{Insert Case Number: (A-XXX-XXX)}
Total Number of Pages: {Insert Total Number of Pages}
{Insert Investigation or AD Review}
AD/CVD Operations, Office {Insert Office Number}
{Insert Business Proprietary, Public Version, or Public Document}

SOCIALIST REPUBLIC OF VIETNAM ("VIETNAM")

SEPARATE RATE APPLICATION

AND REQUIRED SUPPORTING DOCUMENTATION

REQUESTER(S): {insert name of applicant}

REPRESENTATION: {insert name of counsel and law firm and contact info}

CASE: {insert name of subject merchandise, country and case number}

PERIOD OF INVESTIGATION/REVIEW: {insert the period of investigation/review}

DEADLINE FOR SUBMISSION: 30 days from **publication** of date of the initiation notice,
See http://enforcement.trade.gov/frn/index.html.

FILING INSTRUCTIONS: *See* "Instructions for Filing the Application" at Section V.
See also http://enforcement.trade.gov/filing/index.html.

The Department assigns separate rates in non-market economy ("NME") cases only if the applicant can demonstrate an absence of both *de jure* and *de facto* governmental control over its export activities in accordance with the separate-rates test criteria. In determining whether companies should receive separate rates, the Department focuses its attention on the exporter rather than the manufacturer. *See Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China*, 60 FR 56045 (November 6, 1995). Consequently, in this proceeding, the Department will limit its consideration of separate-rate applications to firms that exported subject merchandise to the United States during the period of investigation/review. To be considered for separate-rate treatment, an applying firm must have exported subject merchandise to the United States during the period of investigation/review in a commercial transaction.

To establish whether a company's export activities are sufficiently independent of the government to be eligible for separate rate status, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), and later expanded upon in *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*"). Under this analysis, exporters of subject merchandise are accorded separate, company-specific margins if they can provide sufficient proof of an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: 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 central and/or local government decentralizing control of companies. *See Sparklers*, 56 FR at 20588.

Our analysis of absence of *de facto* government control over exports is typically based on the following four factors: 1) whether each exporter sets its own export prices independent of the government and without the approval of a government authority; 2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; 3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and 4) whether each exporter has autonomy from the government regarding the selection of management. *See Silicon Carbide*, 59 FR at 22586-87.

Following the test outlined above, this form is an application for separate rate treatment in the investigation/review. If used in an administrative review, this Application is intended for firms that **do not** currently have separate rate status; firms that currently have separate rate status should complete the separate rate Certification form instead. Firms that the Department selects to be mandatory respondents will be required to respond to the Department's antidumping questionnaire in order to retain their eligibility for consideration of separate rate status.

- Applicants must individually complete and submit this form with all the required supporting documentation no later than 60 days from the publication date of the initiation notice, pursuant to the Department's 05.1 Policy Bulletin. *See Separate Rates and Combination*

Rates in Antidumping Investigations involving Non-Market Economy Countries, 70 FR 17233 (April 5, 2005). This deadline applies equally to NME-owned and wholly market-economy owned firms. Firms whose applications are incomplete or otherwise deficient may be denied a separate rate.

- In addition to submitting a complete application, if your firm is participating in an investigation, your firm must also respond to the Department's Q&V questionnaire as discussed in the initiation notice to receive consideration for a separate rate.[1] Responses to the Q&V questionnaire from all participating respondents are necessary to ensure that the Department has the requisite information to appropriately select mandatory respondents.

- NME firms owned wholly by entities located in market-economy countries, provided that the ultimate owners are also located in market-economy countries ("wholly market-economy owned firms"), need only fill out the certifications contained in this application and provide supporting documentation for the fields in the application that are marked with an asterisk, "*." These marked fields pertain to the firm's eligibility for separate rates consideration based on having sold subject merchandise to the United States during the period of investigation/review and support the firm's claim that it is in fact wholly owned by a market-economy entity. This information is also necessary for administration once a separate rate has been issued.

- There are two sets of requirements for reporting any affiliations with other firms involved in the production or sale of the subject merchandise, one for wholly market-economy owned firms and another for NME-owned firms.

    - Wholly market-economy owned firms are required to report *all* of their affiliations with other firms involved in the production or sale of the subject merchandise.

    - Firms that are not owned wholly by market-economy entities, however, must only identify any affiliates that exported subject merchandise to the United States during the period of investigation/review and any U.S. affiliates involved in the sale of the subject merchandise.

- <u>Each</u> applicant seeking separate rate status must submit a separate and complete individual application regardless of any common ownership or affiliation between firms and regardless of foreign ownership.

- <u>Applicants which have been selected as mandatory respondents prior to the deadline for submission of separate rate applications are not required to file a separate rate application. Additionally, mandatory respondents are required to file full Section A questionnaire</u>

[1] If your firm is participating in an administrative review, your firm will not need to respond to a Q&V questionnaire unless you have been instructed to do so by the Department.

responses, and cannot refer to or substitute information or supporting documentation submitted in a separate rate application.

- 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. If your firm is assigned separate rate status, your firm will only be able to ship under your separate rate names that are included on your business license/registration documents, or for which you have explained are otherwise permitted (*see* question 2 below).

