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September 6, 2016

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

FROM: Gary Taverman 
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

SUMMARY

The Department of Commerce (the “Department”) is conducting the 12th administrative review of the antidumping duty (“AD”) order on certain frozen fish fillets (“fish fillets”) from the Socialist Republic of Vietnam (“Vietnam”).¹ The Department preliminarily determines that none of the mandatory respondents, *i.e.*, Golden Quality Seafood Corporation (“Golden Quality”), Thuan An Production Trading and Service Co., Ltd. (“Tafishco”) and Viet Phu Foods and Fish Corporation (“Viet Phu”), demonstrated that they were entitled to separate rates. Accordingly, we consider these companies to be part of the Vietnam-Wide Entity.

If we adopt these preliminary results in the final results of the review, we will instruct U.S. Customs and Border Protection (“CBP”) to assess ADs on all appropriate entries of subject merchandise during the POR. We invite interested parties to comment on these preliminary results. We expect to 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”).

Case History

On August 3, 2015, the Department published in the *Federal Register* an opportunity to request an administrative review on fish fillets from Vietnam.² On August 31, 2015, the Department

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

² See *Antidumping or Countervailing Duty Order Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 80 FR 45952 (August 3, 2015).



received a request from Petitioners³ to conduct an administrative review on 71 companies.⁴ In August 2015, 30 companies self-requested an administrative review.⁵ On October 6, 2015, the Department initiated the 12th administrative review of fish fillets from Vietnam with respect to 71 companies.⁶ On December 20, 2015, Bien Dong Seafood Co., Ltd. (“Bien Dong”) withdrew its request for review.⁷ On December 31, 2015, Petitioners withdrew their request for review, with respect to Bien Dong.⁸ On January 4, 2016, Vinh Hoan Corporation (“Vinh Hoan”) withdrew its request for review.⁹ On the same day, Petitioners withdrew their request with respect to Vinh Hoan and 62 other companies.¹⁰

Because of the large number of exporters involved in this administrative review, the Department limited the number of respondents individually examined pursuant to section 777A(c)(2) of the Act and selected the largest exporters, Golden Quality and Tafishco as mandatory respondents.¹¹ On March 22, 2016, the Department issued its standard AD questionnaire to Golden Quality¹² and Tafishco.¹³ On April 8, 2016, Tafishco submitted a letter stating it will not participate in the review.¹⁴ On April 19, 2016, Golden Quality submitted a letter stating it will not participate in the review.¹⁵

On April 14, 2016, the Department selected Viet Phu for individual examination as a mandatory respondent in this proceeding.¹⁶ On April 15, 2016, the Department issued the AD questionnaire to Viet Phu.¹⁷ On May 5, 2016, Viet Phu submitted a letter stating it will not participate in the review.¹⁸ On May 20, 2016, the Department selected Ben Tre Aquaprodukt Import and Export Joint Stock Company (“Aquatex Bentre”) for individual examination in this proceeding. On May 26, 2016, Aquatex Bentre submitted a no shipments certification.¹⁹

³ The Catfish Farmers of America and individual U.S. catfish processors, collectively “Petitioners.”

⁴ See Petitioners’ August 31, 2015 submission.

⁵ See Appendix II for the complete list of companies self-requesting an administrative review.

⁶ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 60356 (October 6, 2015) (“*Initiation Notice*”); see also Appendix I for the complete list of all companies upon which the Department initiated an administrative review.

⁷ See Bien Dong’s withdrawal of request, dated December 30, 2015.

⁸ See Petitioners’ withdrawal of request on Bien Dong, dated December 31, 2015.

⁹ See Vinh Hoan’s withdrawal of request, dated January 4, 2016.

¹⁰ See Petitioners’ withdrawals of request on Vinh Hoan and 62 companies, dated January 4, 2016.

¹¹ See Memorandum to James Doyle, Director, Office V, from Kenneth Hawkins, International Trade Analyst, Office V, “Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Selection of Respondents for Individual Review,” dated March 3, 2016 (“Respondent Selection Memo”).

¹² See Department’s questionnaire to Golden Quality, dated March 22, 2016.

¹³ See Department’s questionnaire to Tafishco, dated March 22, 2016.

¹⁴ See Tafishco’s submission, dated April 8, 2016.

