

2. The Commission will sit *en banc* in this proceeding.

3. Notices of intervention are due no later than December 30, 2011.

4. A prehearing conference is scheduled for January 4, 2012, at 10 a.m., in the Commission's hearing room.

5. Pursuant to 39 U.S.C. 505 and 3661(c), the Commission appoints Christopher Laver to represent the interests of the general public in this proceeding.

6. The Secretary shall arrange for publication of this notice in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results of the New Shipper Review

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

SUMMARY: The Department of Commerce ("Department") is conducting a new shipper review ("NSR") of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam ("Vietnam"). The Department preliminarily determines that Thuan An Production Trading & Services Co., Ltd. ("TAFISHCO") did not sell subject merchandise at less than normal value ("NV"). Upon completion of the final results of this NSR, the Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the period of review ("POR"), August 1, 2010, through January 31, 2011, for which the importer-specific assessment rates are above *de minimis*.

DATES: *Effective Date:* December 13, 2011.

FOR FURTHER INFORMATION CONTACT: Emeka Chukwudebe, 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) 482-0219.

SUPPLEMENTARY INFORMATION:

Case History

On August 12, 2003, the Department published in the **Federal Register** the antidumping duty order on certain frozen fish fillets from Vietnam.¹ On February 28, 2011, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended ("Act"), the Department received a properly filed NSR request from TAFISHCO. On March 31, 2011, the Department published in the **Federal Register** a notice of initiation for the NSR of certain frozen fish fillets from Vietnam covering the period August 1, 2010, through January 31, 2011.² Between April 5, 2011, and October 5, 2011, TAFISHCO filed responses to the Department's original and supplemental antidumping duty questionnaires. On June 23, 2011, the Department extended the deadline for parties to submit surrogate country selection comments and surrogate value ("SV") data.³ On August 5, 2011, the Department extended the deadline for parties to file rebuttal surrogate country and SV comments.⁴ Between July 22, 2011, and August 12, 2011, the Department received surrogate country and SV comments from interested parties. On September 27, 2011, the Department published a notice extending the time period for issuing the preliminary results of this NSR to November 4, 2011.⁵ On November 11, 2011, the Department published a second notice extending the time period for issuing the preliminary results of this NSR to December 5, 2011.

Period of Review

The POR is August 1, 2010, through January 31, 2011.

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

² See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Review*, 76 FR 17837 (March 31, 2011).

³ See Memorandum for All Interested Parties, through Matthew Renkey, Acting Program Manager Import Administration, from Emeka Chukwudebe, Case Analyst, Import Administration, Re: Antidumping Duty New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Time Request to Submit Surrogate Values and Surrogate Country Selection Comments, dated June 23, 2011.

⁴ See Memorandum for All Interested Parties, from Emeka Chukwudebe, Case Analyst, Import Administration, Re: Antidumping Duty New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Time to Submit Rebuttal Surrogate Country and Surrogate Value Comments, dated August 5, 2011.

⁵ See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Time Limit for Preliminary Results of the New Shipper Review*, 76 FR 59658 (September 27, 2011).

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*), 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-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").⁶ 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 a non-market economy ("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. See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 11349 (March 17, 2009). None of the

⁶ 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.

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.

Separate Rate Determination

In proceedings involving NME countries, there is a rebuttable presumption that all companies within the country 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 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.

In this review, TAFISHCO submitted a complete response to the separate rates section of the Department's NME questionnaire. The evidence submitted by TAFISHCO includes government laws and regulations on corporate ownership, business licenses, and narrative information regarding each company's operations and selection of management. The evidence provided by TAFISHCO supports a finding of a *de jure* absence of government control over each of its export activities. We have no information in this proceeding that would cause us to reconsider this determination. Thus, we believe that the evidence on the record supports a preliminary finding of an absence of *de jure* government control 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 respondent.

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. 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).

In its questionnaire response, TAFISHCO submitted evidence indicating an absence of *de facto* government control over its export activities. Specifically, this evidence indicates that: (1) TAFISHCO sets its own export prices independent of the government and without the approval of a government authority; (2) TAFISHCO retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) TAFISHCO's sales manager, vice director, and managing director are authorized to negotiate and bind the company in an agreement; (4) the board of directors select senior management and the factory and operations managers appoint the other management team on a less formal basis; and (5) there is no restriction on any of the company's use of export revenues. Therefore, the Department preliminarily finds that TAFISHCO has established *prima facie* that it qualifies for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers*.

