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October 31, 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; 2015-2016

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## I. SUMMARY

In response to requests from interested parties, the Department of Commerce (Department) is conducting this administrative review of the antidumping duty (AD) order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam (Vietnam) for the period of review (POR) February 1, 2015, through January 31, 2016. The Department preliminarily finds that C.P. Vietnam Corporation (CPV) and Tan Phong Phu Seafood Co., Ltd. (TPP), the two mandatory respondents selected for individual examination, have not established their entitlement to a separate rate, and are, therefore, being treated as part of the Vietnam-Wide entity.

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 (Act) and 19 CFR 351.213(h)(1).

## II. BACKGROUND

On April 7, 2016, the Department initiated an administrative review of certain frozen warmwater shrimp from Vietnam.<sup>1</sup> The Department initiated an administrative review of 218 producers and

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<sup>1</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 20324 (April 7, 2016) (*Initiation Notice*).



exporters of subject merchandise.<sup>2</sup> On June 30, 2016, Quoc Viet and Thong Thuan withdrew their respective requests for administrative review.<sup>3</sup> On July 1, 2016, the Ad Hoc Shrimp Trade Action Committee (the petitioner) withdrew its request for an administrative review for 20 companies, and their various name iterations, as listed in the *Initiation Notice*.<sup>4</sup> On July 1, 2016, the American Shrimp Processors Association (ASPA) withdrew its request for an administrative review for 22 companies and their various name iterations, as listed in the *Initiation Notice*.<sup>5</sup> On July 1, 2016, the Vietnam Association of Shrimp Exporters and Producers (VASEP) withdrew its request for an administrative review of 17 companies and their various name iterations, as listed in the *Initiation Notice*.<sup>6</sup> No other party requested a review of these exporters. On July 6, 2016, the petitioner, ASPA, and the Minh Phu Group withdrew their respective requests for administrative review of the Minh Phu Group.

Pursuant to 19 CFR 351.213(d)(1) and (4), the Department rescinded the administrative review with respect to 21 companies.<sup>7</sup> We also rescinded the review with respect to the Minh Phu Group on July 18, 2016.<sup>8</sup> Thus, after accounting for the companies and their various name iterations rescinded from review, 140 companies remained under review.<sup>9</sup>

On August 25, 2016, the Department extended the deadline for the preliminary results by 120 days, to February 28, 2017.<sup>10</sup>

### III. 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

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<sup>2</sup> *Id.* While there were 218 individual names upon which we initiated an administrative review, the number of *actual* companies initiated upon is significantly less when accounting for numerous duplicate names and minor name variations of the same companies requested by multiple interested parties, and the groupings of companies that have been collapsed and/or have been previously found affiliated.

<sup>3</sup> See Quoc Viet and Thong Thuan's Submission re: "Withdrawal of Request for Administrative Review," dated June 30, 2016.

<sup>4</sup> See the Petitioner's Submission re: "Domestic Producers' Partial Withdrawal of Review Requests," dated July 1, 2016.

<sup>5</sup> See ASPA's Submission re: "Domestic Producers' Partial Withdrawal of Review Requests," dated July 1, 2016.

<sup>6</sup> See VASEP's Submission re: "Partial Withdrawal of Review Requests," dated July 1, 2016.

<sup>7</sup> See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Partial Rescission of Antidumping Duty Administrative Review; 2015–2016*, 81 FR 46047 (July 15, 2016) (*Partial Rescission*). While the petitioner and ASPA withdrew their respective review requests of Tan Phong Phu Seafood Co., Ltd., VASEP did not withdraw its review request on behalf of this company; thus, we did not rescind the review with respect to Tan Phong Phu Seafood Co., Ltd. because there remains an active review request for it on the record. The 22 companies rescinded from review were all covered by the withdrawals submitted from all parties that originally requested review of those companies.

<sup>8</sup> See *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Partial Rescission of Antidumping Duty Administrative Reviews (2014–2015; 2015–2016) and Compromise of Outstanding Claims*, 81 FR 47758 (July 22, 2016).