- All documents submitted in response to a specific question must pertain to the same sale. If volumes or values do not exactly match from one document to the next, the applicant must provide a clear narrative explanation as to why they do not and what the appropriate links are among the documents. The applicant must also provide and explain additional documentation necessary to corroborate its explanation in this regard. For example, if an invoice shows a sales value of $10,000, but the payment amount is $15,000, the applicant must explain the difference and provide documentary support for the explanation.

- **All** documents submitted with the application must be, to the extent possible, direct unaltered photocopies of the original documents (*i.e.*, no copies of copies, and the documents must not be altered in any way, including tracing). All documents submitted with the application must be legible to the maximum extent possible. In case the direct photocopy is not legible, or if submitting a direct photocopy is not possible, you must supply the most legible unaltered photocopy available. Firms that are not able to submit completely legible copies of all the documents required in the application, or are unable to submit a required document, must complete the additional certification in Appendix B and include an explanation of why the submission of completely legible documents is not possible. In addition, you must provide supplemental information explaining the contents of any documents that are not fully legible. Illegible or altered documents cannot be considered evidence of the points for which they are required if not accompanied by the requisite certification and explanations in Appendix B.

- All documents generated in a language other than English must be translated into English. The original language document must also be included with all translations. If all documentation is not complete or if documents are not fully translated, the Department will consider these documents missing for purposes of the separate rate analysis.

- Please label all documents submitted in response to the application with sequential page numbers, so the Department may refer to each document by its respective page number.

The Application is divided into five sections. Section I contains the required certifications that an officer of the company must make to the Department, indicating that the information provided in the application is correct. Section II identifies the firm that is applying for separate rate status

and demonstrates that this firm is eligible for a separate rate by confirming that it exported or sold subject merchandise to the United States during the period of investigation/review. Section III certifies that the firm meets the *de jure* requirements, *i.e.*, that there are no legal barriers to a firm's independent control over its export activities at either the national or any sub-national level. Section IV attests to *de facto* independence, *i.e.*, that this *de jure* independence also exists in practice. Section V deals with filing requirements and gives applicants an opportunity to request business proprietary treatment for information that they submit. Appendix A provides a sample chart of corporate affiliations that firms may wish to reference. Appendix B contains an additional certification, which firms that are unable to submit completely legible copies of all the documents required in the application must complete.

Firms completing this form are certifying that their responses contained in this form are true and accurate and that the supporting documentation supports the answers they provide in the application. The Department only accepts applications that are completed in full (except for wholly market-economy owned enterprises[2]) and submitted with all the required supporting documentation filed timely and in proper form. Sections II, III, and IV require supporting documentation, and the fields in these sections that require supporting documentation are identified in the application and list the specific types of documents that the Department accepts for each certification. As noted above, all supporting documentation pertaining to a U.S. sale must pertain to the same sale and be legible to the maximum extent possible. Moreover, the information contained in these documents must be consistent. If there are any discrepancies between information contained in a series of documents pertaining to the same sale, all such discrepancies must be clearly identified and explained. This is necessary to substantiate the claim for separate rates eligibility. Submission of alternate documents in lieu of documents that are not available and/or clarification of documents that are not completely legible may be acceptable, depending on the facts of each individual case, but may result in the Department's issuance of additional supplemental questions and the conduct of an on-site verification to establish the integrity, reliability, relevance and suitability of the alternative documentation for separate-rate purposes. <u>All</u> firms that do not provide completely legible photocopies of all of the documents that are required in the application must make the additional certifications in Appendix B and include an explanation of why the submission of completely legible photocopies of all the documents required in the application is not possible.

Since firms have clear notice of what is required to document a separate-rate claim, incomplete applications may be rejected without supplementary questionnaires. Completing the application and submitting the supporting documentation does not guarantee receipt of separate rate status. The Department will review each completed application. If the Department finds that the certifications are not supported by the attached documents or are incomplete, the applicant will not have demonstrated to the Department that it qualifies for a separate rate and may receive a rate based on adverse facts available. If the applicant does not provide the required

[2] Please note that all wholly market-economy owned enterprises are required to complete only the asterisked fields.

documentation in the appropriately required form or is unable or unwilling to make the requested certifications, the applicant will not have demonstrated its eligibility for a separate rate.

If necessary, the Department will issue questionnaires for the purpose of clarifying fully responsive answers. The Department retains the right to require additional information concerning the representations made in your firm's application. All information submitted and representations made by applicants are subject to verification. If the Department selects your firm for an on-site verification, the Department will provide your firm with additional instructions at a time preceding the verification.

SECTION I

General Certifications

(To be signed by the company official of the applying firm who is officially responsible for presentations made to the Department of Commerce.)

*1.[3]

CERTIFICATE OF SERVICE

I, _____, hereby certify that a copy of the

(name of certifying official)

foregoing submission on behalf of _____,

(company name)

dated _____, was served by first class mail or by hand delivery (circle the method used) on the following parties:

(Business Proprietary Version)

On Behalf of

Name and address

(Public Version)

On Behalf of

Name and address

_____

(signature of certifying official)

[3] Note again that the asterisked fields are to be completed by *all* firms, including those wholly foreign-owned by entities located in market-economy countries. Wholly market-economy owned firms need not respond to non-asterisked fields.