Bona Fide Sales Analysis

Consistent with the Department's practice, we investigated the *bona fide* nature of the sales made by TAFISHCO in this NSR. We found that the sale made by TAFISHCO was made on a *bona fide* basis. Based on our investigation into the *bona fide* nature of the sale, the questionnaire responses submitted by TAFISHCO, and the company's eligibility for a separate rate (see Separate Rate Determination section above), we preliminarily determine that TAFISHCO has met the requirements to qualify as a new shipper during this POR. Therefore, for the purposes of these preliminary results of review, we are treating

TAFISHCO's sale of subject merchandise to the United States as an appropriate transaction for this NSR.⁷

Surrogate Country and Surrogate Values

As stated above, between July 22, 2011, and August 12, 2011, the Department received surrogate country and SV comments from interested parties.

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 factors of production ("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, TAFISHCO argues 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.⁸ Accordingly, unless we find that all of the countries determined to be equally economically comparable are not significant producers of comparable merchandise, do not provide a reliable source of publicly available surrogate data or are unsuitable for use for other reasons, we will rely on data from one of these countries. 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

⁷ For a more detailed discussion of this issue, see Memorandum to the File, From Emeka Chukwudebe, Case Analyst, Office 9, Through Matthew Renkey, Acting Program Manager, Office 9: Antidumping Duty New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Bona Fide Nature of the Sale Under Review for Thuan An Production Trading & Services Co., Ltd. ("TAFISHCO"), dated November 4, 2011.

⁸ See Memorandum from Carole Showers, Director, Office of Policy, to Matthew Renkey, Acting 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 May 9, 2011 ("Surrogate Country List").

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.⁹ 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 \$2,010.¹⁰ The Department is satisfied that they are equally comparable in terms of economic development and serve as an adequate group to consider when gathering SV 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”).¹¹

As we have stated in prior new shipper reviews, 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.¹² 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,¹³ 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.¹⁴ 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 SV data from Bangladesh, the Philippines, Indonesia, and India.

Bangladesh

TAFISHCO placed the Bangladeshi Department of Agriculture Marketing, Ministry of Agriculture, pangas price data (“DAM data”) on the record, which includes monthly price data for 2008, 2009, and 2010.¹⁵ The Department issued two letters to the Bangladeshi Department of Agriculture Marketing requesting, among other things, more information regarding the publicly availability of the DAM data.¹⁶ 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.¹⁷ The Department issued a letter to the Philippines Bureau of Agricultural Statistics (“BAS”), requesting among other things, more information regarding the public availability of the *Fisheries Statistics*.¹⁸ We received a response from the Philippines BAS, which we placed on the record.¹⁹

Indonesia

The Department placed on the record 2009 annual Indonesian price and quantity data from the United Nations Food and Agriculture Organization’s Fisheries Global Information System (“FIGIS data”).²⁰

India

TAFISHCO placed the Present Status of the Pangasius, *Pangasianodon Hypophthalmus* Farming in Andhra Pradesh, India (“Pangasius Study”), on the record.²¹

Analysis

When evaluating SV data, the Department considers several factors including whether the SV is publicly available, is contemporaneous with the POR, represents a broad-market average, is from an approved surrogate country, is tax and duty-exclusive, and is 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”²² 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

⁹ 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 (“I&D Memo”) at Comment 4.

¹⁰ See Surrogate Country List.

¹¹ See *Fujian Lianfu Forestry Co., Ltd. v. United States*, 638 F. Supp. 2d 1325 (Ct. Int’l Trade 2009).

¹² 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 in *Certain Magnesia Carbon Bricks From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances*, 75 FR 45468 (August 2, 2010).

¹³ See Surrogate Country List.

¹⁴ See Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004).

¹⁵ See TAFISHCO’s First Surrogate Value Submission, dated July 29, 2011, at Exhibit 13A.

