogate Country Selection Comments and Surrogate Value Submissions, dated May 19, 2011.

<sup>9</sup> See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Extension of Time Limit for Preliminary Results of the Seventh Antidumping Duty Administrative Review*, 76 FR 20626 (April 13, 2011).

<sup>10</sup> These companies include: (1) Agifish; (2) Nam Viet; (3) Nam Viet Corporation; (4) SAMEFICO; and (5) Cadovimex II. See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Partial Rescission of the Seventh Antidumping Duty Administrative Review*, 76 FR 47149 (August 4, 2011).

<sup>11</sup> We note that the initiation notice contained both ESS LLC and East Sea Seafoods LLC, however, they appear to be iterations of the same name.

<sup>12</sup> We note that the initiation notice contained both Vinh Hoan Company, Ltd. and Vinh Hoan Corporation. However, they are the same company. Prior to August 2007, Vinh Hoan Corporation was known as Vinh Hoan Company, Ltd.

<sup>13</sup> See Respondent Selection Memo.

<sup>14</sup> See *Initiation*.

<sup>15</sup> See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Antidumping Duty New Shipper Reviews*, 76 FR 35403 (June 17, 2011) ("09-10 NSR").

established in the *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 the *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*”).

#### 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; and (2) any legislative enactments decentralizing control of companies.

Although the Department has previously assigned a separate rate to all of the companies eligible for a separate rate in this review, it is the Department's policy to evaluate separate rates questionnaire responses each time a respondent makes a separate rates claim, regardless of whether the respondent received a separate rate in the past.<sup>16</sup>

In this review, in addition to the two mandatory respondents, Anvifish Co., Ltd., Anvifish JSC, Acomfish, Bien Dong Seafood, Binh An, CASEAMEX, ESS LLC, East Sea Seafoods Joint Venture Co., Ltd., Hiep Thanh, South Vina, and Vinh Quang, submitted complete separate rate certifications and applications. The evidence submitted by these companies includes government laws and regulations on corporate ownership, business licenses, and narrative information regarding the companies' operations and selection of management. The evidence provided by these companies supports a finding of a *de jure* absence of government control over their export activities, based on: (1) An absence of restrictive stipulations associated with the exporter's business license; and (2) the legal authority on the record decentralizing control over the respondents.

#### B. Absence of De Facto Control

The absence of *de facto* government control over exports is based on whether the respondent: (1) Sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate

and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management.<sup>17</sup>

In this review, in addition to the two mandatory respondents, Anvifish Co., Ltd., Anvifish JSC, Acomfish, Bien Dong Seafood, Binh An, CASEAMEX, ESS LLC, East Sea Seafoods Joint Venture Co., Ltd., Hiep Thanh, South Vina, and Vinh Quang, submitted evidence indicating an absence of *de facto* government control over their export activities. Specifically, this evidence indicates that: (1) Each company sets its own export prices independent of the government and without the approval of a government authority; (2) each company retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) each company has a general manager, branch manager or division manager with the authority to negotiate and bind the company in an agreement; (4) the general managers are selected by the board of directors or company employees, and the general managers appoint the deputy managers and the manager of each department; and (5) there is no restriction on any of the companies' use of export revenues. Therefore, the Department preliminarily finds that in this review, Vinh Hoan, QVD, Anvifish Co., Ltd., Anvifish JSC, Acomfish, Bien Dong Seafood, Binh An, CASEAMEX, ESS LLC, East Sea Seafoods Joint Venture Co., Ltd., Hiep Thanh, South Vina, and Vinh Quang, have established that they qualify for separate rates under the criteria established by *Silicon Carbide* and *Sparklers*.

#### Rate for Non-Selected Companies

In this review there are 11 companies that are not presently selected for individual examination.<sup>18</sup> The statute and the Department's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination when the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally we have looked to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents we

did not examine in an administrative review. Section 735(c)(5)(A) of the Act articulates a preference that we are not to calculate an all-others rate using any zero or *de minimis* margins or any margins based entirely on facts available. Accordingly, the Department's usual practice has been to average the rates for the selected companies, excluding zero, *de minimis* and rates based entirely on facts available.<sup>19</sup> Section 735(c)(5)(B) of the Act also provides that, where all margins are zero, *de minimis*, or based entirely on facts available, we may use “any reasonable method” for assigning the rate to non-selected respondents, including “averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated.”

For this administrative review, the Department has calculated positive margins for one mandatory respondent, QVD. Accordingly, consistent with our practice for these preliminary results, the Department has preliminarily established a margin for the separate rate respondents based on the rate calculated for one of the mandatory respondents, QVD. The rate established for the separate rate respondents is a per-unit rate of \$0.56 dollars per kilogram. Entities receiving this rate are identified by name in the “Preliminary Results of Review” section of this notice.

