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March 3, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping
Duty Administrative Review: Certain Frozen Warmwater Shrimp
from the Socialist Republic of Vietnam; 2014-2015

SUMMARY

In response to requests from interested parties, the Department of Commerce (“Department”) is conducting this administrative review of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam (“Vietnam”) for the period of review (“POR”) February 1, 2014, through January 31, 2015. The Department preliminarily determines that sales of the subject merchandise by the Minh Phu Group¹ and Soc Trang Seafood Joint Stock Company (“Stapimex”) were at prices below normal value (“NV”).

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (“CBP”) to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We will issue final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the “Act”) and 19 CFR 351.213(h)(1).

¹ Minh Phu Seafood Corporation, Minh Qui Seafood Co., Ltd., Minh Phat Seafood Co., Ltd., and Minh Phu Hau Giang Seafood Joint Stock Company (collectively, “Minh Phu Group”). In the immediately preceding administrative review, we determined that Minh Phu Seafood Corporation, Minh Qui Seafood Co., Ltd., Minh Phat Seafood Co., Ltd., and Minh Phu Hau Giang Seafood Joint Stock Company are affiliated and comprise a single entity, to which we assigned a single rate. See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2013–2014, 80 FR 55328 (September 15, 2015) (“VN Shrimp AR9 Final”) unchanged from Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review; 2013–2014, 80 FR 12441, 12442 (March 9, 2015) (“VN Shrimp AR9 Prelim”). As the facts have not changed since the preceding review, we continue to find that these companies (collectively, the Minh Phu Group) continue to be affiliated and comprise a single entity, to which we will apply a single rate in these preliminary results.



Background

On April 3, 2015, the Department initiated an administrative review of 195 producers and exporters of certain frozen warmwater shrimp from Vietnam for the period February 1, 2014, through January 31, 2015.²

Extension of Preliminary Results

On September 9, 2015, the Department extended the deadline for the preliminary results by a total of 120 days, to February 28, 2016.^{3,4} Further, as explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government. All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the preliminary results of this review is now March 4, 2016.⁵

Respondent Selection

In the Initiation Notice, the Department notified all interested parties that due to the large number of firms requested for this administrative review and the resulting administrative burden to review each company for which a request had been made, the Department was considering exercising its authority to limit the number of respondents selected for individual review, in accordance with section 777A(c)(2) of the Act, and that the Department intended to select respondents based on CBP data for entries of the subject merchandise during the POR.

Section 777A(c)(1) of the Act directs the Department to calculate individual weighted-average dumping margins for each known exporter and producer of the subject merchandise. However, because of the large number of exporters/producers involved in the investigation or review, it is not practicable to calculate individual weighted-average dumping margins, section 777A(c)(2) of the Act authorizes the Department to determine the weighted-average dumping margins for a reasonable number of exporters/producers by limiting its examination to: (1) a statistically valid sampling of exporters, producers, or types of products; or (2) to the exporters/producers accounting for the largest volume of subject merchandise that can be reasonably examined. The

² See Initiation of Antidumping and Countervailing Duty Administrative Reviews, 80 FR 18202 (April 3, 2015) (“Initiation Notice”). While there were 195 individual names upon which we initiated an administrative review, the number of actual companies initiated is 99 due to variations of names requested by multiple interested parties and the groupings of companies that we have previously collapsed. See the “Separate Rates” and “Vietnam-Wide Entity” sections below for additional information.

³ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated September 9, 2015.

⁴ A 120-day extension of the current deadline is February 28, 2016, which is a Sunday. Therefore, in accordance with our Next Business Day Rule, the deadline is moved to Monday, February 29, 2016. See Notice of Clarification: Application of “Next Business Day” Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended, 70 FR 24533 (May 10, 2005) (“Next Business Day Rule”).

⁵ See Memorandum to the Record, from Ron Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, “Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm Jonas,” dated January 27, 2016.

Statement of Administrative Action accompanying the Uruguay Round Agreements Act (“SAA”) interprets this provision to mean that the authority to select respondents, whether by using a “statistically valid” sample or by examining respondents accounting for the largest volume of subject merchandise, rests exclusively with the Department.⁶

On April 3, 2015, we placed CBP data on the record inviting comments for selecting respondents.⁷ On April 13, 2015, we received respondent selection comments from the Vietnamese Association of Shrimp Exporters and Producers (“VASEP”).⁸ No parties filed a request to employ the sampling methodology to select respondents for individual examination. On April 17, 2015, Petitioner⁹ filed rebuttal comments.¹⁰ VASEP argued the Department should not employ sampling but rather select respondents based on the largest volume of subject merchandise that can be reasonably examined.¹¹

Because no interested parties submitted a request for the Department to employ the sampling methodology, we determined not to employ sampling to select respondents in this review. Rather, pursuant to section 777A(c)(2) of the Act, we limited our examination of exporters or producers accounting for the largest volume of the subject merchandise, based on the CBP data we placed on the record.¹² On April 29, 2015, the Department determined to limit the number of respondents selected for individual examination to the two largest companies by U.S. import entry volume for which a review was requested.¹³

Scope of the Order

The scope of the order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,¹⁴ deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of the order, regardless of definitions in the HTS, are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

⁶ See SAA, H.R. Doc. No. 103-316, vol. 1 at 872 (1994).

⁷ See Memorandum to All Interested Parties, from Irene Gorelik, re: “Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam (“Vietnam”): Customs Data of U.S. Imports of Certain Frozen Warmwater Shrimp from Respondent Selection,” dated April 3, 2015 (“CBP Data Memo”).

⁸ See VASEP’s Submission dated April 13, 2015, re: AR10 Respondent Selection Comments (“VASEP’s Comments”).

⁹ Petitioner is the Ad Hoc Shrimp Trade Action Committee.

¹⁰ See Petitioner’s Submission dated April 17, 2015, re: Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Rebuttal Comments Regarding CBP Data and Respondent Selection (“Petitioner’s Rebuttal Comments”).

¹¹ See VASEP’s Comments.

¹² See CBP Data Memo.

¹³ See Memorandum to James C. Doyle, Office Director, from Irene Gorelik, Senior Analyst, re: “Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Selection of Respondents for Individual Examination,” dated April 29, 2015 (“Respondent Selection Memo”).

¹⁴ “Tails” in this context means the tail fan, which includes the telson and the uropods.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, white-leg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of the order. In addition, food preparations, which are not “prepared meals,” that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of the order.

Excluded from the scope are: 1) breaded shrimp and prawns (HTS subheading 1605.20.10.20); 2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; 3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.00.20 and 0306.23.00.40); 4) shrimp and prawns in prepared meals (HTS subheading 1605.20.05.10); 5) dried shrimp and prawns; 6) canned warmwater shrimp and prawns (HTS subheading 1605.20.10.40); and 7) certain battered shrimp. Battered shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (“IQF”) freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by these orders are currently classified under the following HTS subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. These HTS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.¹⁵

¹⁵ On April 26, 2011, the Department amended the antidumping duty order to include dusted shrimp, pursuant to the U.S. Court of International Trade (“CIT”) decision in *Ad Hoc Shrimp Trade Action Committee v. United States*, 703 F. Supp. 2d 1330 (CIT 2010) and the U.S. International Trade Commission (“ITC”) determination, which found the domestic like product to include dusted shrimp. See *Certain Frozen Warmwater Shrimp from Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision*, 76 FR 23277 (April 26, 2011); see also *Ad Hoc Shrimp Trade Action Committee v. United States*, 703 F. Supp. 2d 1330 (CIT 2010) and *Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam* (Investigation Nos. 731-TA-1063, 1064, 1066-1068 (Review), USITC Publication 4221, March 2011).

DISCUSSION OF THE METHODOLOGY

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested review. Both Petitioner and the American Shrimp Processors Association (“ASPA”) requested an administrative review of Seavina Joint Stock Company (“Seavina”).¹⁶ Because both Petitioner and ASPA withdrew their respective requests for administrative review of Seavina Joint Stock Company within 90 days of the date of publication¹⁷ of the Initiation Notice, and no other interested party requested a review of this company, the Department is rescinding this review with respect to Seavina Joint Stock Company, in accordance with 19 CFR 351.213(d)(1). The review will continue with respect to the companies remaining under active review, as identified in the Initiation Notice.

Preliminary Determination of No Shipments

In the Initiation Notice, we instructed producers or exporters named in the notice that had no exports, sales, or entries during the POR, to notify the Department within 30 days of publication of the notice of this fact.¹⁸ Between April 10, 2015 and May 1, 2015, 15 companies filed a no-shipment certification indicating that they had no exports, sales, or entries of subject merchandise to the United States during the POR.¹⁹ Upon receiving claims of no exports, sales, or entries from companies subject to the administrative review, it is the Department’s practice to send an inquiry message to CBP in which we request that CBP import officers alert the Department if it had information contrary to the party’s claim.²⁰ In this review, for those companies that already have a separate rate during the POR,²¹ we sent two inquiry messages to

¹⁶ See Petitioner’s and ASPA’s requests for administrative review, dated February 27, 2015.

