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UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-552-801
Administrative Review
POR: 8/1/2021 – 7/31/2022
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March 5, 2024

MEMORANDUM TO: Ryan Majerus
Deputy Assistant Secretary
for Policy and Negotiations,
performing the non-exclusive functions and duties
of the Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam; 2021-2022

I. SUMMARY

We analyzed the comments filed by interested parties in the administrative review of the antidumping duty (AD) order on certain frozen fish fillets (fish fillets) from the Socialist Republic of Vietnam (Vietnam) covering the period of review (POR) August 1, 2021, through July 31, 2022. As a result of our analysis, we made changes to the margin calculations for the final results. Additionally, Commerce is issuing a final decision regarding separate rate eligibility for certain companies, and we are rescinding the review with respect to 12 companies and the Vietnam-wide entity.

We recommend that you approve the positions described in the "Discussions of the Issues" section of this memorandum. Below are the issues for which we received comments from interested parties.

Comment 1: Standing of Luscious Seafoods LLC (Luscious Seafoods) to Request a Review
Comment 2: Whether to Apply Facts Available with Adverse Inferences (AFA) to Can Tho Import Export Seafood Joint Stock Company (CASEAMEX)
Comment 3: Whether to Deny CASEAMEX's By-product Offset Claim
Comment 4: Hung Vuong Corporation (HVC)'s Separate Rate Implementation
Comment 5: Surrogate Financial Ratios
Comment 6: Surrogate Value (SV) for Fish Skin
Comment 7: Rescission of Review for Certain Exporters

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II. BACKGROUND

On September 7, 2023, the U.S. Department of Commerce (Commerce) published the *Preliminary Results* of this administrative review and invited interested parties to comment.[1] From October 19, 2023, through October 27, 2023, Commerce verified the questionnaire responses of Vinh Hoan Corporation (Vinh Hoan), one of the two mandatory respondents in this review, in Vietnam.[2]

On December 11, 2023, Commerce extended the deadline for issuance of these final results to March 6, 2024.[3] On December 29, 2023, Commerce requested revised databases from Vinh Hoan to address certain issues resulting from the verification process,[4] which Vinh Hoan timely submitted.[5]

On January 3, 2024, Luscious Seafoods; HVC;[6] the petitioners;[7] and Vinh Hoan/Can Tho Import Export Seafood Joint Stock Company (CASEAMEX)/the Vietnam Association of Seafood Exporters and Producers (VASEP) submitted case briefs.[8] On January 16 and January 17, 2024, IDI International Development and Investment Corporation (IDI), CASEAMEX, Bien Dong

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[1] *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, and Notice of Intent to Rescind, in Part; 2021-2022*, 88 FR 61525 (September 7, 2023) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, "Verification of the Questionnaire Responses of Vinh Hoan Corporation in the Antidumping Duty Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam," dated December 19, 2023 (Verification Report).

[3] *See* Memorandum, "Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated December 11, 2023.

[4] *See* Commerce's Letter, "Request for Revised U.S. Sales Listings and Factors of Production Databases Following Verification," dated December 29, 2023; *see also* Verification Report.

[5] *See* Vinh Hoan's Letter, "Vinh Hoan Corporation - Revised U.S. Sales and FOP Databases," dated January 5, 2024.

[6] HVC is part of a single entity comprised of the following individual companies: (1) An Giang Fisheries Import and Export Joint Stock Company (also known as Agifish, An Giang Fisheries Import and Export, An Giang Fisheries Import & Export Joint Stock Company); (2) Asia Pangasius Company Limited (also known as ASIA); (3) Hung Vuong Ben Tre Seafood Processing Company Limited (also known as Ben Tre, HVBT, HVBT Seafood Processing VBT, or HVBT Seafood Processing); (4) Europe Joint Stock Company (also known as Europe JSC or EJS CO.); (5) Hung Vuong Corporation (also known as HVC, HV Corp. or Hung Vuong Joint Stock Company); (6) Hung Vuong-Sa Dec Co., Ltd. (also known as Hung Vuong Sa Dec Company Limited); (7) Hung Vuong-Vinh Long Co. Ltd. (also known as Hung Vuong Vinh Long Company Limited); and (8) Hung Vuong Mascato Company Limited. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Review; 2011–2012,* 79 FR 19053 (April 7, 2014) (*Vietnam Fish 11-12*), and accompanying Issues and Decision Memorandum (IDM) at 3.

[7] The petitioners are the Catfish Farmers of America and individual U.S. catfish processors America's Catch, Inc., Alabama Catfish, LLC d/b/a Harvest Select Catfish, Inc., Consolidated Catfish Companies, LLC d/b/a Country Select Catfish, Delta Pride Catfish, Inc., Guidry's Catfish, Inc., Heartland Catfish Company, Magnolia Processing, Inc. d/b/a Pride of the Pond, and Simmons Farm Raised Catfish, Inc.

[8] *See* Luscious Seafoods' Letter, "Case Brief," dated January 3, 2024 (Luscious Seafoods Case Brief); HVC's Letter, "Hung Vuong Group Case Brief," dated January 3, 2024 (HVC Case Brief); Petitioners' Letter, "Case Brief," dated January 3, 2024 (Petitioners Case Brief); and Vinh Hoan, CASEAMEX, and VASEP's Letter, "Case Brief," dated January 3, 2024 (Vinh Hoan/CASEAMEX/VASEP Case Brief).

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Seafood Co., Ltd. (Bien Dong)/NTSF Seafoods Joint Stock Company (NTSF), HVC, and the petitioners submitted rebuttal briefs.[9] On February 12, 2024, Commerce held a public hearing.[10]

We conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

III. SCOPE OF THE ORDER

The product covered by the order is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius bocourti, Pangasius hypophthalmus* (also known as *Pangasius pangasius*), and *Pangasius micronemus*.

Frozen fish fillets are lengthwise cuts of whole fish. The fillet products covered by the scope include boneless fillets with the belly flap intact (regular fillets), boneless fillets with the belly flap removed (shank fillets), and 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" or "tra" fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under subheading 0304.62.0020 (Frozen fish fillets of the genus *Pangasius*, including basa and tra), and may enter under subheadings 0305.59.0000, 1604.19.2100, 1604.19.3100, 1604.19.4100, 1604.19.5100, 1604.19.6100, and 1604.19.8100 of the Harmonized Tariff Schedule of the United States (HTSUS).

The order covers all frozen fish fillets meeting the above specifications, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

IV. CHANGES SINCE THE *PRELIMINARY RESULTS*

Based on our verification findings, and our review and analysis of the comments received from the interested parties, we made changes to our margin calculations:

- We have adjusted the surrogate financial ratios by excluding certain income and expenses from the ratio calculations. *See* Comment 5B.

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[9] *See* IDI's Letter, "Rebuttal of I.D.I International Development and Investment Corporation," dated January 16, 2024; CASEAMEX's Letter, "Rebuttal Brief," dated January 16, 2024 (CASEAMEX Rebuttal Brief); Bien Dong and NTSF's Letter, "Rebuttal Brief," dated January 16, 2024 (Bien Dong/NTSF Rebuttal Brief); HVC's Letter, "Hung Vuong Group Rebuttal Brief," dated January 16, 2024 (HVC Rebuttal Brief); and Petitioners' Letter, "Rebuttal Brief," dated January 17, 2024 (Petitioners Rebuttal Brief).

[10] *See* Hearing Transcript, "Public Hearing in the Matter of: the Administrative Review of the Antidumping Order on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam," dated February 12, 2024.

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- We are excluding fresh broken meat and fresh fish waste from CASEAMEX's by-product offset. *See* Comment 3.
- We are modifying CASEAMEX's farm labor hour coefficient to account for the difference between reported amount of farm labor and submitted primary documents. *See* Comment 2.
- We are correcting the factor of production (FOP) for fish skin, a by-product, for Vinh Hoan by using the correct SV for fish skin. *See* Comment 6.
- We adjusted Vinh Hoan's domestic inland freight FOP pursuant to findings at verification. *See* Verification Report.

V. DISCUSSION OF THE ISSUES

Comment 1: Standing of Luscious Seafoods to Request a Review

As discussed in Commerce's January 27, 2023, Standing Memorandum, and in the *Preliminary Results*, we determined that Luscious Seafoods did not qualify as a *bona fide* wholesaler of domestic like product during the POR. Accordingly, we treated Luscious Seafoods' request for administrative review (covering numerous exporters) as invalid.[11]

Luscious Seafoods' Comments[12]

- Commerce's standing analysis was erroneous because Luscious Seafoods engaged in *bona fide* transactions while operating as a wholesaler during the POR.
- Commerce improperly found that Luscious Seafoods' timeline of operations disqualified it as a wholesaler, but there is no "limited history" standard for qualifying as a wholesaler or a domestic interested party. The Act and administrative precedent do not establish a minimum amount of time during which a company must be in operation before being eligible to be considered as a wholesaler.
- The Act indicates that AD or countervailing duties may be imposed if the U.S International Trade Commission (ITC) finds that "the establishment of an industry in the United States is materially retarded."[13] Therefore, a company or industry is eligible for relief from unfairly-priced imports even if it is in the formative stage.
- Commerce improperly found that Luscious Seafoods did not provide certain requested documentation allowing Commerce to further analyze its operations, such as supporting documents regarding its funding. However, neither the Act nor the regulations requires funding-related documentation to qualify as a wholesaler or a domestic interested party, and it is not reasonable for Commerce to assess Luscious Seafoods' eligibility as a domestic interested party using this documentation.
- Commerce improperly considered purported inconsistencies as to affiliations between Luscious Seafoods and one of its suppliers. The relationship described by Luscious Seafoods does not fall under the statutory definitions of affiliation. Moreover, even if the relationship with the supplier were deemed to be an affiliation, it does not disqualify Luscious Seafoods as a wholesaler.

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[11] *See Preliminary Results* PDM at 5-6; *see also* Memorandum, "Luscious Seafoods' Standing to Request Review," dated January 27, 2023 (Standing Memorandum).
[12] *See* Luscious Seafoods Case Brief at 1-12.
[13] *See* sections 701(a)(2)(b) and 731(2)(B) of the Act.

- Similarly, the business transactions cited by Commerce are not grounds for finding that Luscious Seafoods was not a *bona fide* wholesaler. While these factors may weigh against determining that a business activity by an exporter or an importer is *bona fide*, Commerce should not apply this standard to a *domestic* interested party such as Luscious Seafoods. Additionally, the record also shows that Luscious Seafoods engaged in additional business activities during, and after, the POR (and after issuance of the Standing Memorandum).
- Luscious Seafoods has been singled out for special scrutiny and subjected to standards that do not apply to other interested parties and that are not undertaken normally by Commerce in the context of administrative reviews. Importers, for example, need only provide a single document, a U.S. Customs and Border Protection (CBP) form 7501, to show that they are engaged in the importation of subject merchandise during the POR, while the petitioners have not been required to provide any evidence of their eligibility for domestic interested party status.
- In previous reviews in this and other proceedings, Commerce has recognized the statutory "gap" in terms of defining "wholesaler," and has used the North American Industry Classification System (NAICS) definition of "wholesale trade" to supplement the Act. Luscious Seafoods satisfied the definition of wholesale trade and should therefore be considered a wholesaler of domestic like product under section 771(9)(C) of the Act.
- Because the case briefs were filed two months prior to the final results, Commerce has time to remedy its error and should not be precluded from correcting its erroneous finding. Commerce should issue AD questionnaires to exporters that would have been mandatory respondents based on Luscious Seafoods' valid request for review.