#### 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 bone-in, cross-

<sup>16</sup> See *Manganese Metal from the People's Republic of China, Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 12440 (March 13, 1998).

<sup>17</sup> See *Silicon Carbide*, 59 FR at 22587; *Sparklers*, 56 FR at 20589; 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).

<sup>18</sup> These companies include: (1) Anvifish Co., Ltd.; (2) Anvifish JSC; (3) Acomfish; (4) Bien Dong Seafood; (5) Binh An; (6) CASEAMEX; (7) ESS LLC; (8) East Sea Seafoods Joint Venture Co., Ltd.; (9) Hiep Thanh; (10) South Vina; and (11) Vinh Quang.

<sup>19</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.

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>20</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.

### Non-Market Economy Country Status

In every case conducted by the Department involving Vietnam, Vietnam has been treated as an NME country. 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 administering authority.<sup>21</sup> None of the parties to this proceeding have contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

### Surrogate Country and Surrogate Values

On February 1, 2011, the Department sent interested parties a letter setting a deadline to submit comments on surrogate country selection and information pertaining to valuing factors of production ("FOPs"). Between May 10, 2011, and July 29, 2011, Vinh Hoan, QVD, the Vietnam Association of Seafood Exporters and Producers ("VASEP"), and Petitioners submitted surrogate country comments, surrogate value data, and rebuttal comments.

### Surrogate Country

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 FOPs, valued in a surrogate

market economy ("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: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.

Regarding economic comparability, Respondents argue that the Philippines is not economically comparable to Vietnam. However, as explained in our list of surrogate countries, the Department considers Bangladesh, the Philippines, Indonesia, India, Sri Lanka, and Pakistan all comparable to Vietnam in terms of economic development.<sup>22</sup> Section 773(c)(4)(A) of the Act is silent with respect to how the Department may determine that a country is economically comparable to the NME country. As such, the Department's long standing practice has been to identify those countries which are at a level of economic development similar to Vietnam in terms of gross national income ("GNI") data available in the World Development Report provided by the World Bank.<sup>23</sup> In this case, the GNI available are based on data published in 2010. The GNI levels for the list of potential surrogate countries ranged from \$520 to \$2,010.<sup>24</sup> The Department is satisfied that they are equally comparable in terms of economic development and serve as an adequate group to consider when gathering surrogate value data. Further, providing parties with a range of countries with varying GNIs is reasonable given that any alternative would require a complicated analysis of factors affecting the relative GNI differences between Vietnam and other countries which is not required by the statute. In contrast, by identifying countries that are economically comparable to Vietnam based on GNI, the Department provides parties with a predictable practice which is also reasonable and consistent with the statutory requirements. Identifying potential surrogate countries

based on GNI data has been affirmed by the Court of International Trade ("CIT").<sup>25</sup>

As we have stated in prior administrative review determinations, there is no world production data of *Pangasius* frozen fish fillets available on the record with which the Department can identify producers of identical merchandise. Therefore, absent world production data, the Department's practice is to compare, wherever possible, data for comparable merchandise and establish whether any economically comparable country was a significant producer.<sup>26</sup> In this case, we have determined to use the broader category of frozen fish fillets data as the basis for identifying producers of comparable merchandise. Therefore, consistent with cases that have similar circumstances as are present here, we obtained export data for each country identified in the surrogate country list. Based on 2008 export data from the United Nations Food and Agriculture Organization,<sup>27</sup> Bangladesh, the Philippines, Indonesia, India, Sri Lanka, and Pakistan are exporters of frozen fish fillets and, thus, significant producers.

After applying the first two selection criteria, if more than one country remains, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data from those countries.<sup>28</sup> In this case, the whole fish input is the most significant input because it accounts for the largest percentage of NV as fish fillets are produced directly from the whole live fish. As such, we must consider the availability and reliability of the surrogate values for whole fish on the record. This record does not contain any data for whole live fish from Sri Lanka or Pakistan. Therefore, these countries will not be considered for primary surrogate country purposes at this time. However, this record does contain whole fish surrogate value data from Bangladesh, the Philippines, Indonesia, and India.

<sup>20</sup> Until July 1, 2004, these products were classifiable under tariff article codes 0304.20.60.30 (Frozen Catfish Fillets), 0304.20.60.96 (Frozen Fish Fillets, NESOI), 0304.20.60.43 (Frozen Freshwater Fish Fillets) and 0304.20.60.57 (Frozen Sole Fillets) of the HTSUS. Until February 1, 2007, these products were classifiable under tariff article code 0304.20.60.33 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the HTSUS.