¹⁶ See Letter to Fahmida Akhter, Deputy Director of Market Intelligence and Statistics, 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; and Letter to Siddiqur Rahman, Director of Department of Agricultural Marketing, from James C. Doyle, Office Director: Questions for the Bangladeshi Department of Agricultural Marketing Regarding National Wholesale Price Data, dated September 13, 2011.

¹⁷ See Petitioners’ Surrogate Country Comments and Submission of Proposed Factor Values, dated July 29, 2011, at Exhibit 9.

¹⁸ 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.

¹⁹ 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.

²⁰ See Memorandum to the File, from Alexis Polovina, Case Analyst, dated July 15, 2011.

²¹ See TAFISHCO’s First Surrogate Value Submission, dated July 29, 2011, at Exhibit 32A.

²² See Pangasius Study at 1.

or if the study represents a broad market average.²³ Furthermore, the study appears to be based on estimates for one Indian state.²⁴ Therefore, we find that the Pangasius Study is not the most suitable source on the record for purposes of these preliminary results.

TAFISHCO claims that the Philippines' *Pangasius* industries receive government assistance, in the forms of techno-farms and education, and should, therefore, be disregarded as a surrogate country. 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.²⁵ In this case, as we have found in prior reviews, there is no record evidence that the subsidies alleged by TAFISHCO 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 BAS, requesting among other things, more information regarding the public availability of the DAM data and regarding the pricing data in the *Fisheries Statistics*.²⁶ While we received

a response from the Philippines BAS, we have yet to receive a response from the Bangladeshi Department of Agriculture Marketing, and are therefore, at this time, unable to independently ascertain and confirm the public availability of the DAM data.

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 Hypothalmus*.²⁷ 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 hypothalamus*. 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 clearly explained in the I&D Memos,²⁸ still remain, and we note these observations do not apply to the FIGIS data. Finally, with respect to contemporaneity, given that the yearly data for 2009 is not so far removed from the POR for this NSR, we do not find contemporaneity to be an issue in selecting Indonesia as the primary surrogate country in lieu of either the Philippines or Bangladesh.

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 both Bangladesh and the Philippines satisfy the remaining criteria for selection of surrogate country and because the record contains more numerous sources from both Bangladesh and the Philippines, we find them to be suitable secondary surrogate countries. In particular, we intend to rely on financial statements from Bangladesh for purposes of these preliminary results. The record contains three financial statements from Bangladesh, including one from a processing company (Gemini Sea Food) that matches the production experience of TAFISHCO. Thus, for purposes of these preliminary results, we intend to use the financial statements from Gemini Sea Food to calculate the financial ratios.

We hereby invite parties to submit additional comments regarding surrogate country selection to be considered for the final results.²⁹

Fair Value Comparisons

To determine whether sales of the subject merchandise made by TAFISHCO to the United States were at prices below NV, we compared the company's export price ("EP") to its NV, as described below.

U.S. Price

For TAFISHCO's EP sale, we used the EP methodology, pursuant to section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made

²³ 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).

²⁴ See Pangasius Study at 28.

²⁵ 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 I&D Memo at Comment 1; See also *Silicon Metal from the People's Republic of China: Notice of Final Results of 2005/2006 New Shipper Reviews*, 72 FR 58641 (October 16, 2007) and accompanying I&D Memo at Comment 2.

²⁶ 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; 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, and; Letter to Siddiqui Rahman, Director of Department of Agricultural Marketing, from James C. Doyle, Office Director: Questions for the Bangladeshi Department of Agricultural Marketing Regarding National Wholesale Price Data, dated September 13, 2011.

²⁷ See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Sixth Antidumping Duty Administrative Review and Sixth New Shipper Review*, 76 FR 15941 (March 22, 2011), and accompanying I&D Memo ("6th AR Final"). See also, *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), and accompanying I&D Memo ("09-10 NSR Final").

²⁸ For complete details regarding the Department's observations, see *6th AR Final I&D Memo* at 9-14, and *09-10 NSR Final I&D Memo* at 10-15.