¹⁵ See Golden Quality’s submission, dated April 19, 2016.

¹⁶ See Memorandum to James Doyle, Director, Office V, Enforcement and Compliance, from Javier Barrientos, Senior International Trade Compliance Analyst, Office V, “Second Selection of Respondent for Individual Review,” dated April 14, 2016.

¹⁷ See the Department’s questionnaire to Viet Phu, dated April 15, 2016.

¹⁸ See Viet Phu’s submission, dated May 5, 2016.

¹⁹ See Aquatex Bentre’s submission, dated May 26, 2016 (“Bentre’s No Shipments Certification”).

On May 4, 2016, the Department fully extended the preliminary results until September 6, 2016.²⁰

SCOPE OF THE ORDER

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

Frozen fish fillets are lengthwise cuts of whole fish. The fillet products covered by the scope include boneless fillets with the belly flap intact (“regular” fillets), boneless fillets with the belly flap removed (“shank” fillets) and boneless shank fillets cut into strips (“fillet strips/finger”), which include fillets cut into strips, chunks, blocks, skewers, or any other shape.

Specifically excluded from the scope are frozen whole fish (whether or not dressed), frozen steaks, and frozen belly-flap nuggets. Frozen whole, dressed fish are deheaded, skinned, and eviscerated. Steaks are bone-in, cross-section cuts of dressed fish. Nuggets are the belly-flaps.

The subject merchandise will be hereinafter referred to as frozen “basa” and “tra” fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under tariff article code 0304.62.0020 (Frozen Fish Fillets of the species *Pangasius*, including basa and tra), and may enter under tariff article codes 0305.59.0000, 1604.19.2100, 1604.19.3100, 1604.19.4100, 1604.19.5100, 1604.19.6100 and 1604.19.8100 of the Harmonized Tariff Schedule of the United States (“HTSUS”).²¹

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

DISCUSSION OF THE METHODOLOGY

Partial Rescission

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of

²⁰ See Memorandum to Christian Marsh, Deputy Assistant Secretary, Antidumping and Countervailing Duty Operations, through James C. Doyle, Director, Office V, Antidumping and Countervailing Duty Operations, from Kenneth Hawkins, International Trade Compliance Analyst, “Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Deadline for Preliminary Results of 2014-2015 Administrative Review,” dated May 4, 2016.

²¹ Until June 30, 2004, these products were classifiable under HTSUS 0304.20.6030, 0304.20.6096, 0304.20.6043 and 0304.20.6057. From July 1, 2004, until December 31, 2006, these products were classifiable under HTSUS 0304.20.6033. From January 1, 2007, until December 31, 2011, these products were classifiable under HTSUS 0304.29.6033. On March 2, 2011, the Department added two HTSUS numbers at the request of U.S. Customs and Border Protection (“CBP”) that the subject merchandise may enter under: 1604.19.2000 and 1604.19.3000, which were changed to 1604.19.2100 and 1604.19.3100 on January 1, 2012. On January 1, 2012, the Department added the following HTSUS numbers at the request of CBP: 0304.62.0020, 0305.59.0000, 1604.19.4100, 1604.19.5100, 1604.19.6100 and 1604.19.8100.

the date of publication of the notice of initiation.

In order to conduct respondent selection, the Department requested a query from CBP; the data indicated that Vinh Hoan and Bien Dong were the two largest exporters of subject merchandise during the POR.²² As noted above, between December 20, 2015, and January 4, 2016, Bien Dong,²³ Petitioners and Vinh Hoan withdrew their requests for review.²⁴ Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation. Vinh Hoan's, Bien Dong's, and Petitioners' withdrawals of their review requests were submitted within the deadline set forth under 19 CFR 351.213(d)(1). Thus, all administrative review requests have been timely withdrawn for 38 companies. Accordingly, the Department is rescinding this review, in part, with respect to these 38 entities, in accordance with 19 CFR 351.213(d)(1).²⁵

Petitioners withdrew their review request for the Hung Vuong Group.²⁶ Although Petitioners did not withdraw their review request for An Giang Fisheries Import & Export Joint Stock Company ("Agifish"), because it is a part of the Hung Vuong Group collapsed entity, the Department is rescinding this review with respect to Agifish.