2.* **COMPANY CERTIFICATION**

I, **(PRINTED NAME AND TITLE)**, currently employed by **(COMPANY NAME)**, certify that I prepared or otherwise supervised the preparation of the attached submission of **(IDENTIFY THE SPECIFIC SUBMISSION BY TITLE AND DATE)** pursuant to the **(INSERT ONE OF THE FOLLOWING: THE (ANTIDUMPING OR COUNTERVAILING DUTY) INVESTIGATION OF (PRODUCT) FROM (COUNTRY) (CASE NUMBER) or THE (DATES OF POR) (ADMINISTRATIVE OR NEW SHIPPER) REVIEW UNDER THE (ANTIDUMPING OR COUNTERVAILING) DUTY ORDER ON (PRODUCT) FROM (COUNTRY)) (CASE NUMBER) or THE SUNSET REVIEW OR CHANGED CIRCUMSTANCE REVIEW OR SCOPE RULING OR CIRCUMVENTION INQUIRY OF AD/CVD ORDER ON (PRODUCT) FROM (COUNTRY) (CASE NUMBER)**. I certify that the information contained in this submission is accurate and complete to the best of my knowledge. I am aware that the information contained in this submission may be subject to verification or corroboration (as appropriate) by the U.S. Department of Commerce. I am also aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government. In addition, I am aware that, even if this submission may be withdrawn from the record of the AD/CVD proceeding, the Department may preserve this submission, including a business proprietary submission, for purposes of determining the accuracy of this certification. I certify that I am filing a copy of this signed certification with this submission to the U.S. Department of Commerce and that I will retain the original for a five-year period commencing with the filing of this document. The original will be available for inspection by U.S. Department of Commerce officials.

Signature:_____

Date:_____

***** For multiple person certifications, all persons should be listed in the first sentence of the certification and all persons should sign and date the certification. In addition, singular pronouns and possessive adjectives should be changed accordingly, e.g., “I” should be changed to “we” and “my knowledge” should be changed to “our knowledge.”

3.*

REPRESENTATIVE CERTIFICATION

I, **(PRINTED NAME)**, with **(LAW FIRM or OTHER FIRM)**, counsel or representative to **(COMPANY OR GOVERNMENT OR PARTY)**, certify that I have read the attached submission of **(IDENTIFY THE SPECIFIC SUBMISSION BY TITLE AND DATE)** pursuant to the **(INSERT ONE OF THE FOLLOWING: THE (ANTIDUMPING OR COUNTERVAILING DUTY) INVESTIGATION OF (PRODUCT) FROM (COUNTRY) (CASE NUMBER) or THE (DATES OF POR) (ADMINISTRATIVE OR NEW SHIPPER) REVIEW UNDER THE (ANTIDUMPING OR COUNTERVAILING) DUTY ORDER ON (PRODUCT) FROM (COUNTRY) (CASE NUMBER) or THE SUNSET REVIEW OR CHANGED CIRCUMSTANCE REVIEW OR SCOPE RULING OR CIRCUMVENTION INQUIRY OF AD/CVD ORDER ON (PRODUCT) FROM (COUNTRY) (CASE NUMBER)**. In my capacity as an adviser, counsel, preparer or reviewer of this submission, I certify that the information contained in this submission is accurate and complete to the best of my knowledge. I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government. In addition, I am aware that, even if this submission may be withdrawn from the record of the AD/CVD proceeding, the Department may preserve this submission, including a business proprietary submission, for purposes of determining the accuracy of this certification. I certify that I am filing a copy of this signed certification with this submission to the U.S. Department of Commerce and that I will retain the original for a five-year period commencing with the filing of this document. The original will be available for inspection by U.S. Department of Commerce officials.

Signature:_____

Date:_____

** For multiple representative certifications, all representatives and their firms should be listed in the first sentence of the certification and all representatives should sign and date the certification. In addition, singular pronouns and possessive adjectives should be changed accordingly, e.g., "I" should be changed to "we" and "my knowledge" should be changed to "our knowledge."

SECTION II

Administration

*1. The full and exact name and contact information (including address, telephone, fax, and e-mail address) of the exporter[4] applying for separate rate status:

_____

_____

*2a. Is the applicant identified by any other names, such as trade names or "doing-business-as" ("d.b.a.") names, as a legal matter in the home market, in third countries, or in the United States?[5]

___ Yes (complete the chart below, in full)
___ No

If yes, then complete the chart below in full with all trade names and/or d.b.a. names , when and under what circumstances they are used, and confirm whether the business license/registration documents submitted with this application and covering the period of review ("POR")/period of investigation ("POI") include each of these or other alternative names. Please also provide evidence that these names were used during the POR/POI. Then, please answer question 2b.

If a trade name is not listed on the company's business license/registration documents, please provide an explanation and any evidence as to how the company is permitted to use that trade name.

_____

	Covered by the Business License (Y/N)	Capacity in which the trade name/DBA used	Used during POI/POR (Y/N)	Cite to Evidentiary Support in this SRA
Trade Name/DBA 1				(i.e., Exhibit #)
Trade Name/DBA *n*				

*2b._Is the applicant requesting separate rate status for any of the trade names listed in the table above? If so, please list the trade names or d.b.a. names, noted above, for which you are requesting separate rate status. Please note that the applicant must provide documentary evidence that the trade name or d.b.a. name was used during the relevant period.

[4] Ensure that each applicant seeking separate rate status is submitting a separate and complete individual application regardless of any common ownership or affiliation between firms and regardless of foreign ownership. Your response to this question should have only one company name.