Petitioners' Rebuttal Comments[14]

- Commerce should continue to deny Luscious Seafoods' request for wholesaler status.
- Luscious Seafoods claims that Commerce placed inappropriate requirements on it to demonstrate its *bona fide* wholesaler status, but this misstates Commerce's determination. Commerce found that voluminous record evidence indicated that Luscious Seafoods was not a *bona fide* wholesaler, given its history, the nature of its sales, and its operating process.
- Luscious Seafoods also failed to provide requested information, and the information it did provide was at times inconsistent and/or incomplete. As a result, Commerce correctly denied Luscious Seafoods' standing as a wholesaler of domestic like product.

Bien Dong/NTSF Rebuttal Comments[15]

- Commerce should continue to find that Luscious Seafoods does not have standing as a domestic interested party in this administrative review, based on Commerce's comprehensive analysis of Luscious Seafoods' business practices, history, and lack of *bona fide* operations.
- Commerce employs a case-by-case analysis for assessing whether a party qualifies as an interested party in a proceeding, with no set thresholds for determining standing.

[14] *See* Petitioners Rebuttal Brief at 21-24.
[15] *See* Bien Dong/NTSF Rebuttal Brief at 3-10.

Luscious Seafoods attempts to create an arbitrary standard that it then claims to have met. Based on the facts in this proceeding, Luscious Seafoods has failed to demonstrate it is a *bona fide* wholesaler, and it declines to acknowledge or explain the numerous deficiencies that surround its reporting of its business practices and operations.

- Luscious Seafoods argues that Commerce had not previously created a "limited history," "sources of funding," or "affiliated transaction" standard in prior proceedings, but it fails to consider that Commerce's long-established practice for determining standing for interested parties is done on a case-by-case basis and purposefully does not set any standards. Therefore, Commerce was merely analyzing the *bona fide* wholesaling operations of Luscious Seafoods.
- The record contains numerous other issues concerning Luscious Seafoods' operations that Commerce did not address; these deficiencies further support the determination that Luscious Seafoods is not a legitimate interested party in this review.
- Commerce's consideration of Luscious Seafoods' limited history, albeit only one factor, was key in considering other important deficiencies, such as its sources of funding, given Luscious Seafoods' operating capital.
- Commerce's finding of affiliated transactions was also critical to the analysis. Contrary to Luscious Seafoods' claims, Commerce was not concerned about the arm's-length nature of the purchases of the domestic like product, but rather whether Luscious Seafoods had been truthful in describing the relationship with the affiliated supplier. The relationship between the two companies compels a conclusion of affiliation under section 773(33) of the Act and 19 CFR 351.102(b)(3), and Commerce's concern that Luscious Seafoods failed to disclose such information was proper.
- There are numerous other deficiencies that Commerce did not address, but that buttress Commerce's decision, such as missing documentation on the delivery of merchandise, missing documentation on the sales process, lack of relevant banking documentation, and the lack of proper state filings, government and state licensure, and tax documents, all of which substantiate the non-commercial nature of Luscious Seafoods' business.
- Luscious Seafoods' statement that a wholesaler does not need "any particular period of operation, volume of sales, or value of sales" to still be considered a wholesaler is nonsensical. Following this logic, Commerce should consider any entity in existence for a day with no sales a wholesaler; this is obviously not consistent with the common definition of an "interested" party. Commerce should not draw any specific thresholds for what it considers a significant amount of volume of sales for wholesaler status; however, Luscious Seafoods is far from reaching any threshold at all, given its business activities during the POR.
- Luscious Seafoods asserts that mere compliance with the NAICS definition is enough to establish itself as a wholesaler. While Commerce has referred to the NAICS definition to guide its standing analysis for wholesalers, it has specifically noted in other reviews that "other parties wishing to establish they are wholesalers of domestic like product would be evaluated on their own facts and circumstances."[16] Thus, while the NAICS definition is informative, it is not the sole factor to be considered in determining standing, and, in any case, Luscious Seafoods does not even meet the definition set forth therein.

[16] *Id*. at 8-9 (citing *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 70533 (November 26, 2013) (*Activated Carbon 11-12*), and accompanying IDM at Comment 1).

- Luscious Seafoods states that it has been singled out for special scrutiny and is subject to standards that do not apply to other interested parties, such as importers and petitioners. This is wrong. Commerce applies standing analysis to all domestic interested parties. Importers may submit a CBP form 7501, which clearly establishes that a party imported subject merchandise, but importers are not granted the ability to request administrative review of any and all exporters, just of their imports only. The petitioners must establish industry support and provide extensive industry information to Commerce during the investigation segment—otherwise there would not be an investigation. Thus, Luscious Seafoods' assertion that these other classes of interested parties are not subject to similar eligibility tests is wildly inaccurate.
- Luscious Seafoods deserves special scrutiny, as it has failed to provide requested documents and provided incomplete information. It is evident that certain parties may attempt to manipulate Commerce's proceedings with deceptive motives, and domestic interested parties must be required to establish their legitimacy via *bona fide* sales analysis to preserve both the integrity and fairness of Commerce's proceedings. Commerce should continue to find that Luscious Seafoods is not a *bona fide* domestic interested party.

Commerce's Position: We continue to find that Luscious Seafoods did not qualify as a *bona fide* wholesaler of domestic like product during the POR and, thus, Luscious Seafood does not have standing to request a review as a domestic interested party.

The Act identifies "wholesalers … of domestic like product" as a type of domestic interested party under section 771(9)(C), and 19 CFR 351.213(b)(1) states that "a domestic interested party … may request … an administrative review under section 751(a)(1) of the Act of specified individual exporters or producers covered by an order," *i.e.*, any exporter or producer. This is different than 19 CFR 351.213(b)(2), which limits producers and exporters to requesting administrative review of their own sales to the United States, and subsection (3) of the regulation, which limits importers to requesting administrative review of the suppliers of their imports of subject merchandise.

The Act and the regulations are silent on any minimum level of commercial activity required to qualify for interested party status in the context of an administrative review, and it has been Commerce's practice to enforce no such threshold.[17] Rather, with respect to attaining standing as a wholesaler of domestic like product, the focus of the analysis is on the presence of *bona fide* wholesaling operations.[18] As explained in the Standing Memorandum, the details surrounding

[17] *See*, *e.g.*, *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 70163 (November 25, 2014) (*Activated Carbon 12-13*), and accompanying IDM at Comment 1; and *Activated Carbon 11-12* IDM at Comment 1.

[18] *See, e.g., Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018-2019*, 86 FR 36102 (July 8, 2021) (*Vietnam Fish 18-19*), and accompanying IDM at Comment 1 ("Both CBBC and QMC have submitted sufficient evidence of the *bona fide* nature of their sales of domestic like product"); and *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2019-2020*, 87 FR 15912 (March 21, 2022) (*Vietnam Fish 19-20*), and accompanying IDM at Comment 1 ("As an initial matter, and as noted above, Commerce solicited information regarding the *bona fide* nature of CBBC's wholesaling transactions").

Luscious Seafoods' operations, when taken as a whole, warrant a finding that the record does not support Luscious Seafoods' claim that it was a *bona fide* wholesaler of domestic like product during the POR.[19]

Luscious Seafoods claims that neither the Act nor administrative precedent requires that a wholesaler have a minimum length of operations or provide documentation regarding its funding, *i.e*., two of the issues that were part of Commerce's analysis. While we agree with Luscious Seafoods that the Act is silent on the issue, this argument is a strawman. There are a wide variety of factors that Commerce considers in determining whether commercial activities are *bona fide* in other contexts,[20] and we find our approach in such circumstances to be instructive here. In any case, Luscious Seafoods' implication that there must be an exclusive list of factors that Commerce considers (or may not consider) in its analysis is without merit.

Here, we examined information relating to various criteria in our analysis. These considerations included the company's limited history and timing of its establishment, the limited number of transactions during the POR, and the extent to which those limited transactions reflected a commercially reasonable and sustainable business activity.[21] We also noted that Luscious Seafoods failed to provide, at our explicit request, certain information (relating to the company's banking) as well as various business documents, which we deemed relevant to our analysis.[22] Further still, Luscious Seafoods' various responses contained inconsistencies with respect to the timing of its initial activity and the personnel involved in the company's operations.[23] These factors are meaningful, especially given the context of the company as a first-time participant in the proceeding.

Luscious Seafoods also misinterprets or misapplies certain legal provisions regarding AD procedures and affiliation. It claims that there should be no bias against a new company, given the fact that the ITC's analysis contemplates the retardation of the establishment of an industry. This provision,[24] which only applies in the context of the ITC's injury determination, is entirely inapplicable to the treatment of one specific company many years after issuance of an AD order in a long-standing proceeding. In any case, Commerce's treatment of Luscious Seafoods was clearly not based solely on it being a new company.

Similarly, Luscious Seafoods' claim that the relationship described between it and one of its suppliers does not fall under the statutory definition of affiliation is inapposite. In our Standing

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[19] *See* Standing Memorandum at 4.
[20] For instance, in determining whether a U.S. sale in the context of a new shipper review is a *bona fide* transaction, we have a long-standing practice of considering numerous factors, with no single factor being dispositive, in order to assess the totality of the circumstances surrounding the sale in question. *See Certain Preserved Mushrooms from the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 68 FR 41304 (July 11, 2003), and accompanying IDM at Comment 2. These factors include: the timing of the sale; the sale price and quantity; the expenses arising from the sales transaction; whether the sale was sold to the customer at a loss; and whether the sales transaction between the exporter and importer was executed on an arm's-length basis.
[21] *See* Standing Memorandum at 3.
[22] *Id*. at 4.
[23] *Id*.
[24] *See* Luscious Seafoods Case Brief at 4 (citing sections 701(a)(2)(b) and 731(2)(B) of the Act).

Memo,[25] we never claimed to make an affiliation finding under section 771(33) of the Act. Rather, we merely analyzed information relating to whether the sales transaction between the wholesaler and supplier was executed on an arm's-length basis as one of the factors for determining whether Luscious Seafoods' commercial activities are *bona fide*. Ultimately, Luscious Seafoods' claims regarding an affiliation analysis are immaterial; the point remains that the company mischaracterized its relationship with another company, leading to an inconsistent record in this regard.[26]

Luscious Seafoods is simply incorrect in asserting that it has been singled out for special scrutiny and subjected to standards that are not normally undertaken in the context of administrative reviews. The claim ignores the process undertaken in recent segments *in this very proceeding*. We issued Luscious Seafoods two questionnaires in this segment,[27] which is the same number of questionnaires issued to two companies that were attempting to claim status as wholesalers of domestic like product in the 2018-2019 administrative review of this order.[28] In fact, in certain instances, including in the instant administrative review, we issued multiple questionnaires to wholesalers who had already qualified as domestic interested parties in prior segments of this proceeding.[29] Luscious Seafoods' unfamiliarity with Commerce's process for determining the standing of wholesalers does not make Commerce's practice unreasonable or unusual.

With respect to our thorough examination of wholesalers more generally, we note that wholesaling is a class of business distinct from the usual participants in an administrative review, and, thus, it requires its own analysis as distinct from other interested parties. As an importer can only request administrative review of companies from which it has imported subject merchandise,[30] it only needs to prove that it imported that merchandise from the companies for which it is requesting, such as a CBP form 7501. The petitioners have already proven their standing in this proceeding through the petition process.[31] As discussed above, a wholesaler of domestic like product, under the Act and Commerce's regulations, has very broad purview regarding for which companies it can request review and, as such, Commerce must be thorough in assessing standing for any company claiming wholesaler status.