<sup>9</sup> While there were 140 individual company names remaining under active review, the number of *actual* companies remaining under active review is 76 when accounting for numerous duplicate names and minor name variations of the same companies requested by multiple interested parties, and the groupings of companies that have been collapsed and/or have been previously found affiliated.

<sup>10</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, re: "Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated August 25, 2016.

or peeled, tail-on or tail-off,<sup>11</sup> 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.

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 this order 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

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<sup>11</sup> “Tails” in this context means the tail fan, which includes the telson and the uropods.

only and are not dispositive, but rather the written description of the scope of this order is dispositive.<sup>12</sup>

#### IV. DISCUSSION OF THE METHODOLOGY

##### a. 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, if it is not practicable to calculate individual weighted-average dumping margins because of the large number of exporters/producers involved in the investigation or review, 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 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.<sup>13</sup>

On April 7, 2016, we placed CBP data on the record.<sup>14</sup> On April 18, 2015, we received respondent selection comments from VASEP.<sup>15</sup> No other parties filed comments regarding the CBP data or, generally, respondent selection. No interested parties filed rebuttal comments.

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.<sup>16</sup> 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

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<sup>12</sup> 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).

<sup>13</sup> See SAA, H.R. Doc. No. 103-316, vol. 1 (1994) at 872.

<sup>14</sup> See “Memorandum to All Interested Parties, from Irene Gorelik, re: Customs Data of U.S. Imports of Certain Frozen Warmwater Shrimp for Respondent Selection,” dated April 7, 2016.

<sup>15</sup> See VASEP’s Submission dated April 18, 2016, re: AR11 Respondent Selection Comments (VASEP’s Comments).

<sup>16</sup> See CBP Data Memo.

entry volume remaining under active review: CPV and TPP.<sup>17</sup> On July 19, 2016, we issued the non-market economy (NME) questionnaire to CPV and TPP.<sup>18</sup>

b. 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 of this fact within 30 days of publication of the notice.<sup>19</sup> Between April 10, 2016 and May 1, 2016, 14 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.<sup>20</sup> 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.<sup>21</sup> In this review, we sent an inquiry message to CBP.<sup>22</sup> We did not receive a response from CBP regarding the companies listed within the inquiry. Subsequently, we rescinded the review for one of these 14 companies (Thong Thuan Seafood Company Limited, aka Thong Thuan -- Cam Ranh Seafood Joint Stock Company), leaving 13 companies under review that certified they had no shipments during the POR.<sup>23</sup>

Thus, based on the no-shipment claim submitted by the 13 companies under review and our analysis of information on the record, we preliminarily determine that these companies had no shipments during the POR. In addition, the Department finds that, consistent with its practice in NME cases, it is appropriate not to rescind the review, in part, for these 13 companies in this circumstance, but rather to complete the review.<sup>24</sup> In accordance with the Department's practice,

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<sup>17</sup> 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 July 19, 2016.

<sup>18</sup> See Letter from the Department to C.P. Vietnam Corporation, re: "Eleventh Antidumping Administrative Review of Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Antidumping Questionnaire," dated July 19, 2016; Letter from the Department to Tan Phong Phu Seafood Co., Ltd., re: "Eleventh Antidumping Administrative Review of Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Antidumping Questionnaire," dated July 19, 2016.

<sup>19</sup> See *Initiation Notice*, 81 FR at 20324.

<sup>20</sup> These 14 companies are: (1) BIM Seafood Joint Stock Company; (2) Bien Dong Seafood Co., Ltd.; (3) Cam Ranh Seafoods Processing Enterprise Company; (4) Ben Tre Forestry and Aquaprodukt Import Export Joint Stock Company; (5) Fine Foods Company (FFC) (Ca Mau Foods & Fishery Export Joint Stock Company); (6) Gallant Dachan Seafood Co., Ltd.; (7) Green Farms Joint Stock Company; (8) Minh Cuong Seafood Import Export Frozen Processing Joint Stock Company; (9) Quang Minh Seafood Co., Ltd.; (10) Quang Ninh Export Aquatic Products Processing Factory; (11) Tacvan Frozen Seafood Processing Export Company; (12) Thong Thuan Seafood Company Limited, aka Thong Thuan -- Cam Ranh Seafood Joint Stock Company; (13); Trong Nhan Seafood Company Limited; and (14) Vinh Hoan Corp.