[5] Trade names are other names under which the company does business. It does not include product brand names or the names of any other entities in the applicant's "group," affiliated or otherwise. If your firm is assigned separate rate status, your firm will only be able to ship under your separate rate under names that are included on your business license/registration documents, or are otherwise permitted, as explained in your response to this question.

*3. The applicant certifies the accuracy of and can document the following statements: (check any of the following that apply)

☐ a. It has exported, or has sold for export, subject merchandise to the United States during the period of investigation/review.

☐ b. It has, under its own name(s), made a shipment of merchandise that was entered for consumption in the United States.

☐ c. It has, sold the merchandise during the period of investigation/review to an unaffiliated third-country customer for export to the United States (there must be either a sale or entry during the period of investigation/review to proceed with the separate-rate request).

*4. ☐ The applicant certifies that it will, to the maximum extent possible, provide a direct legible photocopy (not a copy of a copy) of all of the following original documents for the first sale by invoice date of subject merchandise to an unaffiliated customer in the United States during the POR/POI for a commercial transaction.[6] These documents must not be altered in any way. If your firm's first sale by invoice date during the period of investigation/review was a sample sale, a sale of non-commercial quantities, or a sale to an affiliated party, identify this sale and provide documentation on another sale.[7] If providing documentation on another sale during the period of investigation/review, attach an explanation of why providing documentation for the first sale during the period of investigation/review was not possible. If you are not able to supply completely legible photocopies of any documents required below, you must supply the most legible photocopies available, complete the additional certification in Appendix B, and include an explanation in it of why submission of all the photocopies in completely legible form is not possible.

A. The U.S. Customs 7501 Entry Summary or the U.S. FDA Release Form.[8]

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[6] If you are not able to supply completely legible photocopies of any documents requested in the application, you must attach an explanation of why submission of completely legible photocopies is not possible.

[7] If your firm has *only* made sales to affiliated parties during the period of investigation/review, you must provide evidence of the first sale to an *unaffiliated* U.S. customer by the affiliated party to qualify for a separate rate.

[8] If the merchandise was entered into the United States informally using Customs Form 368 or 368A because the value of the entry was USD $2000 or less, provide a copy of Customs Form 368 or 368A.

If the exporter is unable to obtain the relevant U.S. Customs 7501 Entry Summary or U.S. FDA Release Form, the exporter must explain why it is unable to submit these documents and provide documentation that it has attempted to obtain these documents from its customers.

B. The bill of lading.
C. The commercial invoice.
D. The packing list.
E. Documentation demonstrating receipt of payment.

All the documents above must pertain to the same sale (normally, the first sale by invoice date during the POR/POI, unless one of the conditions discussed above applies). In addition to providing these documents, you must provide a narrative explanation of how the documents relate to one another and what the specific links are among the documents. If volumes or values do not exactly match from one document to the next, the applicant must provide in this narrative a clear explanation of any apparent discrepancies among the documents. The applicant must also provide and explain additional documentation necessary to corroborate its explanation in this regard. For example, if the invoice and payment amount do not match, the applicant must explain the difference and provide documentary support for this explanation.

*5. Does the applicant have any knowledge that merchandise it sold was resold to the United States through market-economy third-country exporters in U.S. dollars?[9]

___ Yes
___ No

*6. Provide the full name and contact information (including address, telephone, fax, and e-mail address) of each of the applicant's producers and/or suppliers of subject merchandise whose merchandise the applicant sold or exported to the United States during the POR/POI[10]:

_____

*7. Are the producers and/or suppliers, listed under question 6 above, identified by any other names as a legal matter in the home market, in third countries, or in the United States (*i.e.*, do the companies use trade names)?[11]

[9] The Department considered Belarus, Georgia, the Kyrgyz Republic, the People's Republic of China, the Republic of Armenia, the Republic of Azerbaijan, the Republic of Moldova, the Republic of Tajikistan, the Republic of Uzbekistan, the Socialist Republic of Vietnam, and Turkmenistan to be non-market economies during this period of investigation/review.

[10] With respect to investigations, if your firm is assigned separate rate status, the rate will *only* apply to merchandise exported by your firm and supplied by the producers identified here. *See* Enforcement & Compliance Policy Bulletin 05.1, available on the Department's website at http://enforcement.trade.gov/policy/index.html.

[11] Trade names are other names under which the company does business. It does not include product brand names or the names of any other entities in the applicant's "group," affiliated or otherwise.

___ Yes
___ No

If yes, then list any and all other names here, and provide a copy of the business licenses/registration documents showing that the suppliers use these alternative names and the dates in which these names were in effect.

_____

*8. Indicate whether, to the best of your knowledge, the producers and/or suppliers identified under question 6 above directly exported subject merchandise to the United States during the period of investigation/review.

SECTION III

De Jure Control

Please check the boxes below if you can certify that the statements below are accurate

1. ☐ The applicant certifies that there are no government laws or regulations, at either national and sub-national (*e.g.*, provincial, local) levels of government, that control the applicant's export activities.