We disagree with Luscious Seafoods' claims that Commerce should not be closely analyzing Luscious Seafoods' commercial activity, as it is a domestic interested party by definition, given that it made a single sale of domestic like product to a retailer during the POR. As noted above, it is incumbent upon Commerce to protect the integrity of its proceedings,[32] and one of the methods we can use is to examine the business activity of new parties (with extensive ability to

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[25] *See* Standing Memorandum.
[26] *Id.*at 4.
[27] *See* Commerce's Letter, "Questionnaire for Luscious Seafoods," dated October 14, 2022; *see also* Commerce's Letter, "Supplemental Questionnaire for Luscious Seafoods," dated December 13, 2022.
[28] *See Vietnam Fish 18-19* IDM at 9-10 n.50 (noting that Commerce received two questionnaire responses each from both Colorado Boxed Beef Company (CBBC) and QMC Foods, Inc.).
[29] *Id.; see also* Commerce's Letter, "Questionnaire for QMC Foods," dated October 14, 2022; and Commerce's Letter, "Supplemental Questionnaire for QMC," dated December 20, 2022.
[30] *See* 19 CFR 351.213(b)(3).
[31] *See* 19 CFR 351.213(b)(1).
[32] *See, e.g.*, *Harmoni International Spice Inc. v Hume*, 914 F.3d 648 (9th Circ., Jan. 23, 2019); and *New Mexico Garlic Growers Coalition v. United States*, 953 F.3d 1358, 1371 (Fed. Cir. 2020).

request review) that are attempting to participate. In analyzing the nature of Luscious Seafoods' sales and operations, Commerce was not able to confirm the *bona fides* of Luscious Seafoods' commercial transactions.

Luscious Seafoods states that it has satisfied the NAICS definition of wholesale trade and, thus, should be considered a wholesaler as per section 771(9)(C) of the Act. While Commerce has found the NAICS definition instructive in other proceedings to determine whether (or whether not) a company would be classified as a wholesaler, we do not find that the definition – assuming *arguendo* that Luscious Seafoods meets it – is dispositive here, where the company did not demonstrate *bona fide* commercial activity during the POR. As noted above, every situation is different, and Commerce analyzes each party's claim to wholesaler status on a case-by-case basis based on their own facts and circumstances.

Finally, we note that Luscious Seafoods' arguments regarding the compilation of evidence in this review are without merit. For instance, Luscious Seafoods asserts that Commerce may take administrative notice of post-POR activities that occurred based on the record of the 2022-2023 POR, which was initiated in October 2023.[33] As an initial matter, our analysis concerned whether Luscious Seafoods was a *bona fide* wholesaler during the POR in question; thus, post-POR activities are not dispositive. Further, even were acceptance of such information in this segment in accordance with our regulations,[34] Luscious Seafoods' proposal is impractical, given the timing concerns associated with a standing decision. As noted in the Standing Memorandum:

> {I}t is critically important to resolve issues of standing as early as possible in a review. Here, we have already issued two questionnaires providing Luscious Seafoods the opportunity to establish its standing, and it was unable to do so. Accordingly, we intend to immediately treat the Luscious Seafoods review request as void, and proceed accordingly.[35]

Commerce's substantive and procedural approach in this review was consistent with past practice and in accordance with the law. For the reasons stated above, we continue to find that the record did not demonstrate that Luscious Seafoods was a *bona fide* wholesaler of domestic like product during the POR, and we decline to find that the company established its status as a domestic interested party pursuant to section 771(9)(C) of the Act.

Comment 2: Whether to Apply AFA to CASEAMEX

In the *Preliminary Results*, we calculated a dumping margin for CASEAMEX using the FOP and sales data submitted by the company.[36]

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[33] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 71829 (October 18, 2023).
[34] *See* 19 CFR 352. 213(e)(1)(i).
[35] *See* Standing Memorandum at 5.
[36] *See Preliminary Results* PDM at 5-6.

Petitioners' Comments[37]

- CASEAMEX failed to cooperate to the best of its ability in this review, and, thus, Commerce should base its final dumping margin on AFA.
- CASEAMEX's reporting was deficient because CASEAMEX failed to: (1) report the correct universe of U.S. sales; (2) report correct and reliable U.S. gross unit prices; (3) provide complete and accurate sales destination information; (4) properly report all movement expenses; (5) provide FOPs for relevant entities; and (6) report correct and accurate information on glazing, by-products, farm labor, water consumption, and packing.
- With respect to the first point, CASEAMEX reported its sales based on the invoice date, while Commerce's instructions were to report sales based on date of entry (in the case of export price (EP) sales, or sales were made after entry in the case of constructed export price (CEP) sales). A substantial number of CASEAMEX's sales do not follow these requirements and, accordingly, Commerce cannot consider CASEAMEX's U.S. database complete or reliable.
- With respect to the second point, some of CASEAMEX's customers agreed to pay additional international freight expenses due to sudden increases in freight costs. CASEAMEX did not identify which transactions include this freight cost support, *i.e.*, a revenue item, nor the amount. Thus, Commerce is unable to determine whether, and the extent to which, CASEAMEX's U.S. prices are correct. Without accurate and reliable gross unit prices, Commerce cannot deem CASEAMEX's U.S. sales database reliable.
- With respect to the third point, CASEAMEX stated that it did not know the postal ZIP of its customer's place of delivery. Although Commerce instructed CASEAMEX to update its reporting to include the ZIP reflected on its invoices, the ZIP codes for certain transactions in the U.S. sales database do not match those on the associated invoices.
- With respect to movement expenses, CASEAMEX reported inland freight expenses (in the field INLFPWU in the U.S. sales database) which are inconsistent with the delivery terms associated with those sales, and it failed to provide sufficient supporting evidence at Commerce's request.
- With respect to its FOP database, CASEAMEX failed to provide FOPs for subject merchandise purchased from an unaffiliated third party. CASEAMEX did not submit FOP information from the third party, and only reached out late in the proceeding to attempt to obtain it. CASEAMEX's failure to timely provide complete and accurate information regarding these transactions cannot be excused based on the company's failure to adequately track this information or to sufficiently review its records.
- CASEAMEX also failed to provide complete information on glazing, despite Commerce's request in two supplemental questionnaires. CASEAMEX stated that it did not monitor water consumption at various steps and only providing a regulation on controlling net weight and the glazing percentage and a sale contract that requires glazing and monitoring records.
- CASEAMEX provided inaccurate information regarding its reported by-products, given that the amount of total by-product production reported in its section D questionnaire[38] response does not align with the amount of by-product production in its material balance

[37] *See* Petitioners Case Brief at 40-48.
[38] Section D of the questionnaire is the section related to FOPs.

reconciliation. It is also unclear from CASEAMEX's responses whether the by-products are solely derived from the production of subject merchandise.

- CASEAMEX failed to support its reported farming labor, which it based on eight working hours per day, despite Commerce's request. As a result, CASEAMEX has not provided accurate farm labor FOPs.
- CASEAMEX failed to properly report water consumption. CASEAMEX based its reporting on wastewater discharge but provided no explanation or documentation as to how this reporting methodology was complete or accurate. This methodology also cannot serve as a reasonable substitute for water usage, as it would not account for water used for glazing or to freeze merchandise.
- CASEAMEX failed to properly report packing FOPs by limiting its reported packing FOPs to the materials associated with shipments to the United States. CASEAMEX also refused to comply with Commerce's direction in a supplemental questionnaire to identify all packing materials associated with each control number (CONNUM),[39] regardless of the market to which the product was destined, instead insisting that the initial questionnaire did not require it to report this information. Accordingly, CASEAMEX failed to properly report its packing FOPs as requested twice by Commerce.

CASEAMEX's Rebuttal Comments[40]

- CASEAMEX has fully participated in this administrative review and has cooperated to the best of its ability. CASEAMEX has timely submitted thousands of pages of documentation in response to Commerce's questions. The purported shortcomings identified by the petitioners are without merit.
- CASEAMEX accurately and completely reported all U.S. sales during the POR. CASEAMEX had both EP and CEP sales, so the established date for the universe of sales is the invoice date, *i.e.*, the sale to the first unaffiliated customers, as is Commerce's practice.
- CASEAMEX accurately reported its U.S. gross unit prices. The record does not demonstrate that CASEAMEX's gross unit prices were incorrectly inflated due to certain international freight costs. CASEAMEX itself identified the issue and then correctly reported gross unit prices in the revised U.S. sales database.
- CASEAMEX provided complete and accurate sales destination information. There is a reasonable explanation for the identified instances of an invoice showing a different ZIP code than the U.S. sales database; however, Commerce's rules with respect to new factual information prevent CASEAMEX from providing this explanation.
- CASEAMEX properly reported all movement expenses. CASEAMEX provided Commerce with information as to how certain expenses related to delivered sales were paid, and it also responded to a supplemental question from Commerce on the issue and provided supporting documentation. Commerce had no further questions or concerns with the issue, indicating that CASEAMEX's response was satisfactory.
- CASEAMEX reported FOPs for all CONNUMs. Although the petitioners fault CASEAMEX for not obtaining FOPs from an unaffiliated supplier, this issue was raised and addressed in CASEAMEX's initial section D questionnaire response. The product

[39] A CONNUM is an identifier for each unique subject product sold or produced during the POR.
[40] *See* CASEAMEX Rebuttal Brief at 3-8.

purchased from the supplier was a mere four shipments which accounted for a very small percentage of the total shipments of subject merchandise shipped to the United States. The record also demonstrates that CASEAMEX itself produced fillets with the same CONNUM, so there is no missing FOP information in this administrative review.

- CASEAMEX properly reported glazing, and the documentation provided to Commerce—a Vietnamese regulation on glazing as well as a customer contract setting forth a specific glazing percentage—reasonably satisfied Commerce's request for information.
- CASEAMEX correctly reported by-product information. The petitioners' arguments in this regard are based on a misunderstanding of the record and documentation submitted by CASEAMEX.
- CASEAMEX correctly reported its farming labor. In its original section D response, CASEAMEX fully explained how it reported its farming labor hours, and it provided documentation in response to a supplemental questionnaire to demonstrate the reasonableness of that reporting. Commerce was satisfied with these explanations, given that Commerce did not issue further supplemental questionnaires to CASEAMEX.
- CASEAMEX also reported water consumption to the satisfaction of Commerce. CASEAMEX used wastewater discharge as a reasonable proxy for water consumption, and it is likely that this methodology resulted in over-reporting, as the discharge would also include water used in toilets, the canteen, offices, *etc*. CASEAMEX also responded to a question in the first supplemental questionnaire regarding water usage and did not receive any further questions from Commerce.
- CASEAMEX correctly reported its packing FOPs, in accordance with Commerce's instructions and it also responded to supplemental questions with answers that demonstrated the reasonableness of CASEAMEX's reporting methodology.

Commerce's Position: We disagree with the petitioners that the application of AFA to CASEAMEX is warranted. Sections 776(a)(1) and 776(a)(2) of the Act provide that Commerce shall, subject to sections 782(d) and (e) of the Act, apply "facts otherwise available" in reaching the applicable determination if necessary information is not available on the record or, if an interested party or any other person: (A) withholds information that has been requested by Commerce; (B) fails to provide information by the deadlines for such information or in the form and manner requested; (C) significantly impedes a proceeding under the Act; or (D) provides information which cannot be verified. Further, section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting from among the facts otherwise available.