<sup>21</sup> See Notice of Final Results of Administrative Review: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 73 FR 15479 (March 17, 2008) and accompanying Issues and Decision Memorandum ("3rd AR Final Results").

<sup>22</sup> See Memorandum from Carole Showers, Director, Office of Policy, to Alex Villanueva, Program Manager, AD/CVD Enforcement, Office 9: Request for a list of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Certain Frozen Fish Fillets ("Fish Fillets") from the Socialist Republic of Vietnam, dated January 31, 2011 ("Surrogate Country List").

<sup>23</sup> See *Pure Magnesium from the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 75 FR 80791 (December 23, 2010) and accompanying Issues and Decision Memorandum at Comment 4.

<sup>24</sup> See Surrogate Country List.

<sup>25</sup> See *Fujian Lianfu Forestry Co., Ltd. v. United States*, 638 F. Supp. 2d 1325 (Ct. Int'l Trade 2009).

<sup>26</sup> See *Certain Magnesia Carbon Bricks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 11847 (March 12, 2010), unchanged for the final determination, 75 FR 45468 (August 2, 2010).

<sup>27</sup> See Memorandum to the File through Matthew Renkey, Acting Program Manager, Office 9, from Alexis Polovina, Case Analyst, dated August 31, 2011 ("Surrogate Value Memo") at Attachment I.

<sup>28</sup> See Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004).

### Bangladesh

VASEP placed the Bangladeshi Department of Agriculture Marketing, Ministry of Agriculture, pangas price data (“DAM data”) on the record.<sup>29</sup> The Department issued a letter to the Bangladeshi Department of Agriculture Marketing, requesting among other things, more information regarding the publicly availability of the DAM data.<sup>30</sup> We have yet to receive a response from the Bangladeshi Department of Agriculture Marketing.

### Philippines

Petitioners placed the *Fisheries Statistics of the Philippines, 2007–2009*, published by the Philippines Bureau of Agricultural Statistics, Department of Agriculture (“*Fisheries Statistics*”), on the record.<sup>31</sup> The Department issued a letter to the Philippines Bureau of Agricultural Statistics (“BAS”), requesting among other things, more information regarding the publicly availability of the *Fisheries Statistics*.<sup>32</sup> We received a response from the Philippines BAS, which we placed on the record.<sup>33</sup>

### Indonesia

The Department placed Indonesian price and quantity data from the United Nations Food and Agriculture Organization’s Fisheries Global Information System (“FIGIS data”).<sup>34</sup>

### India

VASEP placed the Present Status of the Pangasius, Pangasianodon-Hypophthalmus Farming in Andhra

Pradesh, India (“Pangasius Study”), on the record.<sup>35</sup>

### Analysis

When evaluating surrogate value data, the Department considers several factors including whether the surrogate value is publicly available, contemporaneous with the POR, represents a broad market average, from an approved surrogate country, tax and duty-exclusive, and specific to the input. There is no hierarchy; 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.

First, we note that the Pangasius Study regarding India is a “first attempt”<sup>36</sup> study undertaken by a professor with estimated production quantities. When compared to the other sources on the record, we find that the Pangasius Study is not an appropriate source because there is uncertainty regarding public availability and broad market average. There is no information on how the study was obtained, or on the data collection methods, making it difficult to determine public availability or if the study represents a broad market average.<sup>37</sup> Furthermore, the study appears to be based on estimates for one Indian state.<sup>38</sup> Therefore, we find that the Pangasius Study is not the most suitable source on the record for purposes of these preliminary results.

We note that both Petitioners and Respondents claim that both Bangladesh and the Philippines’ *Pangasius* industries receive government assistance, in the forms of techno-farms and education, and should therefore, be disregarded as surrogate countries. However, the Department’s practice is to exclude data from consideration only when the record evidence demonstrates that the alleged subsidy programs constituted countervailable subsidies.<sup>39</sup> In this case, as we have found in prior reviews, there is no record evidence that the subsidies alleged by Petitioners and

Respondents constitute countervailing subsidies.

With respect to the DAM data, *Fisheries Statistics*, and the FIGIS data, we note that all are from approved surrogate countries, sufficiently specific to the input in question, tax and duty exclusive, and contemporaneous with the POR.