<sup>21</sup> 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).

<sup>22</sup> See CBP Message Number 6158301, dated June 6, 2016, available at: [http://adcvd.cbp.dhs.gov/adcvdweb/ad\\_cvd\\_msgs/21380?filter\\_cat=ALL&filter\\_type=INQ&page=1&per\\_page=10&search=a-552-802](http://adcvd.cbp.dhs.gov/adcvdweb/ad_cvd_msgs/21380?filter_cat=ALL&filter_type=INQ&page=1&per_page=10&search=a-552-802).

<sup>23</sup> See *Partial Rescission*, 81 FR at 46048.

<sup>24</sup> See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694, 65695 (October 24, 2011) (*Assessment Notice*).

if the Department determines in the final results that these 13 companies had no shipments of the subject merchandise during the POR, any suspended entries from these 13 companies will be liquidated at the Vietnam-Wide rate.<sup>25</sup>

c. Non-Market Economy Country

The Department considers Vietnam to be a NME country.<sup>26</sup> In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is a NME country shall remain in effect until revoked by the administering authority. Therefore, we continue to treat Vietnam as a NME country for purposes of these preliminary results.

d. Separate Rates

In proceedings involving NME countries, the Department maintains a rebuttable presumption that all companies within the country are subject to government control and, therefore, should be assessed a single weighted-average dumping margin.<sup>27</sup> The Department's policy is to assign all exporters of merchandise under consideration that are in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.<sup>28</sup> The Department analyzes whether each entity exporting the merchandise under consideration is sufficiently independent under a test established in *Sparklers*<sup>29</sup> and further developed in *Silicon Carbide*.<sup>30</sup> According to this separate rate test, the Department will assign a separate rate in NME proceedings if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over its export activities.

The Department continues to evaluate its practice with regard to the separate rates analysis in light of the diamond sawblades from the Peoples Republic of China (PRC) AD proceeding, and its determinations therein.<sup>31</sup> In particular, in litigation involving the diamond sawblades from the PRC proceeding, the Court of International Trade (CIT) found the Department's existing

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<sup>25</sup> For a full discussion of this practice, see *Assessment Notice*, 76 FR at 65695.

<sup>26</sup> See *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Results of the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results*, 76 FR 62765, 62767-68 (October 11, 2011), unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review*, 77 FR 21734 (April 11, 2012).

<sup>27</sup> See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039, 55040 (September 24, 2008).

<sup>28</sup> See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991) (*Sparklers*).

<sup>29</sup> *Id.*

<sup>30</sup> 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*).

<sup>31</sup> See Final Results of Redetermination pursuant to *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology I*), and available at <http://enforcement.trade.gov/remands/12-147.pdf>, *aff'd Advanced Technology & Materials Co., Ltd., et al. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), *aff'd Advanced Technology & Materials Co., Ltd., et al. v. United States*, Case No. 2014-1154 (Fed. Cir. 2014) (*Advanced Technology II*). See also *Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098 (December 20, 2013) and accompanying Preliminary Decision Memorandum at 7, unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014) and accompanying Issues and Decision Memorandum at Comment 1.

separate rates analysis deficient in the circumstances of that case, in which a government-owned and controlled entity had significant ownership in the respondent exporter.<sup>32</sup> Following the Court’s reasoning, 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 exercises, or has the potential to exercise, control over the company’s operations generally.<sup>33</sup> 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 profit distribution of the company. Accordingly, we have considered the level of government ownership where necessary.