The petitioners argue that the application of AFA is warranted due to errors in the information provided by CASEAMEX throughout this review. However, in most of the cited instances, CASEAMEX adequately explained its reporting and/or Commerce did not request that the company report in a different manner. As a result, there is generally no basis to rely on the facts otherwise available in reaching our determination, and we need not determine whether an adverse inference is warranted in selecting from among those facts pursuant to section 776(b) of the Act. In one instance, as described further below, we relied on neutral facts available.

With respect to the universe of sales reporting, we acknowledge that CASEAMEX did not define the universe of its reported U.S. sales in accordance with Commerce's practice and the instructions contained in the initial questionnaire. Commerce's questionnaire instructs respondents to report their sales as follows:

> Report each U.S. sale of merchandise entered for consumption during the POR, except: (1) for EP sales, if you do not know the entry dates, report each transaction involving merchandise shipped during the POR; and (2) for CEP sales made after importation, report each transaction that has a date of sale within the POR. If you believe there is a reason to report your U.S. sales on a different basis, please contact the official in charge before doing so.[41]

In line with this instruction, CASEAMEX correctly reported all CEP sales that it made during the POR, because: (1) its affiliate made these sales after it imported the product into the United States;[42] and (2) it reported all sales with an invoice date during the POR. However, we note that the company also made a small number of EP sales, and CASEAMEX also determined which of these sales to report using the U.S. invoice date. Under the instructions noted above, and Commerce's longstanding practice, CASEAMEX should have based the universe of examined EP transactions on products which entered for consumption into the United Sates during the POR.[43] This is consistent with section 751 of the Act, requires that Commerce determine a dumping margin for each entry during the POR.[44]

Accordingly, CASEAMEX's construction of its U.S. sales database was incorrect. That said, CASEAMEX clearly stated the basis for its database creation, and, despite issuance of supplemental questions relating to CEP classification,[45] we failed to direct the company to revise its reporting. Accordingly, we disagree with the petitioners that application of AFA is warranted. We also note that, given the timing of the EP sales contained in the database, there is no basis to conclude that they would not have been treated as POR sales even if reported based on their entry date. Nonetheless, CASEMEX is on notice that Commerce will require EP sales to be reported in accordance with our questionnaire instructions in any future segments of this proceeding.

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[41] *See* Commerce's Letter, "Initial Questionnaire," dated February 3, 2023 (Initial Questionnaire), at C-1.
[42] We find no basis to conclude that such sales were improperly classified as CEP sales. As CASEAMEX explained, the company made such sales "to its U.S. affiliate (NP- USA Inc.) who then resold to unaffiliated customers." *See* CASEAMEX's Letter, "Section A Questionnaire Response – Can Tho Import Export Seafood Joint Stock Company," dated February 24, 2023 (CASEAMEX AQR), at 1.
[43] *See Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Administrative Review, Partial Revocation of Antidumping Duty Order and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 28659 (May 17, 2006), and accompanying IDM at Comment 2.
[44] *See, e.g.*, *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017-2018*, 84 FR 34131 (July 17, 2019), and accompanying PDM at 3, unchanged in *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: Final Results of the Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 84 FR 64042 (November 20, 2019).
[45] *See, e.g.*, CASEAMEX's Letter, "Supplemental Section C & D Questionnaire Response – Part 1," dated May 16, 2023, (CASEAMEX May 16, 2023 SQR) at 4-5.

The petitioners also assert that CASEAMEX improperly included additional freight costs in its gross unit price field, warranting application of AFA. We disagree. In its May 23, 2023 supplemental questionnaire response, CASEAMEX explained:

> CASEAMEX is also revising its reported GRSUPRU to account for circumstances where customers agreed to pay for certain amount of international freight due to sudden increases in freight costs. If customers agreed to do so, such amount is recorded on the relevant invoice as freight cost support. When customers pay CASEAMEX, they would pay the aggregate total of the invoice amount and the amount of freight cost support. Accordingly, CASEAMEX is updating GRSUPRU in those circumstances to also include the amount of freight support paid by its customers.[46]

We also acknowledge that, under Commerce's practice, Commerce requires respondents to report separately all revenues which are individually identified on the invoice to the customer, and it includes these revenues in the gross unit price only to the extent that they do not exceed the underlying expense.[47] However, Commerce did not direct CASEAMEX to modify its reporting in this regard; further, we did not question the treatment of the freight revenue reflected on three invoices, provided as part of CASEAMEX's supplemental responses,[48] that contained the "freight cost support" charge. That said, we find no evidence on the record that the gross unit price was distorted or otherwise altered by such charges, and, as a result, there is no basis to apply AFA. In each of the three instances, we observed that the revenue was: (1) known at the time of sale and included on the invoice; (2) accurately reflected in the gross unit price field contained in the database;[49] and (3) less than the underlying expense (*i.e.*, it would not hit the cap in any of the instances).[50] Nonetheless, we agree with the petitioners that such a charge is distinct from the gross unit price of merchandise and, accordingly, should be reported in a separate field. Parties to this proceeding are on notice that such revenues related to freight must be reported separately from the gross unit price in any future segments of this proceeding.

Similarly, we disagree with the petitioners that CASEAMEX's reporting of sales destinations which do not appear on the invoice warrants application of AFA. Although we instructed CASEAMEX to provide ZIP codes in the destination field in the U.S. sales database, CASEAMEX instead reported ZIP codes for the import inspection facilities to which CASEAMEX shipped the subject merchandise.[51] However, this failure is not significant, given that it did not impact the outcome of the differential pricing test; we are relying on the average-

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[46] *See* CASEAMEX's Letter, "Supplemental Section C & D Questionnaire Response - Part 2," dated May 23, 2023, (CASEAMEX May 23, 2023 SQR) at 18-19 and Exhibit 40.
[47] *See Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 46584 (August 11, 2008), and accompanying IDM at Comment 7.
[48] *See* CASEAMEX May 23, 2023 SQR at Exhibit 40, and CASEAMEX May 16, 2023 SQR at Exhibits 8 and 42.
[49] *See* CASEAMEX May 16, 2023 SQR at Exhibits 8 and 42.
[50] *See* CASEAMEX May 23, 2023 SQR at Exhibit 11.
[51] *Id.* at Exhibit 6.

to-transaction method for determining the dumping margin.[52] Thus, CASEAMEX's reporting methodology did not bias the margin calculation in its favor.

We also disagree with the petitioners that CASEAMEX failed to properly report all movement expenses. In its U.S. sales response, CASEAMEX noted that, for delivered sales CASEAMEX was responsible for transportation expenses to inspection facilities only, and not to the warehouse.[53] Example contracts that CASEAMEX submitted indicate that the delivery terms were delivered to such facilities, supporting CASEAMEX's shipment expense claims.[54] CASEAMEX also submitted a contract containing a provision indicating that the customer would be assuming some of the costs usually incurred by the seller under delivered terms, consistent with CASEAMEX's reporting.[55]

With respect to the reported FOPs, we also disagree with the petitioners. As an initial matter, given the volume associated with the product sourced from the unaffiliated suppliers in question, we do not find it necessary to request FOPs for such transactions.[56] We also find that, as CASEAMEX also produced the same CONNUM as was purchased from the unaffiliated party, CASEAMEX's FOPs for these identical CONNUMs provide a reasonable basis for the FOPs for the purchased subject merchandise.

We also disagree that CASEAMEX did not provide information on how it monitored glazing. CASEAMEX provided an example of a contract indicating a requested glazing percentage and, more importantly, a monitoring report generated in the normal course of business showing the percentage and related weight of glazing for a particular production run.[57] We, therefore, find the glazing information provided was sufficient and adequately responsive to Commerce's questions on this issue.

Regarding farming labor hours, we do not agree with the petitioners that the methodology provided by CASEAMEX (*i.e.*, farming work being recorded by the day) is inherently inaccurate. Under the facts here, we find that extrapolating each farming day as eight hours of labor is reasonable, as the primary documents submitted by CASEAMEX only show working days.[58] However, we agree with the petitioners that applying the methodology as described results in a different amount of labor hours than that reported in CASEAMEX's revised FOP input calculations, based on three months of reporting in CASEAMEX's response.[59] As a result,

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[52] *See Preliminary Results* PDM at 17; *see also* Memorandum, "Final Results Analysis Memorandum for Can Tho Import Export Seafood Joint Stock Company," dated concurrently with this memorandum (CASEAMEX Analysis Memorandum).
[53] *See* CASEAMEX's Letter, "Section C Questionnaire Response – Can Tho Import Export Seafood Joint Stock Company," dated March 21, 2023, at 24.
[54] *See* CASEAMEX May 16, 2023 SQR at Exhibit 6; *see also* CASEAMEX's Letter, "Third Supplemental Questionnaire Response," dated July 20, 2023 (CASEAMEX July 20, 2023 SQR) at Exhibit 10.
[55] *See* CASEAMEX May 16, 2023 SQR at Exhibit 10.
[56] *See, e.g., Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2020-2021*, 87 FR 55392 (September 9, 2022), and accompanying PDM at 16, unchanged in *Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2020-2021*, 88 FR 15671 (March 14, 2023).
[57] *See* CASEAMEX July 20, 2023 SQR at Exhibit 10.
[58] *See* CASEAMEX May 16, 2023 SQR at Exhibit 31.
[59] *Id.* at Exhibits 31 and 44.

because CASEAMEX appears to have misapplied its methodology, we have calculated an adjustment factor based on the discrepancy for the three months in question. As neutral facts available, we will apply that adjustment to all 12 months in CASEAMEX's labor calculations.[60]

With respect to water, CASEAMEX reported that it did not have water meters during the POR, and that it was estimating its water usage based on "wastewater discharge."[61] Although we do not disagree with the petitioners' concern that discharge volume may not serve as a reasonable substitute for water usage, because it would not account for water used in the production process that does not get discharged as waste, we do disagree that such reporting warrants application of AFA.[62] We have no basis to conclude that CASEAMEX falsely reported its ability to track water solely used in production during the POR. Moreover, the water usage rates estimated during the POR are consistent with post-POR rates for the company (at which time it had a tracking system).[63]

Finally, we disagree with the petitioners that CASEAMEX did not properly report packing FOPs. The petitioners are correct in pointing out that the initial instructions for reporting FOPs note that:

> {u}nless otherwise instructed by {Commerce}, you should report factors information for all models or product types in the U.S. market sales listing submitted … in response to Section C of the questionnaire, including that portion of the production that was not destined for the United States.[64]

However, later, the instructions for reporting FOPs for packing materials indicate that the respondent should only "{d}escribe the method used to pack the merchandise under consideration for shipment *to the United States*."[65] Thus, we find that CASEAMEX reported its packing material FOPs in an acceptable manner. Moreover, Commerce never instructed CASEAMEX to report the materials otherwise in a supplemental questionnaire, and application of facts available is not warranted.

As all of the comments above have been addressed to Commerce's satisfaction as a whole, we do not find it necessary to address comments calling for the selective application of AFA with regard to individual perceived deficiencies in reporting. Accordingly, with the exception noted above, we will continue to rely on CASEAMEX's data, as reported.

With respect to CASEAMEX's by-product claim, the petitioners raise various arguments regarding deficiencies with the company's reporting and CASEAMEX provides rebuttal arguments. These arguments more directly relate to a claimed offset, rather than Commerce's decision of whether to apply AFA. Accordingly, we discuss by-products separately, below.