*2a. ☐ The applicant possesses an official government business license/registration documents valid during the period of investigation/review and is submitting with the application original-language and translated copies of any business licenses in effect during the POR/POI, the most current business license, and original-language and translated unaltered photocopies of any and all additional business licenses/registration documents or amendments thereto issued to the applicant and in effect during the POR/POI. If you are not able to supply completely legible photocopies of any of these required documents, you must supply the most legible photocopies available, complete the additional certification in Appendix B, and include an explanation in it of why submission of all the photocopies in completely legible form is not possible.[12]

2b. Indicate the full name and contact information (address, telephone, fax, and e-mail address) of the business license/registration documents authority which issued your business

[12] Note that if the Department determines that your firm is eligible for separate rate status, the separate rate will only apply to the firm as named in your business license/registration documents and not to any alternative or trade names that are not included in your business license/registration documents. It is the Department's understanding that a valid business license/registration documents with clearly defined periods of validity issued by the appropriate licensing authority is required for all business activity. An applicant submitting a business license without an expiration date must provide an explanation in order for the Department to consider its application.

license/registration documents and the expiration date of your business license/registration documents (see footnote 10).

_____

2c. Provide the month, day, and year on which the business license authority last renewed your business license/registration documents.

_____

*2d. Indicate from the following choices the ownership structure under which your company has registered itself with the official government business license issuing authority.

- ☐ owned by all of the people
- ☐ collective
- ☐ limited liability
- ☐ proprietorship
- ☐ partnership
- ☐ joint-stock limited company
- ☐ other (please describe:_____)

Select from the following choices any applicable secondary forms of registration related to foreign-invested enterprises that apply to your firm:

- ☐ domestic-foreign equity joint venture
- ☐ domestic-foreign contractual joint venture
- ☐ wholly foreign-owned enterprise
- ☐ other (please describe:_____)

3a. Indicate the full name and contact information (address, telephone, fax, e-mail address) of the business license authority which issued your export certificate of approval and the dates in which it was in effect.

_____

3b. Provide the month, day, and year on which the business license authority issued your export certificate of approval.

_____

3c. ☐ By checking the box, the applicant certifies that it is submitting with the application an original-language and translated copy of its export certificate of approval or foreign trade operator registration form which was valid during the period of investigation/review.[13]

4. In order to conduct export activities, is the applicant required by any national, provincial, or local government law or regulation to possess additional certificates or other documents related to the legal status and/or operation of its business beyond those discussed above?[14]

___ Yes
___ No

If yes, identify the certificates below, and submit original-language and translated copies thereof with the application.

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5. Check the box next to the following Vietnamese government laws and legislative enactments that apply to the applicant firm:

☐ Law on Enterprises, effective as of January 1, 2000
☐ Commercial Law, effective as of January 1, 1998
☐ Administrative Regulations of Vietnam Governing the Registration of Legal Corporations
☐ Law on State Enterprises, effective April 20, 1995
☐ Law on Foreign Investment
☐ Regulations on Export Processing Zones
☐ Other (if checked, please identify below any additional specific national Vietnamese laws and/or legislative enactments which relate to the export functions of the applying company)

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6. Are there any sub-national (provincial, local) government laws affecting the applicant's export operations?

___ Yes
___ No

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[13] It is the Department's understanding that an export certificate of approval or foreign trade operator registration form issued by the appropriate licensing authorities is required for all export activity. Therefore, the Department will not consider a separate rate for any applicant not providing such a certificate/form.

[14] The Department is interested only in government laws or regulations which restrict or limit exports rather than regulations which regulate purely domestic operations (*i.e.*, environmental or labor regulations). If you are unsure of the possible relevance of a given law, please contact the Department immediately.

If yes, identify the laws and submit original and translated copies of each provincial or local government law with the application:

SECTION IV

De Facto Control

A. Ownership

*1a. For each intermediate and ultimate shareholder entity, please respond to the following. In responding, please ensure that you include information regarding the ownership of your reported shareholder entities. The ultimate owners may be individuals, government entities, etc.[15] A shareholder entity which has further ownership (such as individuals or additional shareholder entities) is not considered the ultimate shareholder, but an intermediate owner. Information must be included for all intermediate and ultimate owners.

a. Provide the names and contact information (full business address, telephone number, fax number, and e-mail address) of the legal entities which are the shareholders (*i.e.*, both intermediate and ultimate owners) of each shareholder entity and indicate the percentage ownership.

b. Submit a copy of each shareholder entity's business license.

c. State the legal domicile of each shareholder entity. [16]

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*1b. If any of your intermediate and/or ultimate shareholders reported in response to question 1a. are government entities, such as a State Capital Investment Corporation ("SCIC"), or are supervised by an SCIC, please respond to the following:

a. Provide a description of the nature of the SCIC or government entities' relationship with the applying firm.
b. Provide a breakdown of the different types of shares by owner (e.g. please explain whether there are voting, non-voting, controlling, shares with special rights, "golden shares," etc.)

[15] Please state in your response if any of your intermediate or ultimate shareholders are owned or supervised, in full or in part, by the State Capital Investment Corporation ("SCIC").

[16] Note to firms applying as wholly market-economy owned entities: document whether the ultimate owners of your company are located in market-economy countries and, if so, indicate which market-economy countries.

c. Explain whether the SCIC or government entity is involved in the activities or selection of the applying firm's board of directors and/or board of supervisors.