Hai Huong Seafood Joint Stock Company ("HHfish") was a participant in the recently concluded new shipper review.²⁷ HHfish only had one sale under review which was addressed in its new shipper review. As such, the Department is rescinding this review with respect to HHfish.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate an individual weighted-average dumping margin for each known exporter or producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters and producers if it is not practicable to make individual weighted-average dumping margin determinations because of the large number of exporters and producers involved in the review. Moreover, on June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 ("TPEA"), which made numerous amendments to the AD and CVD law, including amendments to section 782(a) of the

²² See the Department's Letter to Interested Parties, dated November 4, 2015.

²³ See Bien Dong's withdrawal of request, dated December 30, 2015.

²⁴ See, e.g., Vinh Hoan's withdrawal of request, dated January 4, 2016. On January 4, 2016, Petitioners withdrew requests for administrative review on 61 companies. See Petitioners' withdrawal of request, dated January 4, 2016.

²⁵ See Appendix III for a full list of rescinded companies.

²⁶ The Hung Vuong Group, or "HVG," includes: An Giang Fisheries Import & Export Joint Stock Company, Asia Pangasius Company Limited, Europe Joint Stock Company, Hung Vuong Joint Stock Company, Hung Vuong Mascato Company Limited, Hung Vuong – Vinh Long Co., Ltd., and Hung Vuong – Sa Dec Co., Ltd. See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Review; 2011–2012*, 79 FR 19053 (April 7, 2014) ("*Ninth AR Final*") and accompanying Issues and Decision Memorandum at 3.

²⁷ See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty New Shipper Review; 2014–2015*, FR 81 44272 (July 7, 2016).

Act.²⁸ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this review.²⁹ When the Department limits the number of exporters examined in a review pursuant to section 777A(c)(2) of the Act, section 782(a) of the Act directs the Department to calculate individual weighted-average dumping margins for companies not initially selected for individual examination that voluntarily provide the information requested of the mandatory respondents if: (1) the information is submitted by the due date specified for the mandatory respondents and (2) the number of such companies subject to the review is not so large that any additional individual examination of such exporters or producers would be unduly burdensome to the administering authority and inhibit the timely completion of the review. Under Section 782(a) of the Act as recently amended by the TPEA, in determining whether it would be unduly burdensome to examine a voluntary respondent, the Department may consider: 1) the complexity of the issues or information presented in the proceeding, including questionnaires and any responses thereto; 2) any prior experience of the Department in the same or similar proceedings; 3) the total number of investigations or reviews being conducted by the Department; and 4) such other factors relating to the timely completion of these investigations and reviews.

As noted above, because of the large number of exporters involved in this administrative review, the Department limited the number of respondents individually examined pursuant to section 777A(c)(2) of the Act and on November 7, 2014, the Department determined that it was not practicable to examine more than two respondents in the instant administrative review. Therefore, in accordance with section 777A(c)(2)(B) of the Act, the Department selected for individual examination the two exporters accounting for the largest volume of frozen fish fillets exported from Vietnam during the POR based on CBP data. The Department also noted that, if it received voluntary responses in accordance with section 782(a) of the Act and 19 CFR 351.204(d), it would evaluate the circumstances at that time in deciding whether to select an additional respondent for examination.

As noted above, on March 3, 2016, the Department selected, for individual examination as mandatory respondents in this proceeding, the two largest exporters of subject merchandise during the POR that were still subject to the review, Golden Quality and Tafishco.³⁰ With regard to voluntary treatment, on September 21, 2015, Hoang Long requested voluntary respondent status.³¹ While Hoang Long timely submitted its Section A Questionnaire response³², it did not timely file Section C and D responses. Thus, Hoang Long did not meet the requirements under

²⁸ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (“TPEA”). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (“Applicability Notice”).

²⁹ *Id.*, 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

³⁰ See Respondent Selection Memo, dated March 3, 2016.

³¹ See Hoang Long’s submission, dated September 21, 2015.