As noted above, Petitioners have raised concerns regarding the public availability of the DAM data. The Department issued letters to both the Bangladeshi Department of Agriculture Marketing and the Philippines Bureau of Agricultural Statistics, requesting among other things, more information regarding the publicly availability of both the DAM data and the *Fisheries Statistics*.<sup>40</sup> While we received a response from the Philippines Bureau of Agricultural Statistics, we have yet to receive a response from the Bangladeshi Department of Agriculture Marketing, and are therefore, at this time, unable to independently ascertain the public availability of the DAM data. While the DAM data are not published, the record contains a letter from the Deputy Director of DAM stating that the data “\* \* \* can be provided to any member of the public upon request, free of cost.”<sup>41</sup> The record, however, also contains an affidavit from a Barrister at Law in Bangladesh, retained by Petitioners the contents of which raise concerns regarding the public availability of this data. The affiant stated while meeting with the Director and Assistant Director of DAM, the DAM officials explained that “\* \* \* DAM does not, as a matter of course, provide the pangas wholesale price data to members of the public \* \* \*”<sup>42</sup> Regarding the DAM data on the record, according to the affidavit submitted by Petitioners, the DAM officials explained that the Deputy Director “must have been instructed to do so be a superior

<sup>29</sup> See VASEP’s First Surrogate Value Submission, dated May 10, 2011, at Exhibit 13A.

<sup>30</sup> See Letter to Fahmida Akhter, Deputy Director Department of Department of Agricultural Marketing from Matthew Renkey, Acting Program Manager: Questions for the Bangladeshi Department of Agricultural Marketing Regarding National Wholesale Price Data, dated June 23, 2011.

<sup>31</sup> See Petitioners’ Surrogate Country Comments and Submission of Proposed Factor Values, dated May 10, 2011, at Exhibit 9–A.

<sup>32</sup> See Letter to Romeo S. Recide, Director, Bureau of Agriculture Statistics, from Matthew Renkey, Acting Program Manager: Questions for the Philippine Bureau of Agriculture Statistics Regarding Price Data in the Fisheries Statistics of the Philippines, dated June 23, 2011; and Letter to Fahmida Akhter, Deputy Director Department of Department of Agricultural Marketing from Matthew Renkey, Acting Program Manager: Questions for the Bangladeshi Department of Agricultural Marketing Regarding National Wholesale Price Data, dated June 23, 2011.

<sup>33</sup> See Memorandum to the File, from Javier Barrientos, Senior Case Analyst, Regarding Response to Questions for the Philippine Bureau of Agriculture Statistics Regarding Price Data in the Fisheries Statistics of the Philippines, dated July 15, 2011.

<sup>34</sup> See Memorandum to the File, from Alexis Polovina, Case Analyst, dated July 15, 2011.

<sup>35</sup> See VASEP’s First Surrogate Value Submission, dated May 10, 2011, at Exhibit 32A.

<sup>36</sup> See Pangasius Study at 1.

<sup>37</sup> Other than stating the report was compiled over 15 days based on farmer interviews and farm visits, there is no information regarding the data collection methods (*i.e.*, how the farms were selected, the number of farms selected, and who collected the data).

<sup>38</sup> See Pangasius Study at 28.

<sup>39</sup> See *Freshwater Crawfish Tail Meat from the People’s Republic of China: Notice of Final Results And Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 19174 (April 17, 2007) and accompanying Issues and Decision Memorandum at Comment 1, and *Silicon Metal* and accompanying Issues and Decision Memorandum at Comment 2.

<sup>40</sup> See Letter to Romeo S. Recide, Director, Bureau of Agriculture Statistics, from Matthew Renkey, Acting Program Manager: Questions for the Philippine Bureau of Agriculture Statistics Regarding Price Data in the Fisheries Statistics of the Philippines, dated June 23, 2011; and Letter to Fahmida Akhter, Deputy Director, Department of Agricultural Marketing from Matthew Renkey, Acting Program Manager: Questions for the Bangladeshi Department of Agricultural Marketing Regarding National Wholesale Price Data, dated June 23, 2011.

<sup>41</sup> See VASEP’s Letter to the Secretary of Commerce, Regarding VASEP’s First Surrogate Value Submission: 7th Administrative Review of Frozen Fish Fillets from the Socialist Republic of Vietnam, at Exhibits 13A and 13B, dated May 10, 2011.

<sup>42</sup> See Petitioner’s Letter to the Secretary of Commerce, Regarding Seventh Administrative Review of Certain Frozen Fish Fillets from Vietnam: Submission of Additional Rebuttal Information on DAM Price Data, at Exhibit 1, dated July 25, 2011.

official as it is not the DAM's practice to issue such letters to any member of the public."<sup>43</sup>