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[60] *See* CASEAMEX Analysis Memorandum.
[61] *Id.* at 13.
[62] CASEAMEX also notes that the wastewater reporting would also capture non-production sources of wastewater, *e.g.*, toilets, staff canteen, *etc*., thus possibly overreporting water consumption. *See* CASEAMEX Rebuttal Brief at 7.
[63] *See* CASEAMEX May 16, 2023 SQR at 24 and Exhibit 32.
[64] *See* Initial Questionnaire at D-1.
[65] *Id*. at D-10 {emphasis added}.

Comment 3: Whether to Deny CASEAMEX's By-product Offset Claim

Petitioners' Comments[66]

- Commerce requires respondents who claim by-product offsets to provide production records demonstrating production of each by- or co-product during one month of the POR, and evidence of sales and receipt of payment for the largest month of sales if the by-product was sold. CASEAMEX failed to provide all the required documentation to demonstrate eligibility for a by-product offset.
- The documents that CASEAMEX submitted do not encompass all the types of by-products reported. Commerce asked CASEAMEX to provide actual production records, inventory in and out slips, sales documents, and payment documentation for each type of by-product produced and sold. Because CASEAMEX did not provide all the required documentation for several by-products, it has not met the burden for an offset for such by-products.
- The by-product production figure reported in CASEAMEX's material balance reconciliation does not match the reported by-product production in Exhibit 12 of its initial section D questionnaire response. It also is not clear whether the reported by-product offset value only includes subject merchandise. Accordingly, CASEAMEX has failed to support its reported by-product production quantity and, thus, does not qualify for a by-product offset.

CASEAMEX's Comments[67]

- There is no reasonable basis to deny CASEAMEX's by-product offset. CASEAMEX provided a full explanation of its claimed by-product offset and provided Commerce with documentary evidence to support it.

Commerce's Position: We agree with the petitioners that certain aspects of CASEAMEX's reporting were incomplete and, thus, the record does not fully demonstrate that the company is entitled to by-product offsets for fresh broken meat and fresh fish waste.

It is generally Commerce's practice to grant an offset to normal value for sales of by-products generated during the production of subject merchandise during the POR if the respondent can demonstrate that the by-product is either sold (*i.e.*, has commercial value) or re-enters the respondent's production process.[68] The burden rests on the respondent to substantiate by-product offsets by providing Commerce with sufficient information to support its claims.[69] Commerce must also ensure that a respondent does not receive a by-product offset for products generated outside of the POR or in the production of non-subject merchandise.[70]

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[66] *See* Petitioners Case Brief at 49-52.
[67] *See* CASEAMEX Rebuttal Brief at 9-10.
[68] *See Jiangsu Senmao Bamboo & Wood Industrial Co. v. United States*, 651 F. Supp. 3d 1348, 1365 (CIT 2023).
[69] *Id*.
[70] *See Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2019-2020*, 87 FR 39464 (July 1, 2022), and accompanying IDM at 25-26.

With respect to CASEAMEX's material reconciliation for by-products, we recognize that CASEAMEX started the reconciliation with total live fish input, including those destined for non-subject merchandise and a small amount of non-Pangasius fish products.[71] The aggregate figure indicated in this material reconciliation for by-products showed all by-products from all sources; however, it also generally comports with the total by-product figure reported in CASEAMEX's section D questionnaire response, with a less than one percent difference.[72] As shown in CASEAMEX's FOP calculation worksheet, only a portion of this aggregate value of by-products was assigned to subject merchandise. The company's method of allocating by-products to subject merchandise was consistent with its approach for allocating its FOPs in general.[73] Accordingly, we disagree with the petitioners that this difference is indicative of a reporting failure. CASEAMEX's reporting methodology in this regard is consistent with its allocation methodology relied upon for reporting all of its FOPs, and we do not agree with the petitioners' assertion that the by-product reporting results in a distortion to the margin calculation.

With respect to the fresh broken meat and the fresh fish waste by-products (collectively, fresh by-products), CASEAMEX did not substantiate its claim regarding sales of fresh by-products that were produced during the POR. First, in response to our initial questionnaire, where we request that the company "{p}rovide production records demonstrating production of each by-product ... {and} evidence of the sales (*e.g.*, invoices or internal records demonstrating the sale), as well as evidence of receipt of payment for the sale," CASEAMEX provided sales documents, such as contracts, invoices, and bills of lading, for certain *frozen* by-products (*e.g.*, maws, fin, skin), but not fresh by-products.[74]

We pursued this issue in a supplemental questionnaire; however, CASEAMEX again did not provide complete information in response. We requested "actual production records, inventory in and out slips, sales and payment documentation for each type of byproduct produced and sold for each processing facility;" the response, however, did not contain such documentation.[75] In responding to Commerce's request for proof of production, CASEAMEX submitted sales lists and payment documentation demonstrating sales made during the POR.[76] It did not provide production/inventory records for fresh by-products. This stands in contrast to its submission regarding frozen by-products, which were reflected in line items on daily production reports and, therefore, were very clearly produced concomitantly with subject merchandise.[77] This also contrasts with the reporting methodology relied upon by the other respondent, Vinh Hoan, which showed production records, monthly inventory worksheets, invoices, and payments for fresh by-products.[78] Because CASEAMEX has not sufficiently supported its claim that its fresh by-products claimed for offset were produced during the POR, and it did not provide certain key

[71] *See* CASEAMEX July 20, 2023 SQR, at Exhibit 12.
[72] *See* CASEAMEX's Letter, "Can Tho Import Export Seafood Joint Stock Company - Section D Questionnaire Response," dated April 3, 2023 (CASEAMEX DQR), at Exhibit 12.
[73] *See* CASEAMEX's Letter, "Fifth Supplemental Questionnaire Response," dated August 21, 2023, at Exhibit 2.
[74] *See* CASEAMEX DQR at Exhibit 13.
[75] *See* CASEAMEX May 23, 2023 SQR at 16.
[76] *Id*. at Exhibit 36, part A1.
[77] *Id*. at Exhibit 36, part A2.
[78] *See* Vinh Hoan's Letter, "Vinh Hoan Section D Questionnaire Response," dated February 21, 2023, at Exhibits 13, 14, and 15.

documentation, Commerce is not obliged to accept the by-product offset for purposes of its margin calculations.[79] Therefore, we have denied the requested offset for these products for purposes of the final results.[80]

Comment 4: HVC Separate Rate Implementation

HVC's Comments[81]

- In the *Preliminary Results*, Commerce determined that HVC qualified for a separate rate in this segment of the proceeding, but neglected to state that HVC's separate-rate status applied to all of the companies that are collapsed together to comprise HVC.
- For the final results, Commerce should state clearly that the entire HVC entity qualified for separate-rate status, including each of its collapsed affiliates.

No other party provided comments.

Commerce's Position: We agree with HVC. Commerce considers HVC and the following affiliates to be a single entity: An Giang Fisheries Import and Export Joint Stock Company; Asia Pangasius Company Limited; Europe Joint Stock Company; Hung Vuong Mascato Company Limited; Hung Vuong –Vinh Long Co., Ltd.; Hung Vuong – Sa Dec Co., Ltd.; and Hung Vuong Ben Tre Seafood Processing Company Limited.[82]

When we preliminarily found that HVC qualified for a separate rate, we intended to assign that rate to all affiliates that are part of the HVC single entity, along with HVC itself. We will correct this oversight by noting in the *Federal Register* notice accompanying these final results that the rate assigned to HVC is applicable to HVC and each of these affiliates.

Comment 5: Surrogate Financial Ratios

In the *Preliminary Results*, Commerce calculated surrogate financial ratios using the 2022 financial statements of Indonesian processors PT Dharma Samudera Fishing Industries Tbk (Dharma) and PT Japfa Comfeed Indonesia Tbk (Japfa).[83] We received comments regarding the source relied upon, as well as the calculation methodology.

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[79] *See American Tubular Products, LLC v. United States*, 847 F.3d 1354, 1361 (Fed. Cir. 2017) (affirming Commerce's denial of a scrap offset due to respondent's "failure to document scrap production"); *see also Certain Fabricated Structural Steel from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 85 FR 5376 (January 30, 2020) and accompanying IDM at Comment 17 ("In {non-market economy (NME)} proceedings, because we rely upon a FOP methodology, we do not grant claims for a by-product offset where the companies are not able to provide data for their scrap production during the POR.").
[80] *See* CASEAMEX Analysis Memorandum.
[81] *See* HVC Case Brief at 1-3.
[82] *See Vietnam Fish 11-12* IDM at 2-3.
[83] *See* Memorandum, "Surrogate Values for Preliminary Results," dated August 31, 2023 (Preliminary SV Memorandum).

A. Whether to Exclude Japfa's Financial Statements

CASEAMEX, Vinh Hoan, and VASEP Comments[84]

- Commerce appropriately relied on Dharma's financial statements to compute the surrogate financial ratios. However, Commerce should exclude the financial statements of Japfa from the ratio calculations.
- Japfa's financial statements indicate that the company's aquaculture activities relate to retail trade in aquaculture products, with no indication that they account for aquaculture farming or processing. Furthermore, the financial statements indicate that aquaculture products accounted for less than 10 percent of total sales.
- A review of the Japfa's website shows that a subsidiary conducts its aquaculture activities, and the primary aquaculture business involves fish feed production.[85] Based on this information, fish processing is not Japfa's main source of income and, thus, Japfa's activities do not approximate those of the respondents in this review.
- In *Vietnam Fish 17-18*, Commerce stated that: (1) it was not preferable to rely on Japfa as a surrogate financial company; (2) the bulk of Japfa's business activities did not relate to comparable merchandise; and (3) Japfa's financial statements showed that aquaculture represented less than 10 percent of the company's net sales.[86] Here again, the financial statements show aquaculture as accounting for less than 10 percent of net sales.
- Commerce should make the same determination here that the bulk of Japfa's POR activities did not relate to comparable merchandise and exclude Japfa's financial statements from its financial ratio calculation.

Petitioners' Comments[87]

- Japfa is a producer of comparable merchandise and its financial statements are contemporaneous, reflect a profit, and have no evidence of countervailable subsidies.
- In *Vietnam Fish 16-17*, Commerce found that Japfa's financial statements and the company's website showed that it was indeed a producer of comparable merchandise.[88]
- Although the respondents claim that Japfa's aquaculture business relates only to trade of such products, this is incorrect, as Japfa lists "Aquaculture" as a business segment and, notably, "Aquaculture" is listed separately from "Trading and others."[89] Japfa's financial statements identify "aquaculture" as one of the company's "six operating segments" and reflect significant assets and capital expenditures associated with this segment.

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[84] *See* Vinh Hoan/CASEAMEX/VASEP Case Brief at 1-4.
[85] *Id*. (citing Vinh Hoan, CASEAMEX and VASEP Letter, "Rebuttal Comments on Surrogate Values," dated May 15, 2023 at 3, and Exhibits 16-17; and CASEAMEX and VASEP Letter, "Final Direct Surrogate Values," dated August 1, 2023, (CASEAMEX and VASEP August 1, 2023 SV Submission) at Exhibit 2).
[86] *Id*. (citing *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 85 FR 23756 (April 29, 2020) (*Vietnam Fish 17-18*), and accompanying IDM at 20).
[87] *See* Petitioners Rebuttal Brief at 3-7.
[88] *Id*. (citing *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results, and Final Results of No Shipments of the Antidumping Duty Administrative Review*; 2016–2017, 84 FR 18007 (April 29, 2019) (*Vietnam Fish 16-17*), and accompanying IDM at Comment 6).
[89] *Id*. (citing CASEAMEX and VASEP August 1, 2023 SV Submission at Exhibit 2; and Petitioners Letter, "Submission of Proposed Surrogate Factor Values," dated April 21, 2023, (Petitioners April 21, 2023 SV Submission) at Exhibit SV-13C.)