### *Companies Receiving a Separate Rate*

One company under review, Gallant Ocean (Vietnam) Co., Ltd., filed a separate rate certification reporting that it is wholly owned by individuals or companies located in a market economy.<sup>34</sup> Therefore, because it is 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 this company is independent from government control.<sup>35</sup> Accordingly, we have preliminarily granted a separate rate to Gallant Ocean (Vietnam) Co., Ltd.

Thirteen additional companies under review 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, 11 of those 13 companies provided evidence that supports a

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<sup>32</sup> See, e.g., *Advanced Technology I*, 885 F. Supp. 2d at 1349 (CIT 2012) (“The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it.”); *Id.*, at 1351 (“Further substantial evidence of record does not support the inference that SASAC’s {state-owned assets supervision and administration commission} ‘management’ of its ‘state-owned assets’ is restricted to the kind of passive-investor *de jure* ‘separation’ that Commerce concludes.”) (footnotes omitted); *Id.*, at 1355 (“The point here is that ‘governmental control’ in the context of the separate rate test appears to be a fuzzy concept, at least to this court, since a ‘degree’ of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to ‘day-to-day decisions of export operations,’ including terms, financing, and inputs into finished product for export.”); *Id.*, at 1357 (“AT&M itself identifies its ‘controlling shareholder’ as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control over nomination.”) (footnotes omitted).

<sup>33</sup> See *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.

<sup>34</sup> See Gallant Ocean (Vietnam) Co, Ltd.’s Separate Rate Certification, dated May 13, 2016.

<sup>35</sup> 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).

finding of a *de jure* absence of government control over their export activities.<sup>36</sup> 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 export activities of the respondents.

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.<sup>37</sup> 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.<sup>38</sup> Therefore, the Department preliminarily finds that these 11 separate rate applicants have established *prima facie* that they qualify for separate rates under the criteria established by *Silicon Carbide* and *Sparklers*.<sup>39</sup>

#### *Companies Not Receiving a Separate Rate*

In our *Initiation Notice*, the Department stated that: “{f}or exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status

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<sup>36</sup> See, e.g., Viet Hai Seafood Co., Ltd.'s Separate Rate Certification, dated April 25, 2016; Au Vung One Seafood Processing Import & Export Joint Stock Company's Separate Rate Application, dated May 23, 2016. The companies receiving a separate rate are: (1) Cadovimex Seafood Import-Export and Processing Joint Stock Company; (2) Cafatex Fishery Joint Stock Corporation; (3) Viet Hai Seafood Co., Ltd.; (4) Gallant Ocean (Vietnam) Co., Ltd.; (5) Investment Commerce Fisheries Corporation; (6) Kim Anh Co., Ltd.; (7) Nha Trang Fisheries Joint Stock Company; (8) Phuong Nam Co. Ltd.; (9) UTXI Aquatic Products Processing Corporation; (10) Au Vung One Seafood Processing Import & Export Joint Stock Company; (11) Ngo Bros Seaproducts Import-Export One Member Company Limited; and (12) Taika Seafood Corporation. The Department's determination regarding the two mandatory respondents is discussed below.

<sup>37</sup> 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).

<sup>38</sup> See, e.g., UTXI Aquatic Products Processing Corporation's Separate Rate Certification, dated May 10, 2016; Phuong Nam Foodstuff Corp.'s Separate Rate Certification, dated May 6, 2016.

<sup>39</sup> While the Department has granted separate rate status to 12 non-examined exporters, we note that several exporters requested separate rate status for additional trade names. The trade names to which we granted separate rate status appear in the “Preliminary Results of Review” section of the accompanying *Federal Register* notice. For the trade names not granted separate rate status, see Memorandum to the File, from Irene Gorelik, Senior Analyst, re: “Antidumping Duty Administrative of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Requested Trade Names Not Granted Separate Rate Status at the Preliminary Results,” dated concurrently with this memorandum.

unless they respond to all parts of the questionnaire as mandatory respondents.”<sup>40</sup> On July 19, 2016, we issued our NME AD questionnaire to CPV and TPP, the respondents selected for individual examination, with deadlines of August 9, 2016, for Section A and August 25, 2016, for Sections C and D.