¹⁷ See Petitioner’s and ASPA’s Partial Withdrawal of Request for Review, re: Seavina, dated July 2, 2015.

¹⁸ See Initiation Notice, 80 FR at 18202: “Notice of No Sales.”

¹⁹ See the following companies’ no shipment certification submissions: (1) BIM Seafood Joint Stock Company (April 14, 2015) (“BIM”); (2) Bien Dong Seafood Co., Ltd. (April 27, 2015) (“Bien Dong”); (3) Cafatex Fishery Joint Stock Corporation (April 23, 2015) (“Cafatex”); (4) Camranh Seafoods Processing Enterprise Pte. (April 27, 2015) (“Camranh Seafoods”); (5) Coastal Fisheries Development Corporation (April 21, 2015) (“COFIDEC”); (6) Bentre Forestry Aquaprodukt Import-Export Joint Stock Company (May 1, 2015) (“FAQUIMEX”); (7) Fine Foods Co. (April 21, 2015) (“Fine Foods”); (8) Gallant Ocean (Vietnam) Co., Ltd. (May 1, 2015) (“Gallant Ocean (Vietnam)”); (9) Long Toan Frozen Aquatic Products Joint Stock Company (April 28, 2015) (“Long Toan”); (10) Nhat Duc Co., Ltd. (April 21, 2015) (“Nhat Duc”); (11) Ngo Bros Seaproducts Import-Export One Member Company Limited (April 27, 2015) (“Ngo Bros”); (12) Thong Thuan Seafood Company Limited (April 27, 2015) (“T&T Seafood”); (13) Tacvan Seafoods Company (May 1, 2015) (“Tacvan”); (14) Tan Phong Phu Seafood Co., Ltd. (April 21, 2015) (“Tan Phong Phu”); and (15) Vinh Hoan Corporation (April 10, 2015) (“Vinh Hoan”).

²⁰ See e.g., Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013, 79 FR 15941 (March 24, 2014) and accompanying Preliminary Decision Memorandum at 4, unchanged in Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2012–2013, 79 FR 57047 (September 24, 2014).

²¹ BIM, Cafatex, Camranh Seafoods, COFIDEC, Nhat Duc, and T&T Seafood.

CBP.²² We did not receive a response from CBP regarding the companies listed within the inquiries.

Thus, based on the no-shipment claim submitted by these 15 companies and our analysis of information on the record, we preliminarily determine that they had no shipments during the POR. In addition, the Department finds that consistent with its practice in non-market economy (“NME”) cases, it is appropriate not to rescind the review, in part, for these 15 companies in this circumstance, but rather to complete the review.²³

In accordance with the Department’s practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the Vietnam-wide rate. Additionally, if the Department determines that an exporter had no shipments of the subject merchandise, any suspended entries that entered under that exporter’s case number (i.e., at that exporter’s rate) will be liquidated at the Vietnam-wide rate.²⁴

Non-Market Economy Country

The Department considers Vietnam to be an NME country.²⁵ In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Therefore, we continue to treat Vietnam as an NME country for purposes of these preliminary results.

Separate Rates

Pursuant to section 771(18)(C) of the Act, a designation of a country as an NME remains in effect until it is revoked by the Department. Accordingly, there is a rebuttable presumption that all companies within Vietnam are subject to government control and, thus, should be assessed a single antidumping duty rate.²⁶ In the Initiation Notice, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME

²² See CBP Message Number 5159302 available at:

http://adcvd.cbp.dhs.gov/adcvdweb/ad_cvd_msgs/19938?filter_cat=ALL&filter_type=ALL&page=1&per_page=10&search=5159302 and Message Number 5149311 available at:

http://adcvd.cbp.dhs.gov/adcvdweb/ad_cvd_msgs/19910?filter_cat=ALL&filter_type=ALL&page=1&per_page=10&search=5149311.

²³ See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties, 76 FR 65694, 65695 (October 24, 2011) (“Assessment Notice”).

²⁴ For a full discussion of this practice, see Assessment Notice, 76 FR at 65695.

²⁵ See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review, 2011-2012, 78 FR 15699 (March 12, 2013) and accompanying Decision Memorandum at 6, unchanged in Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2012-2013, 78 FR 56211 (September 9, 2013) (“AR7 VN Shrimp Final”).

²⁶ See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People’s Republic of China, 71 FR 53079, 53082 (September 8, 2006); Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People’s Republic of China, 71 FR 29303, 29307 (May 22, 2006).

proceedings.²⁷ It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Sparklers*,²⁸ as amplified by *Silicon Carbide*.²⁹ However, if the Department determines that a company is wholly foreign-owned or located in a market economy ("ME"), then a separate rate analysis is not necessary to determine whether it is independent from government control.³⁰ In this administrative review, 35 companies filed separate rate applications or certifications. Because we are rescinding the administrative review with respect to Seavina Joint Stock Company, there are now 34 companies under active review that have submitted documentation requesting separate rate status.

Separate Rate Granted

Two companies filed separate rate certifications reporting that they are wholly owned by individuals or companies located in a market economy.³¹ Therefore, because they are wholly foreign-owned, and we have no evidence indicating that its export activities are under the control of the Vietnamese government, a further separate rates analysis is not necessary to determine whether these companies are independent from government control.³² Accordingly, we have preliminarily granted a separate rate to C.P. Vietnam Corporation and Viet I-Mei Frozen Foods Co., Ltd.

Thirty additional companies filed either Separate Rate Certifications or Applications, including the two mandatory respondents. As noted above, the Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments decentralizing control of companies. In this review, 30 companies provided evidence that supports a finding of a *de jure* absence of government control over their export activities.³³ Thus, we believe that the evidence on the record supports a preliminary finding of an absence of *de jure* government control based on: (1) an absence of restrictive stipulations associated with the exporter's business license; and (2) the legal authority on the record decentralizing control over the respondents.

²⁷ See *Initiation Notice*, 80 FR at 18203.

²⁸ See *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*").

²⁹ See *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*").

³⁰ See, e.g., *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

³¹ See C.P. Vietnam Corporation's Separate Rate Certification, dated May 4, 2015 and Viet I-Mei Frozen Foods Co., Ltd.'s Separate Rate Certification dated April 23, 2015.

³² See e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104-05 (December 20, 1999) (where the respondent was wholly foreign-owned and, thus, qualified for a separate rate).

³³ See, e.g., Minh Phu Group's Separate Rate Certification, dated May 4, 2015; Sao Ta Foods Joint Stock Company's Separate Rate Application, dated May 4, 2015.

Additionally, as noted above, the absence of de facto government control over exports is based on whether the respondent: (1) sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management.³⁴ In their submitted Separate Rate Certifications and Applications, the applicants submitted evidence indicating an absence of de facto government control over their export activities. Specifically, this evidence indicates that: (1) each company sets its own export prices independent of the government and without the approval of a government authority; (2) each company retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) each company has a general manager, branch manager or division manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the board of directors or company employees, and the general manager appoints the deputy managers and the manager of each department; and (5) there is no restriction on any of the companies use of export revenues.³⁵ Therefore, the Department preliminarily finds that these 30 separate rate applicants, including the mandatory respondents, have established prima facie that they qualify for separate rates under the criteria established by Silicon Carbide and Sparklers.

Separate Rate Not Granted

Of the 34 separate rate applicants, we have preliminarily determined that two of these companies do not qualify for a separate rate. One company, Danang Sea Products Import-Export Corporation (“Seaprodex Danang”), did not demonstrate an absence of governmental control in its Separate Rate Application and supplemental questionnaire responses, and therefore, does not meet the criteria for a separate rate for this review period. Specifically, the record shows that Seaprodex Vietnam, the majority shareholder of Seaprodex Danang, remained majority-owned by the Government of Vietnam’s Ministry of Agriculture and Rural Development (“MARD”) during the POR.^{36,37} Seaprodex Danang also reported that during the POR, three out of five members of its board of directors, including the chairman of the board, were representatives of Seaprodex Vietnam (delegated managers of MARD’s shares), thus composing the majority vote of the board of directors.³⁸

As we stated in VN Shrimp AR9 Final, in recent proceedings, we have concluded that where a government entity holds a majority ownership share, either directly or indirectly, in the respondent exporter, the majority ownership holding in and of itself means that the government

³⁴ See Silicon Carbide, 59 FR at 22587; Sparklers, 56 FR at 20589; see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People’s Republic of China, 60 FR 22544, 22545 (May 8, 1995).

³⁵ See, e.g., Soc Trang Seafood Joint Stock Company’s Separate Rate Application, dated May 4, 2015.

³⁶ See Seaprodex Danang’s Separate Rate Application, dated May 4, 2015, at page 14, and Supplemental Questionnaire Responses, dated August 5, 2015, November 11, 2015, and December 17, 2015.