- Japfa's website shows that Japfa engages in aquaculture production and sales outside of trading, *e.g.*, in addition to fish feed, Japfa is engaged in breeding activities and activities relating to tilapia and eel.
- Japfa's website further describes its aquaculture activities relating to "Tilapia" as "fully integrated and the largest of its kind. The website also explains that the company's operations extend to a range of tilapia products, including frozen tilapia fillets.[90]
- Surrogate financial statements do not need to match respondents' activities exactly, as companies engaging in a range of activities may be used for the financial ratio calculations.
- Relying only on a single company will result in less accurate calculations than relying on multiple financial statements.
- The respondents' assertion that Japfa's financial statements were not preferrable in *Vietnam Fish 17-18* is misleading and misplaced. Commerce was not evaluating the reliability of Japfa's financial statements in *Vietnam Fish 17-18*; the issue there was whether to select India or Indonesia as the primary surrogate country.
- Accordingly, Commerce should continue to rely on Japfa's financial statements for the final results.

Commerce's Position: We agree with the petitioners. In the *Preliminary Results*, Commerce relied on the 2022 audited financial statements of Dharma and Japfa to calculate surrogate financial ratios.[91] The record demonstrates that both companies, including Japfa, are producers of comparable merchandise, and their financial statements are suitable for valuation of the respondents' surrogate financial ratios.[92]

Regarding the respondents' claim that Japfa is not a producer of comparable merchandise, and that its operations are not comparable to their own, excerpts from Japfa's website and the summary of its articles of association indicate that it is involved in trading, but that such trading includes the company's products (*i.e.*, self-produced products), which include aquaculture products.[93] Specifically, on its website, Japfa states that its "tilapia operation is fully integrated and the largest of its kind in Indonesia" and that "{a}fter harvest, the tilapia are transported live to *our own cold storage and processing facility* located 32 km from the lake. We use modern equipment and processes such as *tunnel freezing*."[94] In addition, Japfa highlights several products that it produces, including frozen tilapia fillets/portions.[95]

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[90] *Id*. (citing Petitioners April 21, 2023 SV Submission at Exhibit SV-13C; and Petitioners Letter, "Pre-Preliminary Submission of Rebuttal Surrogate Value Information," dated August 11, 2023, at Exhibit SV-2).
[91] *See* Preliminary SV Memorandum at 6-7.
[92] *See* Petitioners Letter, "Pre-Preliminary Submission of Proposed Surrogate Factor Values," dated August 1, 2023 (Petitioners August 1, 2023 SV Submission) at Exhibits SV-8 and SV-9.
[93] *Id.* at Exhibit SV-9 (at Japfa financial statements page 11).
[94] *Id.*at Exhibit SV-13C.
[95] *Id.*at Exhibit SV-13C (emphasis added) (referencing "Tilapia Shallow Skinned," "Tilapia Deep Skinned," or "Tilapia Super Deep" skinned fillets all available in "3-5, 5-7, 7-9, 9-11 oz" individually quick frozen (IQF) or vacuum pack; "Tilapia Loins" available in IQF or vacuum pack; and "Tilapia Portion Cuts" available in IQF or vacuum pack).

In selecting surrogate financial statements, Commerce examines how similar a proposed surrogate producer's production experience is to the NME producer's production experience.[96] However, contrary to the respondents' claims, this analysis is not dependent upon matching the exact production experience of the respondent.[97]

Regarding respondents' arguments that Japfa's financial statements include activities by (1) subsidiaries, and (2) not related to comparable merchandise, we note that Commerce has relied on consolidated financial statements of multinational corporations with world-wide operations that produce an array of products (including comparable merchandise) for surrogate financial valuation in other cases.[98] Further, with respect to this latter point, the respondents claim that Japfa engages in activities not related to comparable merchandise in addition to aquaculture. A look at Japfa's sales activities demonstrates that it engaged in a multitude of activities including: aquaculture; commercial farming; animal feed production; processing and consumer products; breeding; and trading and others.[99] Contrary to the petitioners' argument that Japfa's activities do not approximate those of the respondents in this review, these activities are not dissimilar to the experience of the respondents here, who themselves engaged in various activities other than frozen processing. For instance, the respondents' financial statements and other documentation (*e.g.*, business registration) reveal that both CASEAMEX and Vinh Hoan are involved in processing, engage in extensive farming, engage in feed production, engage in breeding, and have trading activities.[100]

Moreover, Japfa's experience is similar to that of recent respondents as well, *e.g.*, mandatory respondent NTSF in *Vietnam Fish 16-17*, that had processing, farming, feed production, *etc*., activities, and where Commerce used Japfa for surrogate financial ratio purposes in that segment.[101] Thus, taken as a whole, the experience of Japfa is not dissimilar to that of the respondents, as all engage in activities outside of the processing of fish, including farming, feed production, breeding, trading, and others.

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[96] *See Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010) (*OCTG from China*), and accompanying IDM at Comment 13.
[97] *See Nation Ford Chem. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1999).
[98] *See*, *e.g.*, *OCTG from China* IDM at Comment 13; *Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 42314 (June 29, 2016) (*HFC Blends*), and accompanying IDM at Comment 30; and *1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part*, 82 FR 12192 (March 1, 2017) (*Tetra*), and accompanying IDM at Comment 6.
[99] *See* Petitioners August 1, 2023 SV Submission at Exhibit SV-9 (Note 26 (pg. 133)).
[100] *See e.g.*, CASEAMEX AQR at Exhibit 13 (Financial Statements pg. 2 "Business highlights") and Exhibit 4 (Business Registration); and, Vinh Hoan's Letter, "Section A Questionnaire Response – Vinh Hoan Corporation," dated January 13, 2023, at Exhibit 14 (Financial Statements pg. 11-12 "General Information" and "Principal activities") and Exhibit 4 (Business Registration).
[101] *See Vietnam Fish 16-17* IDM at Comments 4, 5, and 11.

Finally, the courts have recognized Commerce's discretion when choosing companies' financial statements to calculate surrogate financial ratios.[102] In this regard, Commerce has emphasized that using multiple financial statements to calculate surrogate financial ratios allows the agency to average overhead, selling, general and administrative (SG&A), and profit ratios in order "to normalize any potential distortions that may arise" from using the statements of a single producer and to "arrive at a broader-based surrogate valuation that minimizes the particular circumstances of any one producer."[103] Thus, Commerce generally prefers to rely on more than one set of surrogate financial statements when calculating a respondent's dumping margin.[104]

Taken together, the foregoing establishes, and the record supports, that Japfa's financial statements are viable for purposes of calculating the surrogate financial ratios in the instant review. As such, Commerce will continue to use Japfa's (and Dharma's) financial statements to value the respondents' financial ratios for the final results.

B. Ratio Calculations

CASEAMEX, Vinh Hoan, and VASEP's Comments[105]

- Commerce should make certain modifications to the ratios calculated based on the Dharma/Japfa statements relating to the treatment of the following: foreign exchange gains; gain on the sale of fixed assets; sales discounts; and freight expenses/packing costs.
- **Foreign Exchange Gains**. In the *Preliminary Results*, Commerce excluded foreign exchange gains incurred by Dharma (under "Gain on Foreign Exchange") and Japfa (under "Exchange Differences") from the calculation of the SG&A ratio. However, Commerce regularly includes foreign exchange gains in the SG&A ratio calculation and should include foreign exchange gains in the SG&A ratio here.[106]
- **Gain on Sale of Fixed Assets**. In the *Preliminary Results*, Commerce excluded Dharma's "Gain on Sale of Fixed Assets" from the financial ratio calculations. However, Commerce's regularly includes gain/losses on sales of fixed assets in general and administrative expenses.[107] In addition, Commerce correctly included the gain from the sale of fixed assets in the Japfa SG&A calculation. Therefore, for these final results,

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[102] *See*, *e.g.*, *FMC Corp. v. United States*, Court No. 01-00807, Slip Op. 03-15 (CIT February 11, 2003) (finding that Commerce "has wide discretion in choosing among various surrogate sources" and affirming Commerce's reliance on Calibre's financial statement for calculating the SG&A ratio in that case), *aff'd FMC Corp. v. United States,* 87 Fed. Appx. 753 (Fed. Cir. 2004).
[103] *See Certain Activated Carbon from the People's Republic of China; 2010-2011; Final Results of Antidumping Duty Administrative Review*, 77 FR 67337 (November 9, 2012), and accompanying IDM at Comment 1.F.
[104] *See*, *e.g.*, *OCTG from China* IDM at Comment 13; *HFC Blends* IDM at Comment 30 (citing *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 34082 (June 13, 2005), and accompanying IDM at Comment 5); *Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006), and accompanying IDM at Comment 1); and *Tetra* IDM at Comment 6.
[105] *See* Vinh Hoan/CASEAMEX/VASEP Case Brief at 4-6.
[106] *Id*. (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2012-2013*, 80 FR 40998 (July 14, 2015), and accompanying IDM at Comment 25.)
[107] *Id*. (citing *Certain New Pneumatic Off-the-Road Tires from India: Final Results of Antidumping Duty Administrative Review; 2021-2022*, 88 FR 70640 (October 12, 2023), and accompanying IDM at Comment 12).

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Commerce should include the gain on the sale of fixed assets in Dharma's SG&A ratio calculation.

- **Sales Discounts**. In the *Preliminary Results*, Commerce included "Sales Discounts" in the calculation of the Japfa SG&A ratio. However, this results in double counting because sales discounts are also reported as a price adjustment to gross unit price. Moreover, Commerce regularly excludes sales discounts from the financial ratio calculation.[108] Therefore, Commerce should exclude sales discounts from the calculation of the SG&A ratio.
- **Freight Expenses and Packing Costs.** In the *Preliminary Results*, Commerce included Dharma's "Freight-out" (under SG&A), and "Packing Usage and Transportation" (under overhead). Similarly, Commerce included Japfa's "Freight" and "Freight Forwarding," both classified under selling expenses, in SG&A. However, this approach results in double counting because freight expenses and brokerage & handling, *i.e.*, freight forwarding, are also reported as price adjustments to gross unit price and packing inputs are reported on the FOP database. Commerce regularly excludes the cost of such expenses from the financial ratio computations to avoid double-counting.[109] Therefore, Commerce should exclude these items from the calculation of the financial ratios here.