On August 8, 2016, CPV submitted a letter stating that it would not participate any further in the proceeding.<sup>41</sup> CPV did not respond to any portion of the NME AD questionnaire. TPP filed its initial Section A questionnaire response on August 25, 2016, for which we issued a supplemental questionnaire on September 9, 2016.<sup>42</sup> However, TPP did not file its response to the supplemental Section A questionnaire by the established deadline of September 19, 2016. With respect to the Sections C and D portions of the NME AD questionnaire, the Department provided TPP with over 60 days<sup>43</sup> to file its initial responses to Sections C and D, and it did not do so by the (third) extended deadline of September 23, 2016. On September 27, 2016, TPP submitted a letter stating that it would no longer participate in the proceeding.<sup>44</sup>

Thus, while both companies submitted separate rate certifications, they did not respond to our NME AD questionnaire in its entirety and ceased participation as mandatory respondents. Therefore, we have preliminarily determined that CPV and TPP do not qualify for a separate rate, and, as such, should be treated as part of the Vietnam-Wide entity, subject to the Vietnam-Wide rate.

e. The Vietnam-Wide Entity

The Department’s change in policy regarding conditional review of the Vietnam-Wide entity applies to this administrative review.<sup>45</sup> 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 (*i.e.*, 25.76 percent).

As discussed above, we have determined that CPV and TPP are ineligible for a separate rate because they failed to respond to all parts of the NME AD questionnaire as mandatory respondents.<sup>46</sup> Specifically, because these companies withdrew their participation from this review, none of their submitted separate rate information, as provided in their separate rate certifications, can be subjected to further inquiry or verification and, therefore, are unusable for

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<sup>40</sup> See *Initiation Notice*, 81 FR at 20325.

<sup>41</sup> See Letter from C.P. Vietnam Corporation, re: “Notice of Non-Participation in Administrative Review,” dated August 8, 2016.

<sup>42</sup> See Letter to Tan Phong Phu Seafood Co., Ltd., re: “Section A Supplemental Questionnaire,” dated September 9, 2016. This supplemental questionnaire contained questions regarding the company’s ownership, business registration certificate, and the nature of the merchandise it produced and exported during the POR.

<sup>43</sup> See, *e.g.*, Memorandum to the File, from Irene Gorelik, Senior Analyst, re: “Request for Extensions of Questionnaire Deadlines for Tan Phong Phu Seafood Company Ltd.,” dated September 19, 2016.

<sup>44</sup> See Letter from Tan Phong Phu Seafood Co., Ltd., re: “Notice of Non-Participation in Administrative Review,” dated September 27, 2016.

<sup>45</sup> 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).

<sup>46</sup> See *Initiation Notice*, 81 FR at 20325.

any purpose.<sup>47</sup> Consequently, the Department considers CPV and TPP part of the Vietnam-Wide entity. Because no party requested review of the Vietnam-Wide entity, the Vietnam-Wide entity is not under review, and the rate is not subject to change. Thus, the pre-existing Vietnam-Wide rate of 25.76 percent will apply to entries of the subject merchandise from CPV and TPP t during the POR.<sup>48</sup>

Additionally, 51 companies and their various name iterations, named in the *Initiation Notice* and not rescinded from review, did not submit a separate rate application or certification or a certification of no shipments. Because these 51 companies have not demonstrated that they are eligible for separate rate status, the Department finds that they have not rebutted the presumption of government control and, therefore, the Department considers them to be part of the Vietnam-Wide entity (*see* Appendix II).

f. Separate Rate for Eligible, Non-Examined Respondents

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.<sup>49</sup> 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.<sup>50</sup> The SAA states that the "expected method under 'any reasonable method' is that we will weight-average the rates that are zero, *de minimis*, and based entirely on facts available."<sup>51</sup>

However, the Department has determined that the mandatory respondents are part of the Vietnam-Wide entity, which is not under review in this segment. Thus, there is no POR margin

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<sup>47</sup> See, e.g., *Calcium Hypochlorite From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 79 FR 43393 (July 25, 2014) and accompanying Preliminary Decision Memorandum at page 11, unchanged in *Calcium Hypochlorite From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 74065 (December 15, 2014).