As a result of the uncertainty regarding public availability of the DAM data, we find that Bangladesh does not provide the best available information with respect to valuation of whole live fish for purposes of these preliminary results. Therefore, the FIGIS data and the *Fisheries Statistics* remain. When considering specificity to the input, as we have found in prior reviews, the *Fisheries Statistics* are specific to the species, *pangasius hypophthalmus*.<sup>44</sup> As noted above, the FIGIS data indicate specificity only to the genus level, *Pangasius*; however, the record also contains a 2005 World Wildlife Fund article indicating that Indonesia is the second largest producer of *pangasius* behind Vietnam, and that the majority of farmed *pangasius* is that of *Pangasianodon hypophthalmus*. With respect to broad market average, the FIGIS data indicate that the Indonesian *Pangasius* industry has grown in size every year since 2006, to 109,685 MT, while the survey size of the *Fisheries Statistics* now represents only 34.34 MT for 2009. While we note the FIGIS data only contain one data point for the whole country, this one data point represents a significant volume. Additionally, the observations the Department made in the previous reviews,<sup>45</sup> with respect to the *Fisheries Statistics*, and for that matter the DAM data, still remain, and we note these observations concerning the FIGIS data do not exist.

Based on the analysis above, we find that the FIGIS data represent a more reliable broad market average for purposes of valuing whole live fish. Therefore, for the preliminary results, the Department will select Indonesia as the primary surrogate country. We recognize, with respect to determining surrogate financial ratios, that we have no useable financial statements on the record at this time with respect to Indonesia. As Bangladesh satisfies the remaining criteria for selection of surrogate country and because the record contains numerous sources from Bangladesh, we find it a suitable secondary surrogate country. Thus, we intend to rely on financial statements from Bangladesh, the secondary surrogate country, for purposes of these preliminary results. The record contains three financial statements from Bangladesh, including two of which are from vertically integrated companies,

matching the production experience of the mandatory respondents.

We hereby invite parties to submit additional comments to be considered for the final results.

#### Affiliations and Collapsing

Section 771(33) of the Act provides that:

The following persons shall be considered to be 'affiliated' or 'affiliated persons':

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants;

(B) Any officer or director of an organization and such organization;

(C) Partners;

(D) Employer and employee;

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization;

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person;

(G) Any person who controls any other person and such other person.

Additionally, section 771(33) of the Act stipulates that: "For purposes of this paragraph, 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."

Finally, according to 19 CFR 351.401(f)(1) and (2), two or more companies may be treated as a single entity for antidumping duty purposes if: (1) The producers are affiliated, (2) the producers have production facilities for 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>46</sup>

#### Vinh Hoan

In the final results of the sixth antidumping duty administrative review, the Department determined that Vinh Hoan was affiliated with Vinh Hoan Feed 1 Company ("Vinh Hoan Feed"), Vinh Hoan USA, Van Duc Food Export Joint Company ("Van Duc"), and Van Duc Tien Giang ("VD TG"). The Department also determined that Vinh Hoan, Van Duc, and VD TG should be treated as a single entity. *See 6th AR Final*.<sup>47</sup> The Department did not

collapse Vinh Hoan Feed 1 Company ("Vinh Hoan Feed") with these other companies, however, because Vinh Hoan Feed lacked a critical capital component (freezing machines) in order to produce comparable merchandise. *Id.*

Based on evidence submitted by Vinh Hoan in this administrative review, the Department continues to find that Vinh Hoan is affiliated with Vinh Hoan Feed, Vinh Hoan USA, Van Duc, and VD TG, pursuant to section 771(33) of the Act.<sup>48</sup> The Department also preliminarily finds that Vinh Hoan, Van Duc, and VD TG, should be treated as a single entity for purposes of this administrative review.<sup>49</sup> All three companies have the ability to produce and/or export subject merchandise. Furthermore, the companies are under the common control of Ms. Truong and her family by virtue of ownership, common board members or managers. As such, there is significant potential for manipulation of price or production. The Department still determines, however, that Vinh Hoan Feed lacks the critical capital component (*i.e.*, freezing machines) in order to produce comparable merchandise.<sup>50</sup> Therefore, pursuant to 19 CFR 351.401(f)(1) and (2), the Department preliminarily finds that Vinh Hoan, Van Duc, and VD TG, but not Vinh Hoan Feed, should be treated as a single entity (collectively, the "Vinh Hoan Group") in these preliminary results.

#### QVD

In the final results of the fifth antidumping duty administrative review, the Department determined that QVD and QVD USA are affiliated pursuant to sections 771(33)(A), (B), (E), (F), and (G) of the Act.<sup>51</sup> The Department also determined that QVD, QVD DT, and Thuan Hung should be collapsed and treated as a single entity.<sup>52</sup> The Department preliminarily finds that QVD, QVD DT, and Thuan Hung are all under common control of the principal owner allowing for significant potential for price manipulation or production. Based on evidence submitted by QVD in this administrative review, the Department continues to find that QVD, QVD DT,

and Sixth New Shipper Review, 76 FR 15941 (March 22, 2011).