²⁹ Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, in accordance with 19 CFR 351.301(c)(1), for the final results of this new shipper review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). See *Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007) and accompanying I&D Memo at Comment 2. Additionally, for each piece of factual information submitted with surrogate value rebuttal comments, the interested party must provide a written explanation of what information that is already on the record of the ongoing proceeding that the factual information is rebutting, clarifying, or correcting.

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.

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 FOP reported by TAFISHCO pursuant to sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

Factor Valuation

In accordance with section 773(c) of the Act, the Department calculated NV based on FOPs reported by TAFISHCO for the POR. The Department valued the processing FOPs using publicly available Indonesian and Bangladeshi SVs. To calculate NV, the Department valued TAFISHCO's reported per-unit factor quantities using publicly available Indonesian, Bangladeshi, and Indian SVs. 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 Indian sources. In selecting SVs, 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 SVs 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 SVs if it has a

reason to believe or suspect the source data may be subsidized.³⁰ In this regard, the Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies.³¹ 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 Memorandum to The File, through Matthew Renkey, Acting Program Manager, Import Administration, from Emeka Chukwudebe, Case Analyst, Import Administration, Re: Antidumping New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results, dated December 5, 2011 ("Surrogate Values Memo").

Labor

Section 773(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

³⁰ 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.

³¹ 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 I&D Memo 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 I&D Memo 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 I&D Memo 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 I&D Memo at 23.

a comparable level of economic development and (2) significant producers of comparable merchandise.³²

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). 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.³³

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings.³⁴ 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 TAFISHCO's 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

³² See section 773(c)(4) of the Act.

³³ See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, Request for Comment*, 76 FR 9544 (February 18, 2011).

³⁴ See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) ("*Labor Methodologies*").

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 4,568.71 Indonesian Rupiahs per hour. A more detailed description of the

wage rate calculation methodology is provided in the Surrogate Values 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

The Department preliminarily finds that the following margin exists for the period August 1, 2010, to January 31, 2011.

Exporter	Producer	Weighted-average margin (dollars per kilogram)
Thuan An Production Trading & Services Co., Ltd.	Thuan An Production Trading & Services Co., Ltd.	0.00

Public Comments

The Department intends to disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of these preliminary results.³⁵ If a hearing is requested, the Department will announce the hearing schedule at a later date. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of the preliminary results of review.³⁶ Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after the time limit for filing the case briefs.³⁷ The Department intends to issue the final results of this new shipper review, which will include the results of its analysis of issues raised in all comments, and at a hearing, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the final results, pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries on a per-unit basis. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. If these preliminary results are adopted in our final results of review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR

351.212(b)(1), we will calculate importer-specific (or customer) per-unit duty assessment rates. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis*.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of subject merchandise from TAFISHCO 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 subject merchandise produced and exported by TAFISHCO, the cash deposit rate will be \$0.00/Kg.; (2) for subject merchandise exported by TAFISHCO but not manufactured by TAFISHCO, the cash deposit rate will continue to be the Vietnam-wide rate (*i.e.*, \$2.11 per kilogram); and (3) for subject merchandise manufactured by TAFISHCO, but exported by any other party, the cash deposit rate will be the rate applicable to the exporter. If the cash deposit rate calculated in the final results is zero or *de minimis*, no cash deposit will be required for those specific producer-exporter combinations. These cash 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(b) and 777(i)(1) of the Act.

Dated: December 5, 2011.

Kim Glas,

Deputy Assistant Secretary for Textiles and Apparel.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA860

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for scientific research permit 16608 and request for comment.

SUMMARY: Notice is hereby given that NMFS has received an application for scientific research from the U.S. Bureau of Reclamation (USBR) in Sacramento, CA. This document serves to notify the public of the availability of the permit application for review and comment before a final approval or disapproval is made by NMFS.

DATES: Written comments on the permit application must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific Standard Time on January 12, 2012.

ADDRESSES: Written comments on the modification request should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the request. Comments will not be accepted if submitted via email or the Internet. The applications and related documents

³⁵ See 19 CFR 351.310(c).

³⁶ See 19 CFR 351.309(c); Parties submitting written comments must submit them pursuant to the Department's e-filing regulations. See <https://iaaccess.trade.gov/help/IA%20ACCESS%20User%20Guide.pdf>.

³⁷ See 19 CFR 351.309(d).