<sup>48</sup> See, e.g., *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam*, 70 FR 5152, 5154 (February 1, 2005).

<sup>49</sup> 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).

<sup>50</sup> See section 735(c)(5)(B) of the Act.

<sup>51</sup> See SAA at 873 (1994).

information available for the Department to consider in assigning a margin for eligible, non-individually examined separate rate companies. In the absence of any calculated or assigned rates in this segment, including zero or *de minimis* rates or rates based on facts available, to determine an all-others rate for the separate rate respondents, we have reached back to the previously completed review to obtain a non-punitive separate rate margin.<sup>52</sup> Out of the 12 non-individually examined companies eligible for a separate rate, 11 were previously provided the same separate rate in the most recently published review,<sup>53</sup> and one additional company filed a separate rate application in proper order containing documentation supporting its eligibility to receive a separate rate.<sup>54</sup> 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, non-individually examined exporters. Consistent with our recent practice,<sup>55</sup> using this method, we are preliminarily assigning a margin of 4.78 percent to the 12 separate rate companies in these preliminary results.

#### V. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

Agree                       Disagree

  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

31 OCTOBER 2016  
(Date)

<sup>52</sup> This margin is from the 2014-2015 administrative review. See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2014-2015*, 81 FR 62717 (September 12, 2016).

<sup>53</sup> *Id.*

<sup>54</sup> See Au Vung One Seafood Processing Import & Export Joint Stock Company's Separate Rate Application, dated May 23, 2016.

<sup>55</sup> See, e.g., *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results and Partial Rescission of the Antidumping Duty Administrative Review; 2014-2015*, 81 FR 64131 (September 19, 2016) and accompanying Preliminary Decision Memorandum at 10. In *Albemarle Corp. v. United States*, 821 F.3d 1345 (Fed. Cir. 2016) (*Albemarle*), the Court of Appeals for the Federal Circuit (CAFC) affirmed the CIT's holding that the Department improperly "carried forward" the separate rate from the prior review because the mandatory respondents in the active proceeding all received *de minimis* margins. Here, no individual margin is being calculated for the mandatory respondents, as they are ineligible for a separate rate and part of the Vietnam-Wide entity. Accordingly, the CAFC's holding in *Albemarle* does not apply to the facts on the record of this review.

## Appendix I

### Companies Preliminarily Granted Separate Rates

1. Au Vung One Seafood Processing Import & Export Joint Stock Company
2. Cadovimex Seafood Import-Export and Processing Joint Stock Company
3. Cafatex Corporation, aka  
Taydo Seafood Enterprise
4. Gallant Ocean (Vietnam) Co., Ltd.
5. Investment Commerce Fisheries Corporation
6. Kim Anh Company Limited
7. Ngo Bros Seaproducts Import-Export One Member Company Limited, aka  
Ngo Bros
8. Nha Trang Fisheries Joint Stock Company
9. Phuong Nam Foodstuff Corp.
10. Taika Seafood Corporation
11. UTXI Aquatic Products Processing Corporation
12. Vietnam Fish One Co., Ltd., aka  
Viet Hai Seafood Co., Ltd.

