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. 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 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. 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.

Def end 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”).1 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”)2 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.3 The Department received review requests for 26 companies from Petitioners4 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.5 The Department initiated this review with respect to 26 companies.6

2 The Department is treating Vinh Hoan, Van Duc Food Export Joint Company (“Van Duc”) and Van Duc Tien Giang (“VD TC”) 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.
3 See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review, 75 FR 45094 (August 2, 2010).
4 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”)
6 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.7


On March 29, 2011, and May 19, 2011, the Department extended the deadlines for parties to file surrogate country comments and surrogate value data.8 Between May 10, 2011, and July 29, 2011, the Department received surrogate country and value comments from the following companies:

- (26) Vinh Hoan and QVD's revocation requests.
- The Department is not considering Vinh Hoan and QVD's revocation requests.

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. In this case, we made available to the companies who were not selected the separate rates 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, 2011.9 On August 4, 2011, the Department partially rescinded the administrative review with respect to five companies.10 Therefore, 19 companies remain in this review: (1) Anvifish Co., Ltd.; (2) Anvifish JSC; (3) Acomfish; (4) Bien Dong Seafood Co., Ltd.; (5) Bien Dong Seafood Joint Stock Co. ("Binh An"); (6) Cadovimex II; (7) CL–Fish; (8) ESS LLC; (9) East Sea Seafoods Joint Venture Co., Ltd.; (10) Heep Thanh; (11) IDI; (12) NTSF; (13) QVD; (14) QVD DT; (15) South Vina; (16) THIMACO; (17) Thuan Hung; (18) Vinh Hoan; and (19) Vinh Quang.

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 for de facto control, both in law (de jure) and in fact (de facto).

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.16 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 of 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.17

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 managers 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 because they meet 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.18 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)(3)(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.19 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 assigned a mandatory separate rate to QVD.

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.


17 See Silicon Carbide, 59 FR at 22587; Sparklers, 56 FR at 20588; 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).

18 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.

19 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 “baså” 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”). 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. 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 ("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.

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. 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. 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”).

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. 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, 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. 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.
Bangladesh

VASEP placed the Bangladeshi Department of Agriculture Marketing, Ministry of Agriculture, pangas price data ("DAM data") on the record. 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. 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. 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. We receive a response from the Philippines BAS, which we placed on the record.

Indonesia

The Department placed Indonesian price and quantity data from the United Nations Food and Agriculture Organization’s Fisheries Global Information System ("FIGIS data"), on the record.

India

VASEP placed the Present Status of the Pangasius, Pangasianodon-Hypophthalmus Farming in Andhra Pradesh, India ("Pangasius Study"), on the record.

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” 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. Furthermore, the study appears to be based on estimates for one Indian state. 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. 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. 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 anyone of the public upon request, free of cost.” Regarding the DAM data on the record, according to the affidavit submitted by Petitioners, the DAM officials explained that “* * * DAM does not, as a matter of course, provide the pangas wholesale price data to members of the public * * * ”. Regarding the DAM data on the record, according to the affidavit submitted by Petitioners, the DAM officials explained that “* * * DAM does not, as a matter of course, provide the pangas wholesale price data to members of the public * * * ”.


See VASEP’s First Surrogate Value Submission, dated May 10, 2011, at Exhibit 13A.

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.

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


See Memorandum to the File, from Alexis Polovina, Case Analyst, dated July 15, 2011.
official as it is not the DAM’s practice to issue such letters to any member of the public.”

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.

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, 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 produce comparable merchandise, and (3) there is a significant potential for manipulation of price or production.

Vinhh 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 TC”). The Department also determined that Vinh Hoan, Van Duc, and VD TG should be treated as a single entity. See 6th AR Final. 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.

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. 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. 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. The Department also determined that QVD, QVD DT, and Thuan Hung should be collapsed and treated as a single entity. 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).

See Vinh Hoan’s Section A Response at 16–18, dated January 28, 2011.
48 See 19 CFR 351.401(f)(1) and (2).
49 See Vinh Hoan’s Supplemental section A Response at 3, dated March 17, 2011.
51 Id.
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. 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.54 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.55

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.56 In this regard, the Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand.

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54 See Antidumping Methodologies.

55 See Antidumping Methodologies.

because we have determined that these countries maintain broadly available, non-industry specific export subsidies.\textsuperscript{57} 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.\textsuperscript{58}

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 \textsuperscript{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.\textsuperscript{59}

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings.\textsuperscript{60} In \textit{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

\begin{table}
\centering
\begin{tabular}{|c|c|}
\hline
Manufacturer/exporter & Weighted-average margin (dollars per kilogram) \\
\hline
(1) Vinh Hoan & 0.00 \\
(2) OVD & 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 Food & 0.56 \\
(11) Hiap Thanh & 0.56 \\
(12) South Vina & 0.56 \\
(13) Vinh Quang & 0.56 \\
Vietnam-Wide Rate & 2.11 \\
\hline
\end{tabular}
\caption{Preliminary Results of the Review}
\end{table}

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.\textsuperscript{62} An interested party may request a hearing within 30 days of publication of the preliminary results.\textsuperscript{63} 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.\textsuperscript{64} 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,
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 imports/ customers’ entries during the POR, pursuant to 19 CFR 351.212(b)(1).

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.65

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.

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: 12/31/12.

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.

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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.