³⁷ Seaprodex Danang reported that its majority owner, Seaprodex Vietnam was previously 100 percent owned by MARD, but has since equitized so that MARD’s ownership in Seaprodex Vietnam is no longer at 100 percent. See Seaprodex Danang’s Separate Rate Application, dated May 4, 2015, at page 16. However, this equitization was not completed until four days before the end of the POR.

³⁸ See Seaprodex Danang’s Supplemental Questionnaire Response, dated December 17, 2015, at pages 3-4.

exercises, or has the potential to exercise, control over the company's operations generally.³⁹ This may include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with normal business practices, we would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profitability of the company. Thus, as in the preceding review, the potential to control the operations of a company exist with respect to Seaprodex Danang and therefore we find Seaprodex Danang ineligible for a separate rate in this review period.

Additionally, we note that some of the separate rate applicants requested separate rate status for various names which: 1) were not included on their business registration certificates, 2) provided no evidence that those requested names were used commercially to export subject merchandise to the United States during the POR, or 3) included names that were superseded by new company names following changed circumstances determinations. Further, we note the Initiation Notice included variations of company names that are not official company names, not included in either the separate rate applications or certifications of the separate rate applicants.⁴⁰ Because these names (1) have not been granted separate rate status in a previous administrative review, and (2) have not individually submitted separate rate applications or certifications to the Department, we are preliminarily not including these names on the list of companies for which separate rate status applies.⁴¹ Policy Bulletin 5.1, states “{e}ach applicant seeking separate rate status must submit a separate and complete individual application regardless of any common ownership or affiliation between firms”⁴² Further, a company that has not filed a separate rate application/certification is not eligible for a separate rate, even if it is affiliated with another company seeking a separate rate. Additionally, a company that did not export subject merchandise to the United States during the relevant period is also not eligible for a separate rate.⁴³ Policy Bulletin 5.1 also states that “firms that produce the subject merchandise are not required to demonstrate their eligibility for separate rate status unless they also export the merchandise to the United States.”⁴⁴ The Department's practice when the record does not

³⁹ See VN Shrimp AR9 Final and accompanying Issues and Decision Memorandum at Comment 11; see also Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part, 79 FR 53169 (September 8, 2014) and accompanying Preliminary Decision Memorandum at 5-9.

⁴⁰ See Initiation Notice, 80 FR at 18203.

⁴¹ See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 74 FR 47191 (September 15, 2009) and accompanying Issues and Decision Memorandum at Comment 17.

⁴² See Policy Bulletin 5.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries (“Policy Bulletin 5.1”), dated April 5, 2005 found at: <http://enforcement.trade.gov/policy/bull05-1.pdf>; see also Separate Rate Application at page 3; found at: <http://enforcement.trade.gov/nme/sep-rate-files/20121031/srv-sr-app-20121031.pdf>.

⁴³ See Policy Bulletin 5.1.

⁴⁴ Id., at 6.

contain either a separate rate application, certification or no-shipment letter is to consider that company not eligible for a separate rate.⁴⁵

Minh Cuong Seafood Import-Export Processing (“MC Seafood”) filed a Separate Rate Application requesting separate rate status for four names.⁴⁶ However, we note that this company is not receiving a separate rate because it has not complied with our Separate Rate Application instructions. The instructions in the NME Separate Rate Application require applicants to demonstrate, among other things, that:

The name that is provided to the Department in the application must be the name that appears on the exporter’s business license/registration documents. All shipments to the United States declared to U.S. Customs and Border Protection must identify the exporter by its legal business name, and this name must match the name that appears on the exporter’s business/registration documents.⁴⁷

Contrary to our Separate Rate Application instructions noted above, there is no U.S. commercial documentation provided within the company’s Separate Rate Application that matches the names that are listed on the company’s Business Registration Certificate (“BRC”) during the POR. Thus we are preliminarily not granting separate rate status to Minh Cuong Seafood because the names on the BRC do not match the names on the U.S. commercial documents in its Separate Rate Application.⁴⁸ Thus, of the 34 separate rate applicants, we are preliminarily granting separate rate status to 32 companies and preliminarily not granting separate rate status to two companies.

Further, the Department notes that in the current and previous reviews, many names appearing in the Initiation Notice, based on submitted review requests, and previous reviews have become duplicative or vary to some degree.⁴⁹ In the case of companies within the Vietnam-wide entity, we have listed the names as they appeared in the Initiation Notice. In the case of companies

⁴⁵ See, e.g., Honey From the People’s Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2011-2012, 78 FR 38941 (June 28, 2013) and accompanying Preliminary Decision Memorandum at page 3 (“during the review, Dongtai Peak did not file a separate rate application or certification, nor did it file a no shipments certification. Accordingly, because Dongtai Peak did not demonstrate its eligibility for a separate rate, the Department will preliminarily treat Dongtai Peak as part of the PRC-wide Entity.”), unchanged in Honey From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011–2012, 78 FR 56860 (September 16, 2013) (“Honey 2011-2012”); see also Steel Wire Garment Hangers From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review; 2011-2012, 78 FR 70271, 70272 (November 25, 2013) unchanged in PRC Hangers 2014.

⁴⁶ 1) Minh Cuong Seafood Import-Export Processing; 2) MC Seafood; 3) Minh Cuong Seafood Import Export Frozen Processing Joint Stock Co.; and 4) Minh Cuong Seafood Import-Export Frozen Processing Joint Stock Company. See Minh Cuong Seafood’s Separate Rate Application dated April 28, 2015, at page 5.

⁴⁷ See NME Separate Rate Application, at page 4, available at: <http://enforcement.trade.gov/nme/sep-rate-files/app-20150323/srv-sr-app-20150416.pdf>

⁴⁸ See Minh Cuong Seafood’s Separate Rate Application dated April 28, 2015, at page 5 and Exhibits 1-3. See also Memorandum to the File, through Catherine Bertrand, Program Manager, Office V, from Irene Gorelik, Analyst, Office V, re: “Antidumping Duty Administrative of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Names Not Granted Separate Rate Status at the Preliminary Results,” dated concurrently with this memorandum.

⁴⁹ See Initiation Notice, 80 FR at 18204-18207.

receiving a separate rate, we have only listed the names for which separate rate status is granted. Thus, for those names in the Initiation Notice that are unlisted in these preliminary results, we determine that they are either: 1) not official company names, as reported by the companies, or 2) not eligible for status as a trade name. Additionally, parties have an opportunity to comment on the names used in these preliminary results and will consider those comments for the final results.

Separate Rate Calculation

In the “Respondent Selection” section above, we stated that the Department employed a limited examination methodology, as it did not have the resources to examine all companies for which a review request was made, and selected two exporters as mandatory respondents in this review. As noted above, of the 34 separate rate applicants, we preliminarily granted separate rate status to 32 companies, two of which, the Minh Phu Group and Stapimex, participated in the review as mandatory respondents. For the 30 non-individually examined separate rate recipients, we have calculated a separate rate based on the margins calculated for the mandatory respondents.

The statute and the Department’s regulations do not address the establishment of a rate to be applied to individual companies not selected for examination when the Department has limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, we look to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents not selected for individual examination. Section 735(c)(5)(A) of the Act instructs that we do not calculate an all-others rate using any zero or de minimis weighted-average dumping margins or any weighted-average dumping margins based entirely on facts available. Accordingly, the Department’s usual practice has been to average the rates for the selected companies excluding rates that are zero, de minimis, or based entirely on facts available.⁵⁰ Section 735(c)(5)(B) of the Act also provides that, where all rates are zero, de minimis, or based entirely on facts available, we may use “any reasonable method” for assigning the rate to non-selected respondents. One method that section 735(c)(5)(B) of the Act contemplates as a possible method is “averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.”

In these preliminary results, the two mandatory respondents, the Minh Phu Group and Stapimex, have weighted-average dumping margins which are above de minimis and not based entirely on facts available. However, because using the weighted-average margin based on the calculated net U.S. sales quantities for the Minh Phu Group and Stapimex would allow these two respondents to deduce each other’s business-proprietary information and, thus, cause an unwarranted release of such information, we cannot assign to the separate rate companies the

⁵⁰ See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Review in Part, 73 FR 52823, 52824 (September 11, 2008) and accompanying Issues and Decision Memorandum at Comment 16.

weighted-average margin based on the calculated net U.S. sales values from these two respondents.⁵¹

For these preliminary results and consistent with our practice,⁵² we determine that using the ranged (i.e., 10 percent greater or less than the business proprietary sales quantity) total sales quantities reported by the Minh Phu Group and Stapimex from the public versions of their submissions to calculate a weighted-average margin is more appropriate than calculating a simple average margin.⁵³ These publicly-available figures provide the basis on which we can calculate a margin, which is the best proxy for the weighted-average margin based on the calculated net U.S. sales values of the Minh Phu Group and Stapimex without the possibility of disclosing any business proprietary information. We find that this approach is more consistent with the intent of section 735(c)(5)(A) of the Act and our use of section 735(c)(5)(A) of the Act as guidance when we establish the rate for respondents not examined individually in an administrative review.⁵⁴

Because the calculated net U.S. sales values for the Minh Phu Group and Stapimex are business proprietary, we find that 3.56 percent, which we calculated using the publicly available figures of U.S. sales value for these two firms, is the best reasonable proxy for the weighted-average margin based on the calculated U.S. sales values of the Minh Phu Group and Stapimex.⁵⁵ The Separate-Rate Applicants receiving this rate are identified by name in the “Preliminary Results of the Review” section of the Federal Register notice.