Petitioners' Comments[110]

- **Foreign Exchange Gains.** Regarding Dharma's "Gain of Foreign Exchange," Commerce did include each of these line items in the financial ratio calculation. While it appears that Commerce inadvertently categorized this as "Exclude," Commerce did nonetheless include the items under SG&A. Regarding Japfa's "Exchange Differences," this is captured as part of "Other comprehensive income (loss) for the year" and properly excluded from SG&A. Thus, no change is needed from the *Preliminary Results*.
- **Gain on Sale of Fixed Assets**. Regarding Dharma's "Gain on Sale of Fixed Assets," Commerce did include this line item in the financial ratio calculation. However, it appears that Commerce inadvertently categorized this "Exclude," but did nonetheless include this item under SG&A.
- **Sales Discounts**. There is no risk of double counting discounts because Japfa's sales discounts are materially different from the types of expenses reported by the respondents. CASAMEX did not report any sales discounts and it does not claim to have done so. Therefore, no double counting occurred for CASAMEX. With respect to Vinh Hoan, it reported providing quantity discounts which are distinct from sales discounts. Sales discounts occur on a transaction-specific basis at the time of sale, and do not have the same types of uncertain contingencies associated Vinh Hoan's quantity discounts. Thus, there is nothing in Japfa's financial statements to suggest that the "sales discount" line item is similar to Vinh Hoan's quantity discounts. Therefore, there is no double counting

[108] *Id*. (citing *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008), and accompanying IDM at Comment 18.C).
[109] *Id*. (citing *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; and Final Determination of No Shipments; 2020-2021*, 87 FR 67671 (November 9, 2022), and accompanying IDM at Comment 3).
[110] *See* Petitioners Rebuttal Brief at 7-12.

by Commerce's inclusion of Japfa's "sales discounts" line item in Vinh Hoan's surrogate financial ratios.

- **Freight Expenses and Packing Costs.**
    - Regarding Dharma's "Freight Out" expense, this line item likely contains freight and transportation expenses unrelated to respondents' reported freight for sales to the customer. For example, this line item would include freight for Dharma's: recycling activities; movement of machinery; trawling activity; assistance to suppliers and fishing communities; employee training programs; health and safety measures; and overhead materials. Dharma's financial statements includes the Indonesian word "pengangkutan" for "Freight Out" and is the general word for "transportation" rather than any specific type of freight cost, such as delivery to the customer.
    - Regarding Japfa's "Freight" and "Freight Forwarding," the company engages in multiple types of freight activities; thus, it is unlikely to exclusively contain only expenses associated with the delivery of freight to the final customers. For example, these line items would include freight for Japfa's: activities involving animal feed production and corn milling; warehousing and storing various other products, including intermediate goods and overhead consumables, for intercompany transfers; and maintenance and construction with respect to infrastructure and machinery.
    - Regarding Dharma's "Packing Usage and Transportation," transportation expenses included in surrogate financial statements as manufacturing overhead are distinct from those reported by respondents in their sales databases. For example, this line item would include freight for Dharma's overhead freight expenses relating to trawlers and related equipment and within-factory transportation and vehicles used by company management. Moreover, the "packing usage" portion of "Packing usage and transportation" line-item would also include consumables used to transport raw materials and semi-finished goods within the factory, including ice, container bins, bags, crates, tarps, ropes, *etc*.

Commerce's Position: We have examined our surrogate ratio calculations, and we agree with the petitioners in part, and the respondents in part. We discuss each issue raised, in turn.

Foreign Exchange Gains

Regarding Dharma's "Gain of Foreign Exchange," we agree with the petitioners. In the calculations for the *Preliminary Results*, Commerce prepared a spreadsheet containing both Dharma's and Japfa's financial ratio calculations.[111] In the "Dharma Sumadera" tab, Commerce labeled "Gain on Foreign Exchange" as "Exclude" (cell E17), when we meant to label the value as "SG&A." However, the amount for "Gain on Foreign Exchange" *was* included in the SG&A

[111] *See* Preliminary SV Memorandum.

calculation (cell K17). Accordingly, we have revised the labeling to "SG&A."[112]

Regarding Japfa's "Exchange Differences," Japfa's financial statements include five items for exchange adjustments, the first four of which are: "Net Gain on Foreign Exchange Attributable to Operating Activities" under "Other Income,"[113] "Net Loss on Foreign Exchange Attributable to Operating Activities" under "Other Expenses,"[114] "Net Gain on Foreign Exchange Attributable to Financing Activities" under "Finance Income,"[115] and "Net Loss on Foreign Exchange Attributable to Financing Activities" under "Finance Cost."[116] These four items are properly included in the SG&A ratio, as these are related to the general operations of the company, *i.e.*, under Operating Activities and Financing Activities.

However, the last item "Exchange Differences" (which is actually "Exchange Differences from Translation of Financial Statements") is listed under "Other Comprehensive Income" (along with three other items: Remeasurements on Employee Benefits Liabilities; Share in Remeasurement of Defined of Benefit Plans in Joint Ventures, Net of Tax; and Cash flow hedges) in the Profit and Loss Statement.[117] All these items are listed after "Profit Before Income Tax" and even after "Profit for the Year" (after income tax expense). Thus, these items do not appear to be SG&A in nature related to the general operations of the company, but rather post-SG&A items.

Thus, we have excluded all these items under "Other Comprehensive Income" including "Exchange Differences from Translation of Financial Statements" which occurred after profit (after income tax), as these appear to be after-tax adjustments and were not included in the build up to the company's reported after-tax profit. More importantly, gains or losses on foreign exchange relating to Japfa's general operations are being captured in four other line items under Operating and Financing Activities. Accordingly, we have continued to exclude "Exchange Differences from Translation of Financial Statements" from the ratio calculations.

Gain On Sale of Fixed Assets

We agree with the petitioners. In the calculations for the *Preliminary Results*, Commerce prepared a spreadsheet containing Dharma's ratio calculations.[118] In the "Dharma Sumadera" tab, Commerce labeled "Gain on Sale of Fixed Assets" as "Exclude" (cell E18), when we meant to label it as "SG&A." However, the amount for "Gain on Sale of Fixed Assets" was included in the SG&A calculation (cell K18). Accordingly, we have revised the labeling to indicate "SG&A."[119]

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[112] *See* Vinh Hoan Analysis Memorandum; and Memorandum, "Final Results Analysis Memorandum for Vinh Hoan Corporation," dated concurrently with this memorandum (Vinh Hoan Analysis Memorandum).
[113] *See* Petitioners August 1, 2023 SV Submission at Exhibit SV-9 (Japfa's Financial Statements at page 136).
[114] *Id*. at Japfa's Financial Statements page 136.
[115] *Id*. at Japfa's Financial Statements page 137.
[116] *Id*. at Japfa's Financial Statements page 137.
[117] *Id*. at Japfa's Financial Statements page 4.
[118] *See* Preliminary SV Memorandum.
[119] *See* CASEAMEX Analysis Memorandum; and Vinh Hoan Analysis Memorandum.

Sales Discounts

We agree with the respondents, and we have removed sales discounts from our ratio calculated based on the Japfa statements (*i.e*., no longer deduct the value from our SG&A numerator). The petitioners assert that no double counting is occurring because the discounts reflected in the financial statements differ from those of the respondents. However, Commerce normally excludes such expenses from the surrogate financial ratio calculations, because it deems rebates and discounts to be price adjustments that are accounted for elsewhere in the margin calculation.

We note that "Net Sales" (Note 26) in Japfa's financial statements includes seven items (sales from each of the six core operating segments (including aquaculture), and "Sales Discounts").[120] "Sales Discounts" is included as a single adjustment to all the core operating segments sales. Commerce typically deducts this type of discount from gross unit price (*e.g.* items under DISCREBU) when calculating U.S. net price. Although the petitioners assert that "there is nothing in Japfa's financial statements to suggest that the 'sales discount' line item" is duplicative of the Vinh Hoan's precise experience, it would be inappropriate to include surrogate sales discounts in the calculation at all, given that Commerce's practice is to base such discounts on the respondent's own books and records. Moreover, we are "not required to match the experience of the surrogate company perfectly with that of the respondent {or respondents} in determining financial ratios,"[121] and we find that adhering to Commerce's standard practice in this regard is appropriate.

Freight Expenses and Packing Costs

Regarding Japfa's "Freight" and "Freight Forwarding," we agree with respondents. Japfa's financial statements split SG&A into two categories "Selling and Marketing Expenses" (Note 28) and "General and Administrative" (Note 29).[122] These are shown after Japfa lists "Cost of Goods Sold" (Note 27-which includes material, labor, energy and overhead).[123] Japfa's "Freight" and "Freight forwarding" are listed under "Selling and Marketing Expenses."[124] The petitioners argue that Commerce includes freight expenses in its SG&A calculation where the

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[120] *See* Petitioners August 1, 2023 SV Submission at Exhibit SV-9 (at Japfa's Financial Statements page 133).
[121] *See Vietnam Fish 16-17* IDM at Comment 6; *Forged Steel Fittings from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018–2019*, 86 FR 53629 (September 28, 2021), and accompanying IDM at Comment 1; *Certain Quartz Surface Products from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances*, 84 FR 23767 (May 23, 2019), and accompanying IDM at Comment 11; *Frontseating Service Valves from the People's Republic of China: Final Results of the 2008–2010 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 76 FR 70706 (November 15, 2011), and accompanying IDM at Comment 1; *Certain Steel Wheels from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances*, 77 FR 17021 (March 23, 2012), and accompanying IDM at Comment 3; and *OCTG from China* IDM at Comment 13. *See also*, *e.g.*, *Nation Ford Chemical Co. v. United States*, 985 F. Supp. 133, 137 (CIT 1997) (holding that Commerce need not "duplicate the exact production experience of the {Chinese} manufacturers"); *Nation Ford Chemical Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 2006); and *Sigma Corp. v. United States*, 117 F.3d 141, 1407 (Fed. Cir. 1997).
[122] *See* Petitioners August 1, 2023 SV Submission at Exhibit SV-9 (at Japfa's Financial Statements page 135).
[123] *Id*. at Japfa's Financial Statements page 134.
[124] *Id*. at Japfa's Financial Statements page 135.

financial statements do not directly tie those expenses to sales of finished goods. However, in this case, it is reasonable to infer that "Freight" and "Freight forwarding" are related to selling/sales and marketing activities as they are expressly listed under "Selling and Marketing Expenses" (and not general or administrative expenses), and, thus, the case[125] cited by the petitioners is inapplicable. The examples that the petitioners proffer as illustrations of potential non-sales freight costs[126] do not appear to be of a "selling and marketing" nature, but rather appear to be internal transportation activities (*e.g.*, activities involving: production, warehousing and storing, intermediate goods, overhead consumables, intercompany transfers; maintenance and construction, and machinery, *etc*.). Thus, given that these expenses are classified as related to "selling and marketing," they appear to be movement expenses related to sales and, thus, similar to those that Commerce typically deducts from gross unit price to calculate U.S. net price, *e.g.*, DINLFTPU, DBROKU, *etc*. Accordingly, Commerce will exclude "Freight" and "Freight Forwarding" from Japfa's financial ratio calculations for the final results.

Regarding Dharma's "Freight Out" we agree with the respondents. Dharma's financial statements split SG&A into two categories "Selling Expenses" (Note 20) and "General and Administrative Expenses" (Note 21).[127] These are listed after Dharma lists "Cost of Good Sold" (Note 19-which includes material, labor, energy and overhead).[128] Dharma's "Freight Out" expense is listed under "Selling Expenses."[129] Moreover, Dharma's financial statements include other non-selling freight/transportation under "Packing Usage and Transportation" under "Manufacturing Overhead."[130] Thus, it is reasonable to conclude that "Freight Out" is related to selling/sales activities as it is expressly listed under "Selling Expenses" rather than a general expense that would be captured under "General and Administrative Expenses" or "Manufacturing Overhead." We do not find it appropriate to speculate, as the petitioners suggest, that the "Freight Out" field – contained under the "Selling Expenses" category – "likely" includes non-sales transportation costs, such as those relating to recycling and overhead materials.[131] Similarly, although the petitioners speculate about the title of the "Freight Out" line,[132] the fact remains that the context of the line item indicates that it is related to sales expenses. Therefore, we conclude that "Freight Out" is a movement expense related to sales and is similar to those expenses that Commerce typically deducts from gross unit price to calculate U.S. net price. Accordingly, we have excluded "Freight Out" from Dharma's financial ratio calculations for the final results.