³² See Hoang Long’s submission, dated April 20, 2016.

section 782(a)(1) of the Act.³³

Preliminary Determination of No Reviewable Transactions

In addition to requesting to be a voluntary respondent, on November 3, 2015, Hoang Long submitted its separate rate certification, and on November 5, 2015 CADOVIMEX II Seafood Import Export and Processing Joint Stock Company (“CADOVIMEX II”) submitted its separate rate certification. The entry summaries in these companies’ separate rate certifications did not indicate entry dates. The Department issued supplemental questionnaires to Hoang Long and CADOVIMEX II regarding this.³⁴ In response to our questionnaires, Hoang Long and CADOVIMEX II submitted entry documents which indicated they did not have entries during the POR. The Department confirmed this with CBP, which reported no entries within the POR.³⁵ Therefore, we preliminarily find that Hoang Long and CADOVIMEX II had no reviewable entries during the POR.

On October 30, 2015, Aquatex Bentre submitted its separate rate certification. After the Department chose Aquatex Bentre as a mandatory respondent, Aquatex Bentre submitted information which indicates it did not have an entry for consumption to the United States during the POR, and was instead shipped through a foreign trade zone (“FTZ”).³⁶ Aquatex Bentre subsequently submitted its no shipments response.³⁷ Therefore, we preliminarily that Aquatex Bentre had no reviewable entries during the POR.

Based on the evidence on the record thus far, we preliminarily determine that CADOVIMEX II, Hoang Long, and Aquatex Bentre, did not have any reviewable transactions during the POR. In addition, we find that it is appropriate not to rescind the review in part in this circumstance but, rather, to complete the review with respect to the above named companies and issue appropriate instructions to CBP based on the final results of the review.³⁸ Should evidence contrary to these companies’ no shipments claims arise, we will pursue the issue in accordance with our governing statute and regulations.

NME Country Status

In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is a non-market economy (“NME”) country shall remain in effect until revoked by the Department. The Department considers Vietnam to be an NME country.³⁹ Therefore, we continue to treat Vietnam as an NME country for purposes of these preliminary results.

³³ See Department’s July 13, 2016 Letter to Hoang Long.

³⁴ See, e.g., the Department’s April 27, 2016 supplemental questionnaire to Cadovimex II.

³⁵ See Memorandum to James Doyle, Director, AD/CVD Operations, Office V, Enforcement and Compliance, from, Wendy J. Frankel, Director, Customs Liaison Unit, Enforcement and Compliance, “Certain Fish Fillets from Vietnam (A552-801),” dated May 17, 2016 (“CBP Information Letter”).

³⁶ See Bentre’s No Shipment Certification.

³⁷ *Id.*

³⁸ See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694, 65694-65695 (October 24, 2011).

³⁹ See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam; Final Results and Partial Rescission of Antidumping Duty Administrative Review; 2013-2014*, FR 81 17435 (March 29, 2016).

Separate Rates

Pursuant to section 771(18)(C)(i) 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 an NME are subject to government control, and thus, should be assessed a single AD rate.⁴⁰ In the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.⁴¹ 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*,⁴² as amplified by *Silicon Carbide*.⁴³ However, if the Department determines that a company is wholly foreign-owned by individuals or companies located in a market economy ("ME"), then a separate rate analysis is not necessary to determine whether it is independent from government control.⁴⁴

Separate Rate Applicants and Separate Rate Certifications

The Department received separate rate applications from the following companies for which there is an outstanding review request, and for which we have found have entries during the POR ("Separate-Rate Applicants"):

1. CUU Long Fish Joint Stock Company ("CL-Fish Corp.")
2. GODACO Seafood Joint Stock Company ("GODACO")
3. Green Farms Seafood Joint Stock Company ("Green Farms Seafood JSC")
4. NTSF Seafoods Joint Stock Company ("NTSF Seafoods")

A. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government

⁴⁰ 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).

⁴¹ See *Initiation Notice*.

⁴² 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*"), as amplified by *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*"), and 19 CFR 351.107(d).

⁴³ See *Silicon Carbide*, 59 FR at 22585.