*2. Applicants must provide the following documentation to support your response to question 1 above.

a. capital verification report
b. consolidated financial statements
c. share transfer agreement
d. articles of incorporation/articles of association
e. export certificate of approval

If you are not able to submit legible, unaltered photocopies of each of these documents, you must provide the most legible unaltered copies of the documents available, complete the additional certification in Appendix B, and provide a narrative description of why you are not able to provide legible photocopies all of the above documents.

3. In addition, identify the top 10 individual shareholders of your company. If the top 10 individual shareholders of your company do not make up at least 50 percent of the ownership of your company, identify the largest shareholders which make up at least 50 percent ownership.

4A. For each of the applying firm's top ten shareholders (individuals and non-individual firm or government entities) and all of their entity shareholders, at any time during period of investigation/review, report in detail any significant relationship[17] with any of the following:

Vietnamese state asset management company (government-owned and/or private chartered)
The Vietnamese national government and/or its ministries/agencies;
Vietnamese provincial governments;
Vietnamese local/municipal/village government(s)/agency(ies).

4B. Please state what relationship(s) each shareholder entity's managers and board of director members has with any level of the government, (*e.g.*, national, provincial, local) and/or government agencies.

5. For the top ten individual owners of the intermediate and ultimate shareholder entities (*i.e.*, shareholders that are not individuals) of the applying firm, please state whether they hold office at any level of the Vietnam government (*e.g.*, national, provincial, local) or held office at any Vietnam government agencies during the past three years. If so, for each individual, identify the office held, the level of the government and/or agency with

[17] A significant relationship would include ownership, control, affiliation, significant transactions, *etc.*

which the office is held, and describe the official role of each

B. Price Negotiation

Please check the boxes below to make the following certifications.

6. ☐ The applicant certifies that its export prices are not set by, subject to the approval of, or in any way controlled by a government entity at any level (national, provincial, local).[18]

7. ☐ The applicant certifies that it has independent authority to negotiate and sign export contracts and other agreements (conducts independent price negotiation).[19]

8. The applicant must provide documentation supporting its certification that the applicant conducts independent price negotiations. (see question 7 above) You must submit such documentation related to the first sale of the period of investigation/review with the application.[20] If you cannot provide such documentation please contact the official in charge. Examples include the following types of documentation:

- faxes/e-mail correspondence between applicant and unaffiliated U.S. customer
- purchase order from unaffiliated U.S. customer
- order confirmation
- logs of negotiations conducted over the telephone with an unaffiliated U.S. customer

If you do not have any documentation to support your certification that your firm conducts independent price negotiation, you may submit an affidavit as an alternative. This affidavit testifying to independent price negotiation must signed and dated by an *unaffiliated* U.S. customer, and include the unaffiliated U.S. customer's contact information.

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[18] This includes, but is not limited to, the presence of government officials at any meeting where export and pricing decisions are discussed.

[19] The authority to conduct independent price negotiation refers to the ability of an NME exporter to set its own export prices independently of the government at any level (national, provincial, local) and without the approval of any government entity.

[20] Applicants must provide documents showing price negotiation, not documents merely confirming that a sale will take place at a given price. If your firm conducts its price negotiation by phone, does not keep phone logs of meetings conducted over the phone, and therefore has no records of price negotiation, you are required to attach 1) a certification that there are no records of price negotiation, and 2) an affidavit signed and dated by the unaffiliated U.S. customer attesting that it conducts independent price negotiation with the applying firm. Affidavits must provide adequate information to link the applicant to the party signing the affidavit.

C. Selection of Management

9. ☐ By checking the box, the applicant certifies that it has autonomy from all levels of the government (national, provincial, local) and from any government entities in making decisions regarding the selection of management.

10. The applicant must provide specific documentation that evidence independence in the selection of management which supports its certification in question 9 above. Examples might include the following:

- appointment letters
- director meeting minutes
- company-issued resolutions/notifications (besides appointment letters)

11. Provide the name of each manager and board member in the applicant's company who held a management position during the period of investigation/review and the date (month, day, year) that each of the managers obtained his or her position at your company. Also provide the names of each manager and his or her employment (*i.e.*, position, name of company) for the three years prior to working at your company if they have been working at your company for less than three years.

12. Have any of the applying firm's managers or board members worked for the government, at any level (national, provincial, local), or any government entities, in the past three years?

___ Yes
___ No

If yes, briefly describe the government involvement of the manager in question in supporting documentation.

13. Does the applying firm have to submit any of its candidates for managerial positions within the firm for approval to any government entity at any level (national, provincial, local)?

___ Yes
___ No

If yes, you certify that you are filing a document with the application containing an explanation.

D. Disposition of Profits

14. ☐ By checking the box, the applicant certifies that it retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.

15. If the applicant realized a profit during the period of investigation/review, then describe the process by which the applicant's profits were distributed. Specifically, indicate the sections in the company's books and records where such profits were recorded.

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16. Did the applicant make any disbursements to government accounts during the period of investigation/review other than for tax or government-provided goods or services?

___ Yes
___ No

If yes, describe these disbursements, the specific government accounts, and file a document or documents with the Department illustrating these disbursements.