<sup>48</sup> See Vinh Hoan's Section A Response at 16–18, dated January 28, 2011.

<sup>49</sup> See 19 CFR 351.401(f)(1) and (2).

<sup>50</sup> See Vinh Hoan's Supplemental section A Response at 3, dated March 17, 2011.

<sup>51</sup> See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews*, 75 FR 12726 (March 17, 2010) ("5th AR Final").

<sup>52</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> See 6th AR and 09–10 NSR.

<sup>45</sup> See 6th AR at 9–14, and 09–10 NSR at 10–15.

<sup>46</sup> See 19 CFR 351.401(f)(1) and (2).

<sup>47</sup> See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Sixth Antidumping Duty Administrative Review*

and Thuan Hung should be collapsed and treated as a single entity and that QVD and QVD USA are affiliated pursuant to sections 771(33)(A), (B), (E), (F), and (G) of the Act. See QVD's Section A at 1.

#### Fair Value Comparisons

To determine whether sales of the subject merchandise made by Vinh Hoan and QVD to the United States were at prices below NV, we compared each company's export price ("EP") or constructed export price ("CEP"), where appropriate, to NV, as described below.

#### U.S. Price

##### A. Export Price

For Vinh Hoan's EP sales, we used the EP methodology, pursuant to section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation. To calculate EP, we deducted foreign inland freight, foreign cold storage, foreign brokerage and handling, foreign containerization, and international ocean freight from the starting price (or gross unit price), in accordance with section 772(c) of the Act.

##### B. Constructed Export Price

For Vinh Hoan's and QVD's CEP sales, we used the CEP methodology when the first sale to an unaffiliated purchaser occurred after importation of the merchandise into the United States. To calculate CEP, we made adjustments to the gross unit price, where applicable, for billing adjustments, rebates, foreign inland freight, international freight, foreign cold storage, foreign containerization, foreign brokerage and handling, U.S. marine insurance, U.S. inland freight, U.S. warehousing, U.S. inland insurance, other U.S. transportation expenses, and U.S. customs duties. In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States, including commissions, credit expenses, advertising expenses, indirect selling expenses, inventory carrying costs, and U.S. re-packing costs. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

Where movement expenses were provided by NME-service providers or paid for in NME currency, we valued these services using surrogate values from Descartes Carrier Rate Retrieval Database ("Descartes") Web site. See Surrogate Value Memo.

#### Normal Value

Section 773(c)(1) of the Act provides that, in the case of an NME, the

Department shall determine NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Because information on the record does not permit the calculation of NV using home-market prices, third-country prices, or constructed value and no party has argued otherwise, we calculated NV based on FOPs reported by Vinh Hoan and QVD pursuant to sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

#### Factor Valuation Methodology

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to value the FOPs, but when a producer sources an input from a ME country and pays for it in an ME currency, the Department may value the factor using the actual price paid for the input. During the POR, Vinh Hoan reported that it purchased certain inputs, and international freight, from an ME suppliers and paid for the inputs in a ME currency.<sup>53</sup> During the POR, QVD reported that it incurred international freight from a ME carrier and paid it a market economy currency. See QVD's Supplemental Section C at Exhibit 4, dated April 17, 2011. The Department has a rebuttable presumption that ME input prices are the best available information for valuing an input when the total volume of the input purchased from all ME sources during the period of investigation or review exceeds 33 percent of the total volume of the input purchased from all sources during the period. See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717–18 (October 19, 2006) ("*Antidumping Methodologies*").

In this case, unless case-specific facts provide adequate grounds to rebut the Department's presumption, the Department will use the weighted-average ME purchase price to value the input. Alternatively, when the volume of an NME firm's purchases of an input from ME suppliers during the period is below 33 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department

will weight-average the ME purchase price with an appropriate SV according to their respective shares of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption.<sup>54</sup> When a firm has made ME input purchases that may have been dumped or subsidized, are not *bona fide*, or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair determination of whether valid ME purchases meet the 33 percent threshold.<sup>55</sup>

As the basis for NV, Vinh Hoan and QVD provided FOPs used in each of the stages for producing frozen fish fillets. The Department's general policy, consistent with section 773(c)(1) of the Act, is to value the FOPs that a respondent uses to produce the subject merchandise.

To calculate NV, the Department valued Vinh Hoan's and QVD's reported per-unit factor quantities using publicly available Indonesian, Bangladeshi, and Philippine surrogate values. Indonesia is our primary surrogate country source from which to obtain data to value inputs, and when data were not available from Indonesia, we used Bangladeshi, and Philippine, sources. In selecting surrogate values, we considered the quality, specificity, and contemporaneity of the available values. As appropriate, we adjusted the value of material inputs to account for delivery costs. Specifically, we added surrogate freight costs to surrogate values using the reported distances from the Vietnam port to the Vietnam factory or from the domestic supplier to the factory, where appropriate. This adjustment is in accordance with the decision of the CAFC in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997). For those values not contemporaneous with the POR, we adjusted for inflation using data published in the International Monetary Fund's International Financial Statistics.