⁴⁴ See, e.g., *Certain Pneumatic Off-the-Road Tires from the People's Republic of China, Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 9278, 9284 (February 20, 2008), unchanged in final affirmative determination, 73 FR 40485 (July 15, 2013).

decentralizing control of companies.⁴⁵ The evidence submitted by the separate rate applicants supports a preliminary finding of *de jure* absence of government control based on the following: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of companies.⁴⁶

B. Absence of *De Facto* Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices ("EPs") are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.⁴⁷ The Department determines that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.⁴⁸

The evidence provided by the Separate-Rate Applicants, except as stated below, supports a preliminary finding of *de facto* absence of government control based on the following: (1) the companies set their own EPs independent of the government and without the approval of a government authority; (2) the companies have authority to negotiate and sign contracts and other agreements; (3) the companies have autonomy from the government in making decisions regarding the selection of management; and (4) there is no restriction on any of the companies' use of export revenue.⁴⁹

Can Tho Import-Export Seafood Joint Stock Company ("Caseamex")

Section 776(a) of the Act provides that the Department shall apply "facts otherwise available" if (1) necessary information is not on the record or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

On November 5, 2015, Caseamex submitted a separate rate application.⁵⁰ In its separate rate application, Caseamex stated that a change in company structure, shareholdings or operations

⁴⁵ See *Sparklers*, 56 FR at 20589.

⁴⁶ See, e.g., CL-Fish's October 30, 2015 submission at 6-12.

⁴⁷ See *Silicon Carbide*, 59 FR at 22586-87; 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).

⁴⁸ *Id.*, 60 FR at 22544, 22544.

⁴⁹ See, e.g., CL-Fish's October 30, 2015 submission at 6-12.

⁵⁰ See Caseamex's November 5, 2015 submission.

occurred since the prior review.⁵¹ Specifically, one of its shareholders, a government entity, divested its shares. However, this shareholder did not fully divest itself of its shares until after its only sale during the POR.⁵²

We note that in the prior review, AR 11, the Department found that Caseamex was not eligible for a separate rate because Caseamex had not made any changes since AR 10, in which the Department found that Caseamex failed to show an absence of *de facto* control.⁵³ Section 776(a)(1) of the Act provides that the Department shall apply “facts otherwise available” if necessary information is not on the record. Caseamex’s separate rate application in this instant review demonstrates that the record is silent with respect to the government’s role in Caseamex after the agreement to divest its shares, and the actual sale of the shares after Caseamex’s sale during the POR. In light of the Department’s decision in AR 11, and the fact that no structural change was made until after Caseamex’s only sale, as facts available we preliminarily find that Caseamex is not eligible for a separate rate. After the preliminary results, the Department intends to supplement Caseamex to clarify certain facts on the record.

Dumping Margin for the Separate Rate Companies Not Individually Examined

The statute and the Department’s regulations do not directly address the establishment of a rate to be applied to companies not selected for individual examination where the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. The Department’s practice in cases involving limited selection based on exporters or producers accounting for the largest volumes of trade has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any rates that are zero, *de minimis* or based entirely on facts available.

In accordance with the statute, the Department will normally assign to separate rate entities that were not individually examined a rate equal to the weighted average of the rates calculated for the individually examined respondents, excluding any rates that are zero, *de minimis*, or based entirely on facts available.⁵⁴ Where the rates for the individually examined companies are all zero, *de minimis*, or based entirely on facts available, section 735(c)(5)(B) of the Act also provides that the Department may use “any reasonable method” to establish the rate for separate rate entities, which may include averaging the dumping margins for individually examined respondents.⁵⁵ The Statement of Administration Action states that the “expected method is to weight-average margins provided that the volume data is available and the resulting average would be reflective of the dumping margins of other exporters or producers.”

⁵¹ *Id.*

⁵² *Id.* at Exhibit 19.

⁵³ *See Tenth AR Final* at Comment XXI.

⁵⁴ *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007).

⁵⁵ *See* section 735(c)(5)(B) of the Act.

However, because of their failure to cooperate in this segment of the proceeding, the Department has determined that all of the mandatory respondents in this segment are part of the Vietnam-wide entity, an entity which is not under review in this segment. Thus, there is no POR margin information available for the Department to consider in assigning a margin for eligible separate rate companies not individually examined. In the absence of any assigned rates in this segment, including zero or *de minimis* rates or rates based on facts available, to determine a non-selected rate for the separate rate respondents in this review we have reached back to the previously completed review. All five non-individually examined companies eligible for a separate rate were previously provided the same separate rate in the most recently published review. We note that the CIT has held that if using this methodology to assign a separate rate such separate rate shall not be punitive for separate rate respondents.⁵⁶ The Department finds that retaining their separate rate from the prior review is non-punitive and represents a reliable rate which the Department can assign to eligible not individually examined separate rate companies. Thus, the Department preliminarily finds that these companies shall retain their separate rates of \$0.69 per kilogram assigned during the final results of the eleventh administrative review.