17. For each bank account held by the applicant during the period of investigation/review, the applicant certifies it will provide the following information:

- Name and address of the bank
- Bank account number
- Month/Year in which the account was opened

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18. ☐ The applicant certifies that it is submitting with the application audited year-end financial statements covering all months of the POR/POI as well as any other information which supports the applicant's response to question 16 above.[21] If the applicant does not have audited year-end financial statements for the period in question, it must affirmatively state so and submit with the application un-audited year-end financial statements covering all months of the POR/POI.

E. Affiliation

All firms must respond to question 19. In addition, firms applying under NME ownership must respond to question 20, and firms that are applying for separate rate status under the status of 100% foreign ownership must respond to question 21.

Section 771(33) of the Tariff Act of 1930, as amended, defines affiliates as:

A. Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and linked descendants

[21] If financial statements covering the POR/POI are not available at the time this application is filed, please indicate when these statements would be available and submitted to the Department, and provide the Department with monthly financial statements, if available.

B. Any officer and director of an organization and such organization
C. Partners
D. Employer and Employee
E. Any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares or any organization and such organization
F. Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person
G. Any person who controls any other person

For the purposes of affiliation, the Department will consider a person to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

*19. Explain whether your firm made shipments or sales to unaffiliated parties, affiliated parties or both, during the period of investigation/review, as defined by Section 771(33) of the Tariff Act of 1930. If your firm *only* made sales to affiliated parties during the period of investigation/review, you must provide evidence of the first sale to the first unaffiliated party to qualify for a separate rate.

☐ shipments or sales to affiliated parties only
☐ shipments or sales to unaffiliated parties only
☐ shipments or sales to both affiliated and unaffiliated parties

20. As defined by Section 771(33) of the Tariff Act of 1930, as amended, does the applicant have *any affiliates that are located in the United States, or that exported merchandise to the United States* which would fall under the description of merchandise covered by the scope of the proceeding?

☐ Yes
☐ No

If the applying firm is affiliated with any other exporters of subject merchandise pursuant to this definition of affiliation, then the firm must list the full names and contact information (business address, telephone, fax, e-mail address) of the affiliates below. In addition, it would be useful if you would provide a chart demonstrating the ownership and affiliation structure of all of your affiliates that are involved in the production or sale of subject merchandise. For an example of how you might design this chart, *see* Appendix A.

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*21. As defined by Section 771(33) of the Tariff Act of 1930, as amended, does the applicant have any *affiliates involved in the production or sale of merchandise in the home market, third-*

country markets, or the United States which would fall under the description of merchandise covered by the scope of the proceeding?

☐ Yes
☐ No

If the applying firm is affiliated with any other producers or exporters of subject merchandise pursuant to this definition of affiliation, then list the full names and contact information (business address, telephone, fax, e-mail address) of the affiliates below. In addition, it would be useful if you would provide a chart demonstrating the ownership and affiliation structure of all of your affiliates that are involved in the production or sale of subject merchandise. For an example of how you might design this chart, *see* Appendix A.

SECTION V

Instructions for Filing the Response

The following instructions apply to all documents you submit to the Department during the course of this proceeding.

A. Due Date

1. All submissions must be made electronically using the Department's ACCESS website at http://access.trade.gov. If an exception to the electronic filing requirement applies, you must address and manually submit your response to the address indicated on the cover page of this questionnaire. To determine if your response qualifies for manual filing, see the section on "Manual Filing" below. All laws, regulations, and other descriptive materials that supplement your responses should be submitted on the same date as the initial response.

2. The **business proprietary** response should be submitted on the day specified on the cover page of this questionnaire. The **public version** of the response may be filed one business day after the proprietary response.

3. An electronically filed document must be received successfully in its entirety by ACCESS by 5 p.m. Eastern Time (ET) on the due date, unless an earlier time is specified. Where applicable, a submitter must manually file a document between the hours of 8:30 a.m. and 5 p.m. ET on the due date, unless an earlier time is specified.

B. Format

1. You are required to state in the upper right-hand corner of your cover letter the following information in the following format:

a. on the first line, indicate the case number stated on the cover page to this questionnaire;

b. on the second line, indicate the total number of pages in the document including cover pages, appendices, and any unnumbered pages;

c. on the third line, indicate the specific segment of the proceeding, (e.g., investigation, administrative review, scope inquiry, suspension agreement, etc.) and, if applicable, indicate the complete period covered (MM/DD/YY - MM/DD/YY);

d. on the fourth line, indicate the Department office conducting the proceeding;

e. on the fifth and subsequent lines, indicate whether any portion of the document contains business proprietary information and, if so, list the page numbers containing business proprietary information; and indicate the business proprietary/public status of the document and whether you agree or object to release of the submitted information under **administrative protective order** (APO) by stating one of the following:
   - "Business Proprietary Document -- May Be Released Under APO,"
   - "Business Proprietary Document -- May Not Be Released Under APO,"
   - "Business Proprietary/APO Version-- May Be Released Under APO," as applicable,
   - "Public Version," or
   - "Public Document."

2. Please include a "Re:" line on the cover letter of your response, or any other submissions you make during this proceeding. In the Re: line, briefly summarize the purpose of your submission, e.g., "response to Quantity & Value questionnaire," "case brief."

3. Prepare your response in typed form and in English (see 351.303(d) and (e) for these and other formatting requirements). Include an original and translated version of all pertinent portions of non-English language documents that accompany your response, including financial statements.