Vietnam-Wide Entity

Upon initiation of this administrative review, we provided the opportunity for all companies upon which the review was initiated to complete either the separate rate application or certification.⁵⁶ However, 49 companies did not submit either a separate rate application or certification, and therefore, we determine them to be ineligible for a separate rate and, thus, part of the Vietnam-wide entity. In addition, as noted above, Seaprodex Danang did not demonstrate an absence of government control, and is, therefore, properly considered part of the Vietnam-wide entity.

⁵¹ See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip From the People’s Republic of China: Preliminary Results of the 2009-2010 Antidumping Duty Administrative Review, 76 FR 68140 (November 3, 2011), unchanged in Polyethylene Terephthalate Film, Sheet, and Strip From the People’s Republic of China: Final Results of the 2009-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order, 77 FR 14493 (March 12, 2012).

⁵² Id.

⁵³ See the Minh Phu Group Section A questionnaire response (Public Version), dated May 28, 2015, at 4; see also Stapimex Section A questionnaire response (Public Version), dated May 28, 2015 at 1.

⁵⁴ See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 76 FR 56158, 56160 (September 12, 2011); see also Galvanized Steel Wire From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 77 FR 68407, 68415 (November 4, 2011).

⁵⁵ For further discussion regarding this issue, see Memorandum to the File from Irene Gorelik, Analyst, Office V, “Calculation of the Margin for Respondents Not Selected for Individual Examination,” dated concurrently with this notice.

⁵⁶ The separate-rate certification and application were available at: <http://enforcement.trade.gov/nme/nme-sep-rate.html>.

The Department's change in policy regarding conditional review of the Vietnam-wide entity applies to this administrative review.⁵⁷ Under this policy, the Vietnam-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the Vietnam-wide entity in this review, the entity is not under review and the entity's rate is not subject to change. Further, as explained above, two companies under active review do not qualify for a separate rate, and 49 companies under active review have neither applied for a separate rate nor filed "no-shipment" certifications. Thus, the Department preliminarily finds that these 51 companies under active review do not qualify for a separate rate, and are, consequently, part of the Vietnam-wide entity.

Surrogate Country and Surrogate Value Data

On May 21, 2015, the Department issued interested parties a letter identifying six countries (Bangladesh, Pakistan, India, Nicaragua, Nigeria, and the Philippines) at the same level of economic development as Vietnam, and invited comments on the surrogate country list, surrogate country selection and surrogate value ("SV") data.⁵⁸ No parties commented on countries found to be at the same level of economic development as Vietnam. On July 20, 2015, VASEP submitted comments regarding the selection of a surrogate country, arguing that Bangladesh fulfills the Department's criteria, with India as an appropriate alternative, depending on the availability of data.⁵⁹ On August 10, 2015, VASEP and ASPA submitted SV comments.⁶⁰

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production ("FOP"), valued in a surrogate ME country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.⁶¹ The Department determined that Bangladesh, Pakistan, India, Nicaragua, Nigeria, and the Philippines are countries whose per capita gross national incomes ("GNI") are at the same level of economic

⁵⁷ See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings, 78 FR 65963 (November 4, 2013).

⁵⁸ See Department's Letter to All Interested Parties, "Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Request for Surrogate Country and Surrogate Value Comments and Information," dated May 21, 2015 ("Surrogate Country and Value Memo").

⁵⁹ See Letter from VASEP, "Certain Frozen Warmwater Shrimp from Vietnam: Surrogate Country Comments," dated July 20, 2015, at 1 ("VASEP Surrogate Country Comments").

⁶⁰ See e.g., Letters from VASEP and ASPA, "Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Comments on Surrogate Values," dated August 10, 2015 ("VASEP SV Comments" and "ASPA SV Comments," respectively).

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

development as Vietnam.⁶² The sources of the SVs we used in this investigation are discussed under the “Normal Value” section below.

VASEP argues that Bangladesh is the most suitable surrogate country because it is at a comparable level of economic development, is a significant producer of comparable merchandise, and provides the best-quality data for surrogate value purposes. Following Bangladesh, VASEP argues, the best alternative appears to be India. VASEP notes that all potential candidates listed by the Office of Policy, including Bangladesh and India, are at a comparable level of economic development as a matter of Department policy. VASEP argues that only Bangladesh, India, and the Philippines are significant producers of shrimp and that, based upon species and farming methods, shrimp produced in Bangladesh are the most comparable to shrimp from Vietnam, followed by shrimp from India. Finally, VASEP argues that although sufficient Indian data may exist, VASEP has not been able to locate such data. VASEP notes that the Department has rejected submissions of Indian data due to reliability concerns.

Economic Comparability

As explained in our Surrogate Country and Value Memo, the Department considers Bangladesh, Pakistan, India, Nicaragua, Nigeria, and the Philippines to be at the same level of economic development comparable to Vietnam. The Department treats each of these countries as equally comparable.⁶³ Accordingly, unless we find that all of these countries are not significant producers of comparable merchandise, do not provide a reliable source of publicly available surrogate data, or are unsuitable for use for other reasons, or we find that another equally comparable country is an appropriate surrogate, we will rely on data from one of these countries.⁶⁴ Therefore, we consider all six countries identified in the Surrogate Country and Value Memo to have met this prong of the surrogate country selection criteria.

Significant Producers of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department’s regulations provide further guidance on what may be considered comparable merchandise. The Policy Bulletin, however, states that “in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise.”⁶⁵ Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is

⁶² See Surrogate Country and Value Memo.

⁶³ See Surrogate Country and Value Memo.

⁶⁴ See Certain Steel Wheels From the People’s Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination, 76 FR 67703, 67708 (November 2, 2011), unchanged in 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.

⁶⁵ See Policy Bulletin, at 2.

sufficient in selecting a surrogate country.⁶⁶ Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.⁶⁷ “In cases where the identical merchandise is not produced, the Department must determine if other merchandise that is comparable is produced. How the Department does this depends on the subject merchandise.”⁶⁸ In this regard, the Department recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

In other cases, however, where there are major inputs, *i.e.*, inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, *e.g.*, processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.⁶⁹

Further, the statute grants the Department discretion to examine various data sources for determining the best available information.⁷⁰ Moreover, while the legislative history provides that the term “significant producer” includes any country that is a significant “net exporter,”⁷¹ it does not preclude reliance on additional or alternative metrics. In this case, we reviewed shrimp production information from the Food and Agriculture Organization of the United Nations Fisheries Statistics (“UN FAO Statistics”).⁷² After an examination of this information, Bangladesh, Pakistan, India, Nicaragua, Nigeria, and the Philippines reported significant production of comparable merchandise. Thus, among Bangladesh, Pakistan, India, Nicaragua, Nigeria, and the Philippines, the Department evaluated the availability of SV data to determine the most appropriate surrogate country.

Data Availability

When evaluating SV data, the Department considers several factors including whether the SV is publicly available, contemporaneous with the POR, represents a broad-market average, from an approved surrogate country, tax and duty-exclusive, and specific to the input.⁷³ There is no hierarchy among these criteria. It is the Department’s practice to carefully consider the available

⁶⁶ The Policy Bulletin also states that “if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise.” *Id.*, at note 6.

⁶⁷ See Sebacic Acid from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 62 FR 65674, 65675-76 (December 15, 1997) (“{T}o impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.”).

⁶⁸ See Policy Bulletin, at 2.

⁶⁹ *Id.*, at 3.

⁷⁰ See section 773(c) of the Act; see also Nation Ford Chem. Co. v. United States, 166 F.3d 1373, 1377 (Fed. Cir. 1990).

⁷¹ See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).

⁷² See VASEP Surrogate Country Comments at Exhibit 1.

⁷³ See, *e.g.*, First Administrative Review of Certain Polyester Staple Fiber From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 75 FR 1336 (January 11, 2010) and accompanying Issues and Decision Memorandum at Comment 1.

evidence in light of the particular facts of each industry when undertaking its analysis.⁷⁴ In this case, data or surrogate financial statements are unavailable for Nicaragua, Nigeria, Pakistan, and the Philippines, therefore, these countries will not be considered for primary surrogate country selection purposes at this time.