## 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. Binh Thuan Import – Export Joint Stock Company (THAIMEX)
7. Binh An Seafood Joint Stock Company
8. B.O.P. Limited Co.
9. C.P. Vietnam Corporation, aka  
C.P. Vietnam Corporation (“C.P. Vietnam”), aka  
C.P. Vietnam Livestock Company Limited, aka  
C.P. Vietnam Livestock Corporation
10. Can Tho Agricultural and Animal Product Import Export Company (“CATACO”), aka  
Can Tho Agricultural and Animal Products Import Export Company (“CATACO”), aka  
Can Tho Agricultural and Animal Products Imex Company, aka  
Can Tho Agricultural Products
11. Can Tho Import Export Seafood Joint Stock Company (CASEAMEX)
12. Cautre Export Goods Processing Joint Stock Company
13. Coastal Fisheries Development Corporation (“COFIDEC”)
14. Danang Seaproducts Import-Export Corporation (“Seaprodex Danang”) (and its affiliates),  
aka  
Danang Seaproducts Import Export Corporation (and its affiliate, Tho Quang Seafood  
Processing and Export Company) (collectively, “Seaprodex Danang”), aka  
Danang Seaproducts Import Export Corporation (“Seaprodex Danang”), aka  
Seaprodex Danang, aka  
Tho Quang Co, aka  
Tho Quang Seafood Processing and Export Company, aka  
Frozen Seafoods Factory No. 32 (Tho Quang Seafood Processing and Export Company)
15. Duy Dai Corporation
16. D & N Foods Processing (Danang Company Ltd.)
17. Gallant Ocean (Quang Ngai) Co., Ltd.
18. Gn Foods
19. Hai Thanh Food Company Ltd.
20. Hai Vuong Co., Ltd.
21. Han An Trading Service Co., Ltd.
22. Hoang Hai Company Ltd.
23. Hua Heong Food Industries Vietnam Co. Ltd.
24. Huynh Hung Seafood Processing (Huynh Houg Trading and Import Export Joint Stock  
Company)
25. Kien Long Seafoods Co. Ltd.
26. Khanh Loi Seafood Factory
27. Long Toan Frozen Aquatic Products Joint Stock Company
28. Luan Vo Fishery Co., Ltd.
29. Minh Chau Imp. Exp. Seafood Processing Co., Ltd.
30. Mp Consol Co., Ltd.

31. New Wind Seafood Co., Ltd.
32. Ngoc Chau Co., Ltd. and/or Ngoc Chau Seafood Processing Company
33. Ngoc Sinh, aka  
Ngoc Sinh Fisheries, aka  
Ngoc Sinh Private Enterprises, aka  
Ngoc Sinh Seafoods, aka  
Ngoc Sinh Seafood Processing Company, aka  
Ngoc Sinh Seafood Trading & Processing Enterprise
34. Nhat Duc Co., Ltd. (“Nhat Duc”), aka  
Nhat Duc Co., Ltd., aka  
Nhat Duc Co. Ltd.
35. Phu Cuong Jostoco Seafood Corporation, aka  
Phu Cuong Jostoco Corp.
36. Quoc Ai Seafood Processing Import Export Co., Ltd.
37. S.R.V. Freight Services Co., Ltd.
38. Saigon Food Joint Stock Company
39. Sustainable Seafood
40. Tan Thanh Loi Frozen Food Co., Ltd.
41. Tan Phong Phu Seafood Co., Ltd., aka  
Tan Phong Phu Seafood Company Ltd. (“TPP Co., Ltd.”), aka  
Tan Phong Phu Seafood Co. Ltd. (“TPP Co., Ltd.”)
42. Thanh Doan Seaproducts Import & Export Processing Joint-Stock Company  
(THADIMEXCO)
43. Thanh Hung Frozen Seafood Processing Import Export Co., Ltd.
44. Thanh Tri Seafood Processing Co. Ltd.
45. Thinh Hung Co., Ltd.
46. Trang Khan Seafood Co., Ltd.
47. Tien Tien Garment Joint Stock Company
48. Tithi Co., Ltd.
49. Viet Cuong Seafood Processing Import Export Joint-Stock Company
50. Vietnam Northern Viking Technologies Co. Ltd.
51. Vinatex Danang
52. Vinh Loi Import Export Company (“VIMEX”), aka  
Vinh Loi Import Export Company (“Vimexco”)
53. Xi Nghiep Che Bien Thuy Sue San Xuat Kau Cantho