Golden Quality, Tafishco and Viet Phu

As noted above, Golden Quality, Tafishco and Viet Phu were selected as mandatory respondents in the review. However, these companies did not respond to the AD questionnaire, and therefore, did demonstrate that they were entitled to separate rates. Accordingly, we consider these companies to be part of the Vietnam-Wide Entity. Because no review was requested of the Vietnam-Wide entity, then the pre-existing Vietnam-Wide rate of \$2.39 per kilogram will apply to entries of their subject merchandise into the United States during the POR.⁵⁷

⁵⁶ See *Shenzhen Xinboda Industrial Co., Ltd., v. United States*, Court No. 15-00179, Slip Op. (CIT July, 2016).

⁵⁷ See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative; 2012-2013*, FR 80 2394 (January 16, 2015).

Appendix I: Initiation Companies

- 1) An Giang Agriculture and Foods Import-Export Joint Stock Company (AFIEX)
- 2) An Giang Fisheries Import and Export Joint Stock Company (also known as Agifish or AnGiang Fisheries Import and Export)
- 3) An My Fish Joint Stock Company (also known as Anmyfish or Anmyfishco)
- 4) An Phat Seafood Co. Ltd.
- 5) An Phu Seafood Corp. (also known as ASEAFood)
- 6) Anvifish Co., Ltd.
- 7) Anvifish Joint Stock Company (ANVIFISH)
- 8) Asia Commerce Fisheries Joint Stock Company (also known as Acomfish JSC or Acomfish)
- 9) Asia Pangasius Company Limited
- 10) Basa Joint Stock Company (BASACO)
- 11) Bien Dong Seafood Company Ltd., (Bien Dong Seafood)
- 12) Binh An Seafood Joint Stock Co.
- 13) Bentre Aquaproduct Import & Export Joint Company (also known as Bentre Aquaproduct or Ben Tre Aquaproduct Import and Export Joint Stock Company or Aquatex Bentre)
- 14) Bentre Forestry and Aquaproduct Import Export Joint Stock Company (also known as Ben Tre Forestry and Aquaproduct Import-Export Company or Ben Tre Forestry Aquaproduct Import-Export Company or Ben Tre Frozen Aquaproduct Export Company or Faquimex)
- 15) C.P. Vietnam Corporation
- 16) Cadovimex II Seafood Import-Export and Processing Joint Stock Company (also known as CADOVIMEX II or)
- 17) Cafatex Corporation (CAFATEX) as CADOVIMEX II Seafood Import-Export)
- 18) Can Tho Animal Fishery Products Processing Export Enterprise (also known as Cafatex)
- 19) Can Tho Import-Export Seafood Joint Stock Company
- 20) Cantho Import-Export Joint Stock Company (CASEAMEX)
- 21) Cuu Long Fish Joint Stock Company (CL-Fish)
- 22) Dai Thanh Seafoods Company Limited (DATHACO)
- 23) East Sea Seafoods LLC (ESS)
- 24) Europe Joint Stock Company
- 25) Fatifish Company Limited (FATIFISH)
- 26) GODACO Seafood Joint Stock Company (GODACO)
- 27) Golden Quality Seafood Corporation (GOLDEN QUALITY)
- 28) Green Farms Seafood Joint Stock Company (Green Farms)
- 29) Hai Huong Seafood Joint Stock Company (also known as HHFish or HH Fish)
- 30) Hiep Thanh Seafood Joint Stock Co.
- 31) Hoa Phat Seafood Import-Export and Processing J.S.C. (HOPAFISH)
- 32) Hoang Long Seafood Processing Co., Ltd. (HLS)
- 33) Hung Vuong Corporation
- 34) Hung Vuong Joint Stock Company
- 35) Hung Vuong Mascato Company Limited
- 36) Hung Vuong Seafood Joint Stock Company
- 37) Hung Vuong-Sa Dec Co. Ltd.
- 38) Hung Vuong-Vinh Long Co., Ltd.
- 39) International Development & Investment Corporation (IDI)