The Department notes that the value of the main input, head-on, shell-on shrimp, is the critical FOP in the dumping calculation as it accounts for the majority of the NV.⁷⁵ Consequently, the Department places great weight on the available sources of whole shrimp prices—more so than for non-shrimp FOPs. The record contains publicly available SV information for most FOPs from Bangladesh and India. With respect to the main raw material input, fresh shrimp, VASEP submitted fresh shrimp SV data for Bangladesh from a study conducted by the Network of Aquaculture Centers in Asia-Pacific (“NACA”), an intergovernmental organization affiliated with the United Nation’s (“UN”) Food and Agricultural Organization (“FAO”) which provides prices for several shrimp count-sizes.⁷⁶ This is also the only SV for fresh shrimp on the record. With respect to the non-shrimp SVs, we note that UN Comtrade provides SV data for the vast majority of the reported FOPs, apart from erythorbate (a chemical input) and steam (an energy source). As stated above, the Department’s practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, SVs which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR and exclusive of taxes and duties.⁷⁷ As a general matter, among other factors, the Department prefers to use publicly available data representing a broad-market average to value SVs.⁷⁸

Public Availability and Broad-Market Average

The Bangladeshi shrimp values within the NACA study are compiled by the UN’s FAO from actual pricing records kept by Bangladeshi farmers, traders, depots, agents, and processors.⁷⁹ Moreover, the NACA study is a reliable and objective source of fresh, whole shrimp prices and available to the public, as we have determined in prior segments of the proceeding.⁸⁰ Indeed, the Department has continually relied on the NACA study for numerous administrative reviews to value shrimp, which constitutes the majority of the normal value, thus the most important element of SV data. Therefore, we find the Bangladeshi data publicly available and representative of a broad market average.

⁷⁴ See [Policy Bulletin](#).

⁷⁵ See [Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results Antidumping Duty Administrative Review](#), 79 FR 15944 (March 24, 2014) (“[Preliminary Results](#)”) and accompanying Preliminary Decision Memorandum at 14, unchanged in [Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review](#), 2012–2013, 79 FR 57047 (September 24, 2014) and accompanying Issues and Decision Memorandum at Comment 6 (“[VN Shrimp AR8 Final](#)”).

⁷⁶ See VASEP SV Comments at Exhibit SV-2.

⁷⁷ See [Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of the Eleventh Administrative Review and New Shipper Reviews](#), 72 FR 34438 (June 22, 2007) and accompanying Issues and Decision Memorandum at Comment 2A.

⁷⁸ [Id.](#)

⁷⁹ See VASEP SV Comments at Exhibit SV-2.

⁸⁰ See e.g., [VN Shrimp AR8 Final](#).

Specificity

The Department notes that the Bangladeshi NACA data is for Black Tiger shrimp only, whereas Indian data is for white shrimp (*P. Vannamei*) only. The Department also notes that all the mandatory respondents produce and sell *P. Vannamei* to varying degrees in addition to Black Tiger. Accordingly, while the Bangladeshi SV data would not cover all shrimp species produced and exported by the respondents, as we stated in VN Shrimp AR8 Final and VN Shrimp AR9 Prelim, the absence of white shrimp price data in the Bangladeshi NACA study does not render it inferior or unusable.⁸¹ Specifically, as we stated in VN Shrimp AR8 Final, “what the data for Bangladesh lacks in vannamei prices is outweighed by other factors, such as Bangladesh’s economic comparability to Vietnam, as well as the availability of Bangladeshi surrogate financial statements, labor SV, and a larger range of pricing for count sizes of black tiger shrimp, particularly the largest, most expensive shrimp count size.”⁸² Moreover, there is no other SV source for fresh shrimp on the record of this review.

Furthermore, the ability to value shrimp on a count-size basis is a significant consideration with respect to the data available on the record, as the subject merchandise and the raw shrimp input are both sold on a count-size specific basis. The Department’s long-standing reliance on the NACA study rests on the fact that it provides useable and reliable pricing data for a large range of shrimp count-sizes, which is a fundamental element of the Department’s margin calculations, as our Control Number (“CONNUM”) categories place a greater weight on count-sizes of shrimp versus the species of shrimp. As we stated in VN Shrimp AR8 Final, “the CIT affirmed our placement of great weight on count size stating that ‘because the count size of shrimp is unquestionably an important consideration, Commerce reasonably placed more weight on its specificity criterion than on its four other criteria.’⁸³ Moreover, for these reasons, in prior administrative reviews, the Department rejected shrimp SVs with limited count sizes.⁸⁴ Accordingly, we find the Bangladeshi data to be specific to the main input.

Contemporaneity and Tax and Duty Exclusive

While the NACA study data is not contemporaneous with the POR and does not indicate whether the prices are tax and duty exclusive, we find that these factors do not detract from the overall preference to rely on the NACA data to value the largest component of the NV, fresh shrimp, as we have in all prior administrative reviews.

Given the above facts, the Department has preliminarily selected Bangladesh as the primary surrogate country for this review. A detailed explanation of the SVs is provided below in the “Normal Value” section of this notice.

⁸¹ See VN Shrimp AR8 Final and accompanying Issues and Decision memorandum at at Comments 1 and 3; VN Shrimp AR9 Prelim and accompanying Preliminary Decision Memorandum at 16.

⁸² Id., at Comment 3.

⁸³ See Allied Pacific Food (Dalian) Co. Ltd., v. United States, 716 F. Supp. 2d 1339, 1344-1345 (CIT 2010). See also VN Shrimp AR8 Final at Comment 1.

⁸⁴ See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 74 FR 47191 (September 15, 2009) and accompanying Issues and Decision Memorandum at Comment 6.

Date of Sale

The Minh Phu Group and Stapimex reported the invoice date as the date of sale because they claim that for their U.S. sales of subject merchandise made during the POR, the material terms of sale were established based on the invoice date. In this case, as the Department found no evidence contrary to their claims that invoice date was the appropriate date of sale, the Department used invoice date as the date of sale for these preliminary results in accordance with 19 CFR 351.401(i).⁸⁵

Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether the Minh Phu Group's and Stapimex's sales of the subject merchandise from Vietnam to the United States were made at less than normal value, the Department compared the Minh Phu Group's export price ("EP") and constructed export price ("CEP") and Stapimex's EP to the normal value as described in the "Export Price" and "Constructed Export Price" and "Normal Value" sections of this memorandum.

A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average normal values to weighted-average export prices (or constructed export prices) (i.e., the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average normal values with the export prices (or constructed export prices) of individual sales (i.e., the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.⁸⁶

In recent investigations, the Department applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.⁸⁷ The Department

⁸⁵ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand, 69 FR 76918 (December 23, 2004) and accompanying Issues and Decision Memorandum at Comment 10.

⁸⁶ See Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011, 77 FR 73415 (December 10, 2012) and accompanying Issues and Decision Memorandum at comment 1; see also Apex Frozen Foods Private Ltd. v. United States, 37 F. Supp. 3d 1286 (Ct. Int'l Trade 2014).

⁸⁷ See, e.g., Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair, 78 FR 33351 (June 4, 2013); Steel Concrete Reinforcing Bar From Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, 79 FR 54967 (September 15, 2014); or Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value, 80 FR 61362 (October 13, 2015).

finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of EP (or CEP) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of review based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and normal value for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test

accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the de minimis threshold, or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the de minimis threshold.

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

B. Results of the Differential Pricing Analysis

For the Minh Phu Group, based on the results of the differential pricing analysis, the Department preliminarily finds that 55.10 percent of the value of U.S. sales pass the Cohen's *d* test,⁸⁸ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that the average-to-average method cannot account for such differences because the weighted-average dumping margin crosses the de minimis threshold when calculated using the average-to-average method and when calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for these preliminary results, the Department is applying the average-to-transaction method to those U.S. sales which passed the

⁸⁸ See Memorandum Through Catherine Bertrand, Program Manager, Office V, from Irene Gorelik, Senior International Trade Analyst, Office V, re: "Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Analysis for the Preliminary Results for the Minh Phu Group," dated concurrently with this preliminary decision memorandum.

Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test to calculate the weighted-average dumping margin for the Minh Phu Group.

For Stapimex, based on the results of the differential pricing analysis, the Department preliminarily finds that 78.00 percent of the value of U.S. sales pass the Cohen's *d* test,⁸⁹ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that the average-to-average method cannot account for such differences because the weighted-average dumping margin crosses the de minimis threshold when calculated using the average-to-average method and when calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for these preliminary results, the Department is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for Stapimex.

U.S. Price

Export Price

In accordance with section 772(a) of the Act, the Department calculated EP for sales to the United States for Stapimex and a portion of sales to the United States for the Minh Phu Group because the first sale to an unaffiliated party was made before the date of importation and the use of CEP was not otherwise warranted. The Department calculated EP based on the sales price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, as appropriate, the Department deducted from the sales price certain foreign inland freight, lift, containerization, and international movement costs. Because the inland freight, lift, and containerization services were either provided by a NME vendor or paid for using an NME currency, the Department based the deduction of these charges on SVs. Further, because international freight was paid in an NME currency by both respondents, the Department based the deduction of international freight on SVs.⁹⁰

Constructed Export Price

For some of the Minh Phu Group's sales, the Department based U.S. price on CEP in accordance with section 772(b) of the Act, because sales were made on behalf of the Vietnam-based company by a U.S. affiliate to unaffiliated purchasers in the United States. For these sales, the Department based CEP on prices to the first unaffiliated purchaser in the United States. Where appropriate, the Department made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, U.S. movement expenses, and appropriate selling adjustments, in accordance with section 772(c)(2)(A) of the Act.