In accordance with the *OTCA 1988* legislative history, the Department continues to apply its long-standing practice of disregarding surrogate values if it has a reason to believe or suspect the source data may be subsidized.<sup>56</sup> In this regard, the Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand

<sup>54</sup> See *Antidumping Methodologies*.

<sup>55</sup> See *Antidumping Methodologies*.

<sup>56</sup> See *Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) ("OTCA 1988")* at 590.

<sup>53</sup> See Vinh Hoan's Section D, dated February 23, 2011, and Supplemental Section D, dated May 9, 2011.

because we have determined that these countries maintain broadly available, non-industry specific export subsidies.<sup>57</sup> Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea, and Thailand may have benefitted from these subsidies.

Additionally, we disregarded prices from NME countries. Finally, imports that were labeled as originating from an “unspecified” country were excluded 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. For further detail, see Surrogate Values Memo.

### Labor

Section 733(c) of the Act, provides that the Department will value the FOPs in NME cases using the best available information regarding the value of such factors in a ME country or countries considered to be appropriate by the administering authority. The Act requires that when valuing FOPs, the Department utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are (1) At a comparable level of economic development and (2) significant producers of comparable merchandise.<sup>58</sup>

Previously, the Department used regression-based wages that captured the worldwide relationship between per capita GNI and hourly manufacturing wages, pursuant to 19 CFR 351.408(c)(3), to value the respondent’s cost of labor. However, on May 14, 2010, the Court of Appeals for the Federal Circuit (“CAFC”), in *Dorbest Ltd. v. United States*, 604 F.3d 1363, 1372 (Fed. Cir. 2010) (“*Dorbest*”), invalidated 19 CFR 351.408(c)(3). As a consequence of the CAFC’s ruling in

*Dorbest*, the Department no longer relies on the regression-based wage rate methodology described in its regulations. On February 18, 2011, the Department published in the **Federal Register** a request for public comment on the interim methodology, and the data sources.<sup>59</sup>

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings.<sup>60</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: Labor Cost in Manufacturing, from the International Labor Organization (“ILO”) Yearbook of Labor Statistics (“Yearbook”).

In this review, however, the Department has selected Indonesia as the surrogate country. Because Indonesia does not report labor data to the ILO under Chapter 6A, for these preliminary results, we are unable to use ILO’s Chapter 6A data to value the Respondents’ labor wage and instead will use industry-specific wage rate using earnings or wage data reported under ILO’s Chapter 5B. The Department finds the two-digit description under ISIC–Revision 3 (“Manufacture of Food Products and Beverages”) to be the best available information on the record because it is specific to the industry being examined, and is therefore derived from industries that produce comparable merchandise. Accordingly, relying on Chapter 5B of the Yearbook, the Department calculated the labor input using labor data reported by Indonesia to the ILO under Sub-Classification 15 of the ISIC–Revision 3 standard, in accordance with Section 773(c)(4) of the Act. For these preliminary results, the calculated wage rate is 4,298.06 Indonesian Rupiahs per hour. A more detailed description of the wage rate calculation methodology is provided in the Surrogate Value Memo.

### 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.

### Preliminary Results of the Review

As a result of our review, we preliminarily find that the following margins exist for the period August 1, 2009, through July 31, 2010.

Manufacturer/exporter	Weighted-average margin (dollars per kilogram)
(1) Vinh Hoan <sup>61</sup> .....	0.00
(2) QVD .....	0.56
(3) Anvifish Co., Ltd. ....	0.56
(4) Anvifish JSC .....	0.56
(5) Acomfish .....	0.56
(6) Bien Dong Seafood .....	0.56
(7) Binh An .....	0.56
(8) CASEAMEX .....	0.56
(9) ESS LLC .....	0.56
(10) East Sea Seafoods Joint Venture Co., Ltd. ....	0.56
(11) Hiep Thanh .....	0.56
(12) South Vina .....	0.56
(13) Vinh Quang .....	0.56
Vietnam-Wide Rate .....	2.11

### Public Comment

The Department will disclose to parties of this proceeding the calculations performed in reaching the preliminary results within five days of the date of announcement of the preliminary results.<sup>62</sup> An interested party may request a hearing within 30 days of publication of the preliminary results.<sup>63</sup> Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, within five days after the time limit for filing case briefs.<sup>64</sup> Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments,

<sup>57</sup> See, e.g., *Expedited Sunset Review of the Countervailing Duty Order on Carbazole Violet Pigment 23 from India*, 75 FR 13257 (March 19, 2010) and accompanying Issues and Decision Memorandum at 4–5; *Expedited Sunset Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia*, 70 FR 45692 (August 8, 2005) and accompanying Issues and Decision Memorandum at 4; *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; and *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Countervailing Duty Determination*, 66 FR 50410 (October 3, 2001) and accompanying Issues and Decision Memorandum at 23.