- 40) Lian Heng Investment Co., Ltd. (also known as Lian Heng)
- 41) Lian Heng Trading Co., Ltd. (also known as Lian Heng)
- 42) Nam Phuong Seafood Company Ltd. (also known as Nam Phoung Seafood Company Ltd. or NAFISHCO)
- 43) Nam Viet Company Ltd.
- 44) Nam Viet Corporation (NAVICO)
- 45) Ngoc Ha Co., Ltd. Food Processing and Trading
- 46) Nha Trang Seafoods, Inc. (also known as Nha Trang Seafoods-F89 or Nha Trang Seafoods)
- 47) NTACO Corporation (NTACO)
- 48) NTSF Seafoods Joint Stock Company (NTSF)
- 49) Quang Minh Seafood Co., Ltd.
- 50) QVD Dong Thap Food Co., Ltd. (also known as Dong Thap)
- 51) QVD Food Company, Ltd.
- 52) Saigon-Mekong Fishery Co., Ltd. (also known as SAMEFICO)
- 53) Seafood Joint Stock Company No. 4—Branch Dong Tam Fisheries Processing Company (DOTASEAFOODCO)
- 54) Southern Fisheries Industries Company, Ltd. (also known as South Vina)
- 55) Southern Fishery Industries Company, Ltd. (also known as South Vina)
- 56) Sunrise Corporation
- 57) TG Fishery Holdings Corporation (also known as TG)
- 58) Thanh Hung Co., Ltd. (also known as Thanh Hung Frozen Seafood Processing Import Export Co., Ltd. or Thanh Hung)
- 59) Thien Ma Seafood Co., Ltd. (also known as THIMACO)
- 60) Thien Ma Seafoods Co., Ltd. (also known as THIMACO)
- 61) Thien Phat Seafood Co., Ltd.
- 62) Thuan Hung Co., Ltd. (also known as THUFICO)
- 63) Thuan An Production Trading and Service Co., Ltd. (TAFISHCO)
- 64) Thuan An Production Trading and Services Co., Ltd. (TAFISHCO)
- 65) Thuan Hung Co., Ltd. (also known as THUFICO)
- 66) To Chau Joint Stock Company (TOCHAU)
- 67) Viet Phu Foods and Fish Corporation (Viet Phu)
- 68) Vinh Hoan Corporation (also known as Vinh Hoan)
- 69) Vinh Long Import-Export Company (also known as Vinh Long or Imex Cuu Long)
- 70) Vinh Quang Fisheries Corporation (also known as Vinh Quang)
- 71) Vinh Quang Fisheries Joint-Stock Company

Appendix II: Self-Requested Companies

- 1) An Giang Agriculture and Foods Import-Export Joint Stock Company (AFIEX)
- 2) An Giang Fisheries Import and Export Joint Stock Company (also known as Agifish or AnGiang Fisheries Import and Export)
- 3) Anvifish Joint Stock Company (ANVIFISH)
- 4) Basa Joint Stock Company (BASACO)
- 5) Bien Dong Seafood Company Ltd., (Bien Dong Seafood)
- 6) Bentre Aquaproduct Import & Export Joint Company (also known as Bentre Aquaproduct or Ben Tre Aquaproduct Import and Export Joint Stock Company or Aquatex Bentre)
- 7) Cadovimex II Seafood Import-Export and Processing Joint Stock Company (also known as CADOVIMEX II or)
- 8) Can Tho Import-Export Seafood Joint Stock Company
- 9) Cantho Import-Export Joint Stock Company (CASEAMEX)
- 10) Cuu Long Fish Joint Stock Company (CL-Fish)
- 11) Dai Thanh Seafoods Company Limited (DATHACO)
- 12) East Sea Seafoods LLC (ESS)
- 13) Fatifish Company Limited (FATIFISH)
- 14) GODACO Seafood Joint Stock Company (GODACO)
- 15) Golden Quality Seafood Corporation (GOLDEN QUALITY)
- 16) Green Farms Seafood Joint Stock Company (Green Farms)
- 17) Hoa Phat Seafood Import-Export and Processing J.S.C. (HOPAFISH)
- 18) Hoang Long Seafood Processing Co., Ltd. (HLS)
- 19) Nam Phuong Seafood Company Ltd. (also known as Nam Phoung Seafood Company Ltd. or NAFISHCO)
- 20) Nam Viet Corporation (NAVICO)
- 21) NTACO Corporation (NTACO)
- 22) NTSF Seafoods Joint Stock Company (NTSF)
- 23) QVD Dong Thap Food Co., Ltd. (also known as Dong Thap)
- 24) QVD Food Company, Ltd.
- 25) Saigon-Mekong Fishery Co., Ltd. (also known as SAMEFICO)
- 26) Thuan An Production Trading and Service Co., Ltd. (TAFISHCO)
- 27) To Chau Joint Stock Company (TOCHAU)
- 28) Viet Phu Foods and Fish Corporation (Viet Phu)
- 29) Vinh Hoan Corporation (also known as Vinh Hoan)
- 30) Vinh Quang Fisheries Corporation (also known as Vinh Quang)