⁸⁹ See Memorandum Through Catherine Bertrand, Program Manager, Office V, from Irene Gorelik, Senior International Trade Analyst, Office V, re: "Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Analysis for the Preliminary Results for Soc Trang Seafood Joint Stock Company ("Stapimex")," dated concurrently with this preliminary decision memorandum.

⁹⁰ See "Factor Valuations" section below for further discussion. See also VN Shrimp AR9 Final and accompanying Issues and Decision Memorandum at Comment 3, wherein the Department's determination regarding ocean freight valuation and currency used to pay for ocean freight expenses mirror the circumstances presented by the mandatory respondents in this review.

In accordance with section 772(d)(1) of the Act, the Department also deducted those selling expenses associated with economic activities occurring in the United States. The Department deducted, where appropriate, commissions, inventory carrying costs, interest revenue, credit expenses, warranty expenses, and indirect selling expenses. Where foreign movement expenses, international movement expenses, or U.S. movement expenses were provided by NME service providers or paid for in an NME currency, the Department valued these services using SVs.⁹¹ For those expenses that were provided by an ME provider and paid for in an ME currency, the Department used the reported expense. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for each company, see the company-specific analysis memoranda, dated concurrently with these preliminary results.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

Exclusion Requests

On May 28, 2015, the Minh Phu Group and Stapimex requested to be excused from reporting FOPs separately for purchased frozen shrimp.⁹² Following our determination in VN Shrimp AR9 Final,⁹³ the Department declined to excuse either company from reporting their frozen shrimp purchases/consumption and we declined to treat that quantity of purchased frozen shrimp as fresh shrimp.⁹⁴ In a second letter, the Minh Phu Group also requested to be excused from reporting: 1) separate FOPs for shrimp that was toll processed by another producer and 2) upstream FOPs for fresh shrimp obtained from its affiliated shrimp farms.⁹⁵ The Department granted both of these exclusion requests based on the information Minh Phu Group provided regarding the relatively negligible quantity of toll-processed shrimp and farmed shrimp compared to the overall quantity of whole shrimp (fresh and frozen) consumption over the POR.⁹⁶

⁹¹ Id.

⁹² See Stapimex's and Minh Phu Group's Letters re: "Exclusion Requests," dated May 28, 2015.

⁹³ See VN Shrimp AR9 Final and accompanying Issues and Decision Memorandum at Comment 2.

⁹⁴ See the Department's Letters to the Minh Phu Group and Stapimex, "re: 2014-2015 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from Vietnam: Reporting Methodology," both dated June 5, 2015.

⁹⁵ See the Minh Phu Group's Letter re: "Tolling Exclusion Request and Update on Affiliated Farm Purchases," dated June 19, 2015.

⁹⁶ See the Department's Letter to the Minh Phu Group re: "2014-2015 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from Vietnam: Additional Reporting Exclusions Requested," dated June 22, 2015.

Factor Valuations

In accordance with section 773(c) of the Act, for subject merchandise produced by the Minh Phu Group and Stapimex, the Department calculated NV based on the FOPs reported by these companies for the POR. The Department used Bangladeshi import data and other publicly available Bangladeshi sources in order to calculate SVs for the majority of the respondents' FOPs. Instances in which the Department used data from a country other than Bangladesh are described further below. To calculate NV, the Department multiplied the reported per-unit FOP quantities by publicly available SVs. The Department's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.⁹⁷

As appropriate, the Department adjusted input prices by including freight costs to render them delivered prices. Specifically, the Department added to Bangladeshi import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where it relied on an import value. This adjustment is in accordance with the decision of the Federal Circuit.⁹⁸ Additionally, where necessary, the Department adjusted SVs for inflation and exchange rates, taxes, and the Department converted all applicable FOPs to a per-kilogram basis.

Consistent with section 773(c)(5) of the Act, we disregarded import prices from countries that we have determined maintain broadly available export subsidies.⁹⁹ In prior proceedings, we determined India, Indonesia, South Korea, and Thailand maintain broadly available, non-industry-specific export subsidies.¹⁰⁰ Additionally, consistent with our practice, we disregarded prices from NME countries and excluded imports labeled as originating from an "unspecified" country from the average value because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.¹⁰¹ Therefore, we have not used prices from these countries in calculating the import-based SVs or in calculating ME input values.

⁹⁷ See, e.g., Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 48195 (August 18, 2008) and accompanying Issues and Decision Memorandum at Comment 2.

⁹⁸ See Sigma Corp. v. United States, 117 F.3d 1401, 1408 (Fed. Cir. 1997)

⁹⁹ See Section 505 of the Trade Preferences Extension Act of 2015, Pub. Law 114-27 (June 29, 2015); see also, Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793, 46795 (August 6, 2015).

¹⁰⁰ See, e.g., Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order, 75 FR 13257 (March 19, 2010) and accompanying Issues and Decision Memorandum at 4-5; Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review, 70 FR 45692 (August 8, 2005) and accompanying Issues and Decision Memorandum at 4; Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 74 FR 2512 (January 15, 2009) and accompanying Issues and Decision Memorandum at 17, 19-20; Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination, 78 FR 50379 (August 19, 2013).

¹⁰¹ See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates from the People's Republic of China, 69 FR 75294, 75300 (December 16, 2004), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China, 70 FR 24502 (May 10, 2005)

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (i.e., not insignificant quantities) and pays in an ME currency, the Department uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping and/or subsidization.¹⁰² Where the Department finds ME purchases to be of significant quantities (i.e., 85 percent or more), in accordance with our statement of policy as outlined in Antidumping Methodologies: Market Economy Inputs,¹⁰³ the Department uses the actual purchase prices to value the inputs. Alternatively, when the volume of an NME firm's purchases of an input from ME suppliers during the period is below 85 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department will weight-average the ME purchase price with an appropriate SV, according to their respective shares of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption.¹⁰⁴ When a firm has made ME input purchases that may have been dumped or subsidized, are not bona fide, or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair determination of whether valid ME purchases meet the 85 percent threshold.¹⁰⁵ The Department addresses respondents' reported ME purchases of inputs during the POR that were paid for in ME currency within the Prelim SV Memo and in their respective preliminary analysis memoranda, if applicable.

The Department used UN Comtrade Statistics, provided by the UN Department of Economic and Social Affairs' Statistics Division,¹⁰⁶ as its primary source of Bangladeshi SV data to value nearly all other raw materials, certain energy inputs and packing material inputs that the respondents used to produce subject merchandise during the POR, except where listed below. The data represent cumulative values for the calendar years 2010 and 2011 for inputs classified by the Harmonized Commodity Description and Coding System ("HS") number. For each input value, we used the average value per unit for that input imported into Bangladesh from all countries that the Department has not previously determined to be NME countries. Import statistics from countries that the Department determines to be countries which subsidized exports (i.e., India, Indonesia, South Korea, and Thailand) and imports from unspecified countries also

¹⁰² See, e.g., Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27366 (May 19, 1997).

¹⁰³ See ME Inputs Final Rule, 78 FR 46799 (August 2, 2013).

¹⁰⁴ Id.

¹⁰⁵ Id.

¹⁰⁶ This can be accessed online at: <http://www.unstats.un.org/unsd/comtrade/>.

were excluded in the calculation of the average value. We inflated the value using the POR average Bangladeshi CPI rate.¹⁰⁷

Fresh Shrimp and Frozen Shrimp

The shrimp values within the NACA study conducted by an intergovernmental agency affiliated with the UN FAO are compiled from actual pricing records kept by Bangladeshi farmers, traders, depots, agents, and processors, are count-size specific, and are publicly available.¹⁰⁸ Therefore, to value the main input, head-on, shell-on fresh shrimp, the Department used data contained in the NACA study, as we have done in all prior administrative reviews.

Where the respondents reported ME purchases of frozen shrimp, neither had usable purchase prices to value the frozen shrimp;¹⁰⁹ thus, we applied a Bangladeshi SV from UN Comtrade to the respondents' respective reported quantity of purchased frozen shrimp.¹¹⁰ VASEP did not provide any frozen shrimp SVs on the record, while ASPA suggested the Department use an Indian GTA SV using HS 0306.17: "Shrimps And Prawns, Frozen, Other Than Cold-Water."¹¹¹ However, the Department notes that our preferred source for the primary surrogate country selected, UN Comtrade, contained Bangladeshi import statistics for frozen shrimp.¹¹² The Department acknowledges that the HS number used to obtain a Bangladeshi SV for frozen shrimp from UN Comtrade is a basket-category, like the Indian GTA data, with no count-size distinctions. While we acknowledge that count-sizes are an important consideration and the SV applied to the frozen shrimp input is not on a count-size basis, it is data from the primary surrogate country, Bangladesh, which, when available, is our preference. Because both the Indian GTA data and the Bangladeshi UN Comtrade data for frozen shrimp are obtained using a basket category HS number, the Department, in this case, prefers the data from the primary surrogate country, Bangladesh.