<sup>58</sup> See section 773(c)(4) of the Act.

<sup>59</sup> See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, Request for Comment*, 76 FR 9544 (February 18, 2011).

<sup>60</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>61</sup> This rate is applicable to the Vinh Hoan Group which includes Vinh Hoan, Van Duc, and VD TG.

<sup>62</sup> See 19 CFR 351.224(b).

<sup>63</sup> See 19 CFR 351.310(c).

<sup>64</sup> See 19 CFR 351.309(c)(1)(ii) and 19 CFR 351.309(d).



within 120 days of publication of the preliminary results. The assessment of antidumping duties on entries of merchandise covered by this review and future deposits of estimated duties shall be based on the final results of this review.

#### Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. In accordance with 19 CFR 351.212(b)(1), we are calculating importer- (or customer-) specific assessment rates for the merchandise subject to this review. Where the respondent has reported reliable entered values, we calculate importer- (or customer-) specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer). Where an importer- (or customer-) specific *ad valorem* rate is greater than *de minimis*, we will apply the assessment rate to the entered value of the importers'/ customers' entries during the POR, pursuant to 19 CFR 351.212(b)(1).

Where we do not have entered values for all U.S. sales to a particular importer/customer, we calculate a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to that importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer).<sup>65</sup> To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer- (or customer-) specific *ad valorem* ratios based on the estimated entered value. Where an importer- (or customer-) specific *ad valorem* rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.<sup>66</sup>

#### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section

751(a)(2)(C) of the Act: (1) For the exporters listed above the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis*, the cash deposit will be zero); (2) for previously investigated or reviewed Vietnam and non-Vietnam exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all Vietnam exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the Vietnam-wide rate of \$2.11 per kilogram; and (4) for all non-Vietnam exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Vietnam exporters that supplied that non-Vietnam exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

#### Notification to Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 31, 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2011-23154 Filed 9-8-11; 8:45 am]

**BILLING CODE 3510-DS-P**

#### DEPARTMENT OF COMMERCE

##### National Institute of Standards and Technology

##### National Institute of Standards and Technology; Performance Review Board Membership

The National Institute of Standards and Technology Performance Review Board (NIST PRB) reviews performance appraisals, agreements, and recommended actions pertaining to employees in the Senior Executive Service and ST-3104 employees. The Board makes recommendations to the

appropriate appointing authority concerning such matters so as to ensure the fair and equitable treatment of these individuals.

This notice lists the membership of the NIST PRB and supersedes the list published in *Federal Register* Vol. 75, No. 95, page 27708, on May 18, 2010.

Delwin Brockett (C), Chief Information Officer, National Institute of Standards & Technology, Gaithersburg, MD 20899, *Appointment Expires: 12/31/13*.

Robert Dimeo (C), Director, NIST Center for Neutron Research, National Institute of Standards & Technology, Gaithersburg, MD 20899, *Appointment Expires: 12/31/12*.

Stella Fiotes (C) (alternate), Chief Facilities Management Officer, National Institute of Standards & Technology, Gaithersburg, MD 20899, *Appointment Expires: 12/31/12*.

Ellen Herbst (C), Senior Advisor for Policy and Program Integration, Office of the Deputy Secretary, Department of Commerce, Washington, DC 20230, *Appointment Expires: 12/31/2012*.

Nancy Potok (NC), Deputy Under Secretary for Economic Affairs, Economics and Statistics Administration, Department of Commerce, Washington, DC 20230, *Appointment Expires: 12/31/2012*.

Sivaraj Shyam-Sunder (C) (alternate), Director, Engineering Laboratory, National Institute of Standards & Technology, Gaithersburg, MD 20899, *Appointment Expires: 12/31/12*.

Dated: September 1, 2011.

**Willie E. May,**

*Associate Director for Laboratory Programs.*

[FR Doc. 2011-23117 Filed 9-8-11; 8:45 am]

**BILLING CODE 3510-13-P**

#### DEPARTMENT OF COMMERCE

##### United States Patent and Trademark Office

##### Recording Assignments

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before November 8, 2011.

<sup>65</sup> See 19 CFR 351.212(b)(1).

<sup>66</sup> See 19 CFR 351.106(c)(2).