Appendix III: Rescinded Companies

- 1) An Giang Fisheries Import and Export Joint Stock Company (also known as Agifish or AnGiang Fisheries Import and Export)
- 2) An My Fish Joint Stock Company (also known as Anmyfish or Anmyfishco)
- 3) An Phat Seafood Co. Ltd.
- 4) An Phu Seafood Corp. (also known as ASEAFOOD)
- 5) Anvifish Co., Ltd.
- 6) Asia Commerce Fisheries Joint Stock Company (also known as Acomfish JSC or Acomfish)
- 7) Asia Pangasius Company Limited
- 8) Bentre Forestry and Aquaproduct Import Export Joint Stock Company (also known as Ben Tre Forestry and Aquaproduct Import-Export Company or Ben Tre Forestry Aquaproduct Import-Export Company or Ben Tre Frozen Aquaproduct Export Company or Faquimex)
- 9) Binh An Seafood Joint Stock Co.
- 10) C.P. Vietnam Corporation
- 11) Cafatex Corporation (CAFATEX)
- 12) Can Tho Animal Fishery Products Processing Export Enterprise (also known as Cafatex)
- 13) Europe Joint Stock Company
- 14) Hiep Thanh Seafood Joint Stock Co.
- 15) Hoang Long Seafood Processing Co., Ltd. (HLS)
- 16) Hung Vuong Corporation
- 17) Hung Vuong Joint Stock Company
- 18) Hung Vuong Mascato Company Limited
- 19) Hung Vuong-Sa Dec Co. Ltd.
- 20) Hung Vuong-Vinh Long Co., Ltd.
- 21) International Development & Investment Corporation (IDI)
- 22) Lian Heng Investment Co., Ltd. (also known as Lian Heng)
- 23) Lian Heng Trading Co., Ltd. (also known as Lian Heng)
- 24) Nam Viet Company Ltd.
- 25) Ngoc Ha Co., Ltd. Food Processing and Trading
- 26) Nha Trang Seafoods, Inc. (also known as Nha Trang Seafoods-F89 or Nha Trang Seafoods)
- 27) Quang Minh Seafood Co., Ltd.
- 28) Seafood Joint Stock Company No. 4-Branch Dong Tam Fisheries Processing Company (DOTASEAFOODCO)
- 29) Southern Fisheries Industries Company, Ltd. (also known as South Vina)
- 30) Southern Fishery Industries Company, Ltd. (also known as South Vina)
- 31) Sunrise Corporation
- 32) TG Fishery Holdings Corporation (also known as TG)
- 33) Thanh Hung Co., Ltd. (also known as Thanh Hung Frozen Seafood Processing Import Export Co., Ltd. or Thanh Hung)
- 34) Thien Ma Seafood Co., Ltd. (also known as THIMACO)
- 35) Thien Ma Seafoods Co., Ltd. (also known as THIMACO)
- 36) Thien Phat Seafood Co., Ltd.

- 37) Thuan An Production Trading and Services Co., Ltd. (TAFISHCO)
- 38) Thuan Hung Co., Ltd. (also known as THUFICO)
- 39) Vinh Long Import-Export Company (also known as Vinh Long or Imex Cuu Long)
- 40) Vinh Quang Fisheries Joint-Stock Company