¹⁰⁷ The UN Comtrade import data for Bangladesh is expressed in USD, but collected in Bangladeshi Taka, as noted in the Memorandum to Catherine Bertrand, Program Manager, Office V, from Irene Gorelik, Senior International Trade Analyst, Office V, re: "Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results," dated concurrently with this preliminary decision memorandum, ("Prelim SV Memo"). Our practice is to apply an inflator from the country from which the data is obtained. See, e.g., VN Shrimp AR9 Final and accompanying Issues and Decision Memorandum at Comment 4; see also Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Romania: Final Results of Antidumping Duty Administrative Review and Final Determination Not To Revoke Order in Part, 70 FR 7237 (February 11, 2005) and accompanying Issues and Decision Memorandum at Comment 7; Glycine From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review, 77 FR 21738, 21742 (April 11, 2012) unchanged in Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 77 FR 64100 (October 18, 2012) and accompanying Issues and Decision Memorandum at Comment 8.

¹⁰⁸ See VASEP SV Comments at Exhibit SV-2. For a detailed explanation of the Department's valuation of shrimp, see Prelim SV Memo.

¹⁰⁹ The ME purchases either: 1) did not meet the 85 percent threshold established in ME Inputs Final Rule, or 2) were purchased from countries that maintain broadly available, non-industry-specific export subsidies.

¹¹⁰ See Prelim SV Memo. See also the company-specific analysis memoranda, dated concurrently with these preliminary results.

¹¹¹ See ASPA SV Comments, dated August 10, 2015, at Exhibit 1.

¹¹² See Prelim SV Memo.

Shrimp Scrap Byproduct

Both VASEP and ASPA placed a shrimp scrap SV on the record. As stated above, while our preference is to value factors in a single surrogate country when possible, our decision necessarily is guided by considering the best available information on the record.¹¹³ While we did not select India as the primary surrogate country, India was determined to be at the same level of economic development as Vietnam and was included on the SC list. Thus, for example, as discussed below, where we could not obtain Bangladeshi values for steam, we looked to Indian sources for an appropriate SV. However, with respect to the shrimp scrap SVs on the record, the Indian SV from GTA under HS number 0508.00.50 is preferable to the Bangladeshi shrimp scrap SV from UN Comtrade under HS number 0508.00. The India GTA data, under HS 0508.00.50: “Shells Of Molluscs, Crustaceans/Echinoderms”¹¹⁴ is specific to the shrimp scrap generated as byproduct, while the UN Comtrade data, under a broader HS number, includes coral, seashells, and cuttlebone among other unidentified components.¹¹⁵ Moreover, the Bangladeshi SV from UN Comtrade is \$13.96 per kilogram, which exceeds the relative value of the main input, whole shrimp.¹¹⁶ As we stated in the VN Shrimp AR9 Final,¹¹⁷ we find it unreasonable to assign a higher value, such as the UN Comtrade SV under HS 0508.00, to shrimp shell and head waste product, than to the input product, whole shrimp. The Department has a long-standing practice of rejecting *or* capping the byproduct SV in instances where the byproduct SV exceeds the SV of the product from which it was derived.¹¹⁸ Indeed, recent case precedent supports the practice of rejecting and/or capping a scrap SV when it is of a higher price than the SV for the input which created the scrap byproduct in question.¹¹⁹ The Department’s practice does not favor capping over rejecting data, or vice-versa. The Department’s practice allows for either option, based on information on the record. Here, the record contains a useable shrimp scrap SV that is more specific to the actual shrimp waste generated and that fulfills our SV selection criteria. The Indian SV for shrimp scrap is from a reliable source and from a country determined to be at the same level of economic development as Vietnam. Thus, we have determined that the India GTA SV for shrimp scrap is best available information on the record to value shrimp waste.

¹¹³ See, e.g., High Pressure Steel Cylinders From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 77 FR 26739 (May 7, 2012) and accompanying Issues and Decision Memorandum at Comments I and II.

¹¹⁴ See ASPA SV Comments dated August 10, 2015 at Exhibit 2.

¹¹⁵ See Prelim SV Memo.

¹¹⁶ See respondents’ NV tables, as generated within the SAS programs, for these preliminary results.

¹¹⁷ See VN Shrimp AR9 Final and accompanying Issues and Decision Memorandum at Comment 7.

¹¹⁸ See Certain Steel Nails from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 33977 (June 16, 2008) and accompanying Issues and Decision Memorandum at Comment 12.

¹¹⁹ See, e.g., Certain New Pneumatic Off-the-Road Tires From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review: 2012-2013, 80 FR 20197 (April 15, 2015) and accompanying Issues and Decision Memorandum at Comment 20; Monosodium Glutamate From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and the Final Affirmative Determination of Critical Circumstances, 79 FR 58326 (September 29, 2014) at Comment 11; Multilayered Wood Flooring From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 64318 (Tuesday, October 18, 2011) at Comment 24; Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results and Partial Rescission of the Seventh Antidumping Duty Administrative Review, 77 FR 15039 (March 14, 2012) at Comment II.B.3.

Steam and Erythorbate

The Department prefers to value all inputs from the primary surrogate country, Bangladesh. However, there is no SV data from Bangladesh for steam as no party placed any steam SV information on the record or an appropriate HS number for the steam input. Thus, to obtain a SV for steam consumption, the Department used a HS number for natural gas, as applied in other AD proceedings, because natural gas and steam have the same British Thermal Unit.¹²⁰ However, because UN Comtrade contained no Bangladeshi data for the HS number for natural gas, the Department must go outside of its primary surrogate country to select a SV. Again, while we did not select India as the primary surrogate country, India was determined to be at the same level of economic development as Vietnam and was included on the SC list. As a result, where we could not obtain Bangladeshi values for natural gas, we looked to Indian sources for an appropriate SV. Thus, as in Steel Wheels, Chlorinated Isos and Carbon AR5, we are valuing steam using Indian GTA import data for natural gas.¹²¹

Finally, while VASEP provided a HS number 2932.20 for erythorbate, a direct material input, VASEP did not include an actual SV for this input in its SV comments.¹²² Because we could not independently obtain a Bangladeshi SV for erythorbate using UN Comtrade import data, we obtained a SV for erythorbate from Indian GTA import data.¹²³

Water

The Department valued water using publicly available Bangladeshi data from the Dhaka Water Supply and Sewage Authority, which is contemporaneous with the POR.¹²⁴

Movement

We valued brokerage and handling costs incurred at the domestic port using a price list of export procedures necessary to export a standardized cargo of goods in Bangladesh. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in Bangladesh that is published in Doing Business 2015: Bangladesh by the World Bank.¹²⁵ This World Bank report gathers information concerning the

¹²⁰ See, e.g., Certain Steel Wheels From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination, 76 FR 67703 at 67714 (November 2, 2011), unchanged in Certain Steel Wheels from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 77 FR 17021 (March 23, 2012) ("Steel Wheels"); 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) ("Carbon AR5") and accompanying Issues and Decision Memorandum at Comment 9. Chlorinated Isocyanurates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010–2011, 78 FR 4386 (January 22, 2013) ("Chlorinated Isos") and accompanying Issues and Decision Memorandum at Comment 11.

¹²¹ See Prelim SV Memo for the steam SV and the conversion factor applied.

¹²² See VASEP SV Comments at Exhibit SV-1, where VASEP placed "zeros" in place of a SV on the Erythorbate line item.

¹²³ See Prelim SV Memo.

¹²⁴ Id.

¹²⁵ Id.

cost to transport 10,000 kilograms in a 20-foot container. The brokerage and handling SV is calculated based on the itemized charges for various export procedures such as “Documents Preparation” valued at \$225/10,000 kilograms, “Customs clearance and Inspections” valued at \$150/10,000 kilograms, and “Ports and Terminal Handling” valued at \$600/10,000 kilograms. The total of all itemized charges is \$975/10,000 kilograms. We valued brokerage and handling specific to each respondent’s brokerage and handling expense incurred.¹²⁶

We used Bangladeshi transport information in order to value the freight-in cost of the raw materials. The Department determined the best available information for valuing truck and boat freight to be from Bangladesh Statistical Yearbook for 2012. We inflated the value using the POR average CPI rate. We valued ocean freight using data obtained from the Descartes Carrier Rate Retrieval Database (Descartes), accessed through <http://descartes.com>, which publishes international ocean freight rates offered by numerous carriers.¹²⁷ These rates are publicly available and cover a wide range of shipping rates which are reported on a daily basis. We did not inflate or deflate the rate cited in this survey because it is contemporaneous with the POR.