Regarding Dharma's "Packing Usage and Transportation" we agree with the petitioners. Dharma's "Packing Usage and Transportation" is included under "Manufacturing Overhead," which itself is included under "Cost of Goods Manufactured," which itself is classified under "Cost of Good Sold."[133] Dharma's "Manufacturing Overhead" includes: "Electricity and Fuel," "Supplies," "Depreciation," "Repair and Maintenance," "Others," and "Packing Usage and

[125] *See* Petitioners Rebuttal Brief at 15-16 (citing *Activated Carbon 12-13* IDM at Comment 6).
[126] *Id.* at 19-20.
[127] *Id*. at Exhibit SV-8 (at Dharma's Financial Statements page 40).
[128] *Id*. at Dharma's Financial Statements page 39-40.
[129] *Id*. at Dharma's Financial Statements page 40.
[130] *Id*. at Dharma's Financial Statements page 40.
[131] *Id*. at 16.
[132] *Id*. at 18.
[133] *Id*. at Dharma's Financial Statements page 39-40.

Transportation."[134] Given this, we find that "Packing Usage and Transportation" is related to overhead, as this line item is ultimately found under "Manufacturing Overhead" along with other costs that are typically classified as overhead items.

Moreover, as explained above, the Dharma financial statements explicitly include a different type of transportation ("Freight Out") under "Selling Expenses." Thus, we do not agree with respondents that any freight covered by the "Packing Usage and Transportation" line item should be excluded; the type of freight that Commerce typically excludes from its financial ratio calculations is accounted for elsewhere, *i.e.*, in "Freight Out" under "Selling Expenses." Accordingly, transportation costs contained within "Packing Usage and Transportation" in the Dharma statements are overhead costs. Similarly, regarding the "Packing Usage" portion of this line item, it is not clear what percentage this component constitutes of the overall "Packing Usage and Transportation" cost or what type of packing is encompassed. Moreover, Dharma grouped it under "Manufacturing Overhead." Accordingly, as discussed in the context of the transportation costs that are booked under this line item, we find it significant that the item was contained under the "Manufacturing Overhead" category, and we defer to this designation for our classification of the expenses here.

Comment 6: SV for Fish Skin

Respondents' Comments[135]

- In the *Preliminary Results*, Commerce incorrectly used the average price for fish waste (including fresh air bladders and fresh fish stomachs) to value fresh fish skin. Commerce should correct its calculations to use the value for fresh fish skin for the final results.

No other party commented on this issue.

Commerce's Position: We agree with the respondents and will value fish skin using only the SV for fish skin.[136]

Comment 7: Rescission of Review for Certain Exporters

Commerce initiated this review with respect to 25 exporters, including the Vietnam-wide entity. In the *Preliminary Results*, Commerce assigned a new rate to the Vietnam-wide entity based on the rate calculated for CASEAMEX.[137] At that time, we preliminarily found the following companies eligible for separate rates: Cafatex Corporation (Cafatex); CASEAMEX; HVC; IDI; Loc Kim Chi Seafood Joint Stock Company (Loc Kim Chi); and Vinh Hoan.[138]

Additionally, in the *Preliminary Results*, as discussed in Comment 1 above, Commerce determined that Luscious Seafoods' review request was not valid. Accordingly, we stated that any company that was under review solely as a result of that request would have this review

[134] *Id*. at Dharma's Financial Statements page 40.
[135] *See* Vinh Hoan/CASEAMEX/VASEP Case Brief at 7.
[136] *See* Memorandum, "Surrogate Values for the Final Results," date concurrently with this memorandum; *see also* "Final Results Analysis Memorandum for the Vinh Hoan Corporation," dated concurrently with this Memorandum.
[137] *See Preliminary Results*, 88 FR at 61525-26.
[138] *Id*., 88 FR at 61526.

rescinded in these final results.

Petitioners' Comments:[139]

- Commerce should rescind the review of the Vietnam-wide entity because no exporter comprising the Vietnam-wide entity had any U.S. shipments/entries during the POR.
- This did not become clear until the *Preliminary Results*, when Commerce initially determined that the only companies with entries under the Vietnam-wide entity case number were eligible for a separate rate. Similarly, Commerce was continuing its investigation of companies with no shipments after the deadline to submit a withdrawal of the request for review.
- For the final results, in light of Commerce's confirmation of the lack of entries by the Vietnam-wide entity, Commerce must rescind the review of the Vietnam-wide entity. Further, this decision will not prejudice any other party as no company that is part of the Vietnam-wide entity chose to participate in this proceeding and all suspended entries under review were from companies found to be independent of Vietnamese government control.
- Should Commerce not rescind the review of the Vietnam-wide entity, consistent with its legal requirements, then Commerce must carry forward the Vietnam-wide rate of $2.39/kg from the most recent administrative review for the final results.

HVG Comments:[140]

- The petitioners requested a review of the Vietnam-wide entity and did not withdraw it.
- Commerce has not historically considered whether the Vietnam-wide entity had entries during the POR in considering whether to maintain a review request. In any case, the Vietnam-wide entity had reviewable entries during the POR (*i.e.*, that entered under A-552-801-000) and, thus, Commerce properly reviewed the Vietnam-wide entity.
- Commerce correctly determined that the Vietnam-wide entity should receive a new updated AD rate based on the rates computed for the other parties this segment of the proceeding. Commerce should maintain this aspect of its decision in the final results.

Commerce's Position: We agree with the petitioners, in part. Based on our examination of the data obtained from CBP,[141] for any company/entity without POR entries we are rescinding this review. We are also rescinding this review for any company with entries that was under review based only on the request of Luscious Seafoods.

Pursuant to 19 CFR 351.213(d)(3), Commerce:

> may rescind an administrative review, in whole or only with respect to a particular exporter or producer, if {Commerce} concludes that, during the period covered by

[139] *See* Petitioners Case Brief at 2-40; and Petitioners Rebuttal Brief at 25-30.
[140] *See* HVG Case Brief at 4-5; and HVG Rebuttal Brief at 1-12.
[141] *See* Memorandum, "U.S. Customs and Border Protection Data Query," dated December 7, 2022.

> the review, there were no entries, exports, or sales of the subject merchandise, as the case may be.

Consistent with this regulation, it is Commerce's practice to rescind an administrative review of an AD order where it concludes that there are no reviewable entries of subject merchandise during the POR for an exporter or producer.[142] Normally, upon completion of an administrative review, the suspended entries are liquidated at the AD assessment rate calculated for the review period.[143] Therefore, for an administrative review to be conducted, there must be a reviewable, suspended entry that Commerce can instruct CBP to liquidate at the AD assessment rate calculated for the review period.[144]

This approach has been upheld by the courts. In *Allegheny*, the U.S. Court of Appeals for the Federal Circuit held that, "where there are no entries . . . during a {POR} there is no subject merchandise and thus nothing to review and no basis for revising cash deposit rates - so Commerce need not (indeed, cannot) conduct a review."[145] The CIT reiterated this principle in *Hubbell Power Systems*, stating that "{m}erchandise must enter during the POR in order to qualify as subject merchandise."[146]

To provide clarity regarding this practice, at the end of 2023, Commerce began stating its intention regarding its rescission practice/policy in each initiation notice published in the *Federal Register* at the outset of all administrative reviews, noting that "{w}ith respect to AD administrative reviews, we intend to rescind the review where there are no suspended entries for a company or entity under review and/or where there are no suspended entries under the company-specific case number for that company or entity."[147]

The overwhelming majority of exporters subject to this review, including the Vietnam-wide entity, had no POR entries of subject merchandise. Thus, consistent with Commerce's current practice/policy discussed above, we are rescinding this review with respect to those entities.

Of note, in light of our final decisions regarding the separate rate eligibility for CAFATEX, CASEAMEX, HVG, IDI, Loc Kim Chi, and Vinh Hoan, there are no POR entries attributable to

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[142] *See, e.g.*, *Certain Softwood Lumber Products from Canada: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Partial Rescission in the Administrative Review, 2022*, 89 FR 8152, 8153 (February 6, 2024); *Dioctyl Terephthalate from the Republic of Korea: Rescission of Antidumping Administrative Review; 2021–2022*, 88 FR 24758 (April 24, 2023); *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Federal Republic of Germany: Recission of Antidumping Administrative Review; 2020–2021*, 88 FR 4154 (January 24, 2023); *1,1,1,2-Tetrafluoroethane (R-134a) From the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2022-2023*, 89 FR 4909 (January 25, 2024); and *Common Alloy Aluminum Sheet from Taiwan: Rescission of Antidumping Duty Administrative Review; 2020-2022*, 88 FR 27866 (May 3, 2023), and accompanying IDM.
[143] *See* 19 CFR 351.212(b)(1).
[144] *See* 19 CFR 351.213(d)(3).
[145] *See Allegheny Ludlum Corp. v. United States*, 346 F.3d 1368, 1372 (Fed. Cir. 2003) (*Allegheny*).
[146] *See Hubbell Power Systems, Inc. v. United States*, 884 F. Supp 2d 1283, 1290 (CIT 2012) (*Hubbell Power Systems*).
[147] *See, e.g.*, *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 84784, 84785 (December 6, 2023); *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 89 FR 8641 (February 8, 2024).

the Vietnam-wide entity. In particular, for each entry of subject merchandise during the POR – including entries attributable to the Vietnam-wide entity that entered under A-552-801-000 – the exporter in question was granted (or maintained) a separate rate. Therefore, consistent with our approach regarding the company/exporters discussed above, there is no basis for conducting a review of the Vietnam-wide entity.[148] Accordingly, we are partially rescinding this administrative review in accordance with 19 CFR 351.213(d)(3), and the cash deposit rate for the Vietnam-wide rate remains unchanged from the current rate in effect, $2.39/kg, as a result of this review.

Finally, we note that several companies, including Bien Dong and NTSF, had entries of subject merchandise during the POR. However, the sole remaining review request for these companies was from Luscious Seafoods. As discussed above in Comment 1, we have found this request to be invalid. Accordingly, we are rescinding this review for these companies that were under review based only on the request of Luscious Seafoods.[149]

A complete list of exporters for which we are rescinding this review is contained in Appendix II of the *Federal Register* notice accompanying this memorandum.

VI. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If accepted, we will publish the final results in the *Federal Register*.

☒ ☐

Agree Disagree

X

Signed by: RYAN MAJERUS

Ryan Majerus
Deputy Assistant Secretary
for Policy and Negotiations,
performing the non-exclusive functions and duties
of the Assistant Secretary for Enforcement and Compliance

[148] We note that the petitioners provided voluminous comments regarding the assignment of a rate to the Vietnam-wide entity. *See* Petitioners Case Brief at 2-40; and Petitioners Rebuttal Brief at 25-30. In light of the rescission of this review with respect to the entity, these comments are moot.

[149] Several additional companies, including PREFCO Distribution, LLC and Bien Dong Hau Giang Seafood Joint Stock Company (also known as Bien Dong HG or Bien Dong Hau Giang Seafood Joint Stock Co.), were also solely under review based on the invalidated request from Luscious Seafoods.

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