4. It is your responsibility to contact the official in charge if subsequent to your filing there are events that affect your response (e.g., changes in your cost accounting system are relevant to antidumping proceedings, and changes as a result of an audit are relevant to both antidumping and CVD proceedings).

C. Manual Filing

1. **All submissions must be filed electronically**. Only under the following four circumstances will the Department accept a hardcopy response that is manually filed:

   - Documents exceeding 500 pages in length may be filed manually (in paper form) in the APO/Dockets Unit. This is referred to as a "bulky document."

   - Data files greater than 20 MB must be filed manually on CD-ROM or DVD.

   - If the ACCESS system is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour between 12:00 p.m. and 4:30 p.m. ET or for any duration of time between 4:31 p.m. and 5:00 p.m. ET, then a person may manually file the document in the APO/Dockets Unit. The Department will provide notice of such technical failures on the ACCESS Help Desk line at 202-482-3150 and on the E&C website, which is http://www.trade.gov/enforcement/.

   - Apart from the above, if you are unable to comply with the electronic filing requirement, as provided in § 351.103(c) of the Department's Regulations, and in accordance with section 782(c) of the Tariff Act of 1930, as amended (the Act), you must promptly notify the official in charge and submit a full written explanation of the reasons you are unable to file the document electronically. You must also suggest alternative forms in which to submit the information. The Department will consider the ability of a submitter and may modify the electronic filing requirement on a case-by-case basis.

2. All manually filed documents must be accompanied by a cover sheet generated in ACCESS. For manually filed bulky documents, separator sheets must also be generated and used.

3. If your response qualifies as a bulky document and you opt to file it manually, you must file two identical paper copies of the document. For all other authorized manual submissions, only one paper copy is required.

4. Manual submissions must be addressed and submitted to:
   Secretary of Commerce
   APO/Dockets Unit
   Room 1870
   U.S. Department of Commerce
   Fourteenth Street and Constitution Avenue, N.W.
   Washington, D.C. 20230

Attn: Enforcement & Compliance
AD/CVD Operations, Office {Insert Office Number}

D. Certification

1. Submit the required **certification of accuracy**. Providers of information and the person(s) submitting it, if different (e.g., a legal representative), must certify that they have read the submission and that the information submitted is accurate and complete. The Department cannot accept questionnaire responses that do not contain the certification statements. Forms for such certification are included as appendices to this questionnaire. You may photocopy this form and submit a completed copy with each of your submissions.

2. Provide the required **certificate of service** (included as an appendix) with each business proprietary document and public version submitted to the Department.

3. Signed certifications of accuracy and certificates of service should be scanned and appended to the appropriate electronic documents filed in ACCESS.

E. Business Proprietary Information and Summarization of Business Proprietary Information

1. Request business proprietary treatment for information submitted that you do not wish to be made publicly available. As a general rule, the Department places all correspondence and submissions received in the course of an antidumping or countervailing duty proceeding in a public reading file. However, information deemed to be proprietary information will not be made available to the public. If you wish to make a request for proprietary treatment for particular information, refer to sections 351.304, 351.305, and 351.306 of the Department's regulations. You must submit the request for proprietary treatment at the same time as the claimed business proprietary information is submitted to the Department.

2. Utilize the "one-day lag rule" under section 351.303(c)(2) of the Department's regulations if you wish an additional day to review the final bracketing of business proprietary information in a document and to prepare the required public version. The filing requirements under the one-day lag rule provide for a party to file only the business proprietary document within the applicable time limit (section 351.303(c)(2)(i)). By the close of business one business day after the date the business proprietary document is filed, the person must file the complete final business proprietary document (section 351.303(c)(2)(i)(ii)). The final business proprietary document must be identical to the original document except for any bracketing corrections.

3. By the close of business one business day after the date the business proprietary

document is filed (refer to the "one-day lag rule" in the preceding paragraph), submit the public version of your response (section 351.303(c)(2)(i)(iii)). A public version must contain:

(1) a non-proprietary (public) version of your response that is in sufficient detail to permit a reasonable understanding of the information submitted in confidence, and/or

(2) an itemization of particular information that you believe you are unable to summarize. State the reasons why you cannot summarize each piece of information.

Please note: The summarization requirement does not apply solely to the narrative portion of your response. It applies equally to worksheets and other appendices to your response, and even to sales and cost databases submitted in antidumping proceedings. Generally, numerical data, such as that provided in sales and cost databases in antidumping proceedings, are adequately summarized only if grouped or presented in terms of indices or figures ranged within 10 percent of the actual figure. If a particular portion of data is voluminous, use ranged figures for at least one percent of the voluminous portion.

Responses, or portions thereof, that are not adequately summarized may be rejected from the record of this proceeding.

4. Submit the statements required regarding limited release of business proprietary information under the provisions of an APO. U.S. law permits limited disclosure to representatives of parties (e.g., legal counsel) of certain business proprietary information, including electronic business proprietary information, under an APO. (Note that data received under an APO cannot be shared with others who are not covered by the APO.) Under the provisions governing APO disclosure, you must submit either:

(1) a statement agreeing to permit the release under APO of information submitted by you in confidence during the course of the proceeding, or

(2) a statement itemizing those portions of the information which you believe should not be released under APO, together with arguments supporting your objections to that release.

We are required by our regulations to reject, at the time of filing, submissions of business proprietary information that do not contain one of these statements. As discussed above, you