Labor

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings.¹²⁸ In Labor Methodologies, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 5B: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics (“Yearbook”). However, in this case, the Department notes the ILO does not contain labor data for Bangladesh.

The record contains a labor wage rate for shrimp processing in Bangladesh, published by the Bangladesh Bureau of Statistics (“BBS”). When selecting possible SVs for use in an NME proceeding, the Department’s preference is to use SVs that are publicly available, broad market averages, contemporaneous with the POR, specific to the input in question, and exclusive of taxes.¹²⁹ Pursuant to section 773(c)(1) of the Act, it is also the Department’s practice to use the best available information to derive SVs. The Department considers several factors, including quality, specificity and contemporaneity, to determine the best available information in accordance with the Act. The Department finds this labor wage rate to be the best available information on the record from the surrogate country we selected to value factors of production. These data are publicly available, represent a broad market average, specific to the shrimp processing industry, and collected from an official Bangladeshi government source in the surrogate country that the Department selected. Therefore, we note that the BBS data are consistent with the Department’s statement of policy regarding the calculation of the SV for labor. Moreover, the Department’s use of the BBS for a wage rate SV has been affirmed by the

¹²⁶ Id.

¹²⁷ Id.

¹²⁸ See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092 (June 21, 2011) (“Labor Methodologies”).

¹²⁹ See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Second Administrative Review, 72 FR 13242 (March 21, 2007) and accompanying Issues and Decision Memorandum at Comment 8B.

CIT.¹³⁰ A more detailed description of the wage rate calculation methodology is provided in the Prelim SV Memo.¹³¹

Surrogate Financial Ratios

To value factory overhead, selling, general, and administrative expenses (“SG&A”), and profit, the Department used the 2013-2014 financial statements of Bangladeshi companies, Gemini Seafood Limited and Apex Foods Limited, both of which indicate they are non-integrated processors of identical merchandise.¹³²

Currency Conversion

Where necessary, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Verification

Pursuant to 19 CFR 351.307(b)(1)(v)(A) and (B), the Department conducted verification of Minh Phu Group’s CEP sales.¹³³

Conclusion

We recommend applying the above methodology for these preliminary results.

✓

Agree Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

3 MARCH 2016

(Date)

¹³⁰ See Camau Frozen Seafood Processing Import Export Corporation v. United States, 929 F. Supp. 2d 1352, 1356 (CIT 2013) (“Camau II”). See also VN Shrimp AR9 Final and accompanying Issues and Decision Memorandum at Comment 9.

¹³¹ See Prelim SV Memo.

¹³² Id.

¹³³ See “Memorandum to the File, through Catherine Bertrand, Program Manager, from Irene Gorelik, Analyst re: Verification of the CEP Sales Response of the MPG in the 2014-2015 Administrative Review of Certain Warmwater Shrimp from the Socialist Republic of Vietnam,” dated January 29, 2016.

Appendix I

Companies Preliminarily Granted Separate Rates

1. Bac Lieu Fisheries Joint Stock Company
2. C.P. Vietnam Corporation
3. Cadovimex Seafood Import-Export and Processing Joint Stock Company
4. Camau Frozen Seafood Processing Import Export Corporation
5. Camau Seafood Processing and Service Joint Stock Corporation
6. Can Tho Import Export Fishery Limited Company
7. Cuulong Seaproducts Company
8. Gallant Dachan Seafood Co., Ltd.
9. Green Farms Seafood Joint Stock Company
10. Hai Viet Corporation
11. Investment Commerce Fisheries Corporation
12. Kim Anh Company Limited
13. Minh Hai Export Frozen Seafood Processing Joint-Stock Company
14. Minh Hai Joint-Stock Seafoods Processing Company
15. Minh Phu Seafood Corporation, Minh Phu Seafood Corp., Minh Phu Seafood Corporation, Minh Qui Seafood Co., Ltd., Minh Phat Seafood Co., Ltd., Minh Phu Hau Giang Seafood Joint Stock Company (collectively, the Minh Phu Group”)
16. Ngoc Tri Seafood Joint Stock Company
17. Nha Trang Fisheries Joint Stock Company
18. Nha Trang Seaproduct Company
19. Phuong Nam Foodstuff Corp.
20. Quang Minh Seafood Co., Ltd.
21. Quoc Viet Seaproducts Processing Trading and Import-Export Co., Ltd.
22. Sao Ta Foods Joint Stock Company
23. Seaprimexco Vietnam
24. Stapimex
25. Taika Seafood Corporation
26. Thong Thuan Company Limited
27. Thuan Phuoc Seafoods and Trading Corporation
28. Trong Nhan Seafood Company Limited
29. UTXI Aquatic Products Processing Corporation
30. Viet Foods Co., Ltd.
31. Viet I-Mei Frozen Foods Co., Ltd.
32. Vietnam Clean Seafood Corporation

Appendix II

Companies Subject to Review Determined to be Part of the Vietnam-Wide Entity

1. Amanda Foods (Vietnam) Ltd. Ngoc Tri Seafood Company (Amanda's affiliate)
2. Amanda Seafood Co., Ltd.
3. An Giang Coffee JSC
4. Anvifish Joint Stock Co.
5. Asia Food Stuffs Import Export Co., Ltd.
6. B.O.P. Limited Co.
7. Binh An Seafood Joint Stock Company
8. Can Tho Agricultural and Animal Product Import Export Company ("CATACO")
Can Tho Agricultural and Animal Products Imex Company
Can Tho Agricultural and Animal Products Import Export Company ("CATACO")
Can Tho Agricultural Products
Can Tho Agricultural Products
9. Can Tho Import Export Seafood Joint Stock Company (CASEAMEX)
10. Cau Tre Enterprise (C. T. E.)
11. Cautre Export Goods Processing Joint Stock Company
12. CL Fish Co., Ltd. (Cuu Long Fish Company)
13. Danang Seaproducts Import Export Corporation ("Seaprodex Danang")
Danang Seaproducts Import-Export Corporation ("Seaprodex Danang") (and its affiliates)
Danang Seaproducts Import-Export Corporation (and its affiliate, Tho Quang Seafood Processing and Export Company) (collectively "Seaprodex Danang")
Seaprodex Danang
Tho Quang Co.
Tho Quang Seafood Processing and Export Company
Frozen Seafoods Factory No. 32 (Tho Quang Seafood Processing and Export Company)
14. D & N Foods Processing (Danang Company Ltd.)
15. Duy Dai Corporation
16. Gallant Ocean (Quang Ngai) Co., Ltd.
17. Gn Foods
18. Hai Thanh Food Company Ltd.
19. Hai Vuong Co., Ltd.
20. Han An Trading Service Co., Ltd.
21. Hoang Hai Company Ltd.
22. Hua Heong Food Industries Vietnam Co. Ltd.
23. Huynh Huong Seafood Processing (Huynh Houng Trading and Import Export Joint Stock Company)
24. Interfood Shareholding Co.
25. Khanh Loi Seafood Factory
26. Kien Long Seafoods Co. Ltd.
27. Luan Vo Fishery Co., Ltd.
28. Minh Chau Imp. Exp. Seafood Processing Co., Ltd.
29. Minh Cuong Seafood Import Export Frozen Processing Joint Stock Company ("Minh Cuong Seafood")

30. Mp Consol Co., Ltd.
31. Ngoc Chau Co., Ltd. and/or Ngoc Chau Seafood Processing Company
32. Ngoc Sinh
Ngoc Sinh Fisheries
Ngoc Sinh Private Enterprises
Ngoc Sinh Seafood Processing Company
Ngoc Sinh Seafood Trading & Processing Enterprise
Ngoc Sinh Seafoods
33. Phu Cuong Jostoco Corp.
Phu Cuong Jostoco Seafood Corporation
34. Quang Ninh Export Aquatic Products Processing Factory
35. Quang Ninh Seaproducts Factory
36. Quoc Ai Seafood Processing Import Export Co., Ltd.
37. S.R.V. Freight Services Co., Ltd.
38. Sustainable Seafood
39. Tan Thanh Loi Frozen Food Co., Ltd.
40. Thanh Doan Seaproducts Import & Export Processing Joint-Stock Company (THADIMEXCO)
41. Thanh Hung Frozen Seafood Processing Import Export Co., Ltd.
42. Thanh Tri Seafood Processing Co. Ltd.
43. Thinh Hung Co., Ltd.
44. Tien Tien Garment Joint Stock Company
45. Tithi Co., Ltd.
46. Trang Khan Seafood Co., Ltd.
47. Viet Cuong Seafood Processing Import Export Joint-Stock Company
48. Vietnam Fish One Co., Ltd.
Viet Hai Seafood Co., Ltd.
Vietnam Fish-One Co., Ltd. (“Fish One”) (Viet Hai Seafood Co., Ltd.)
49. Vietnam Northern Viking Technologies Co. Ltd.
50. Vinatex Danang
51. Vinh Loi Import Export Company (“VIMEX”)
Vinh Loi Import Export Company (“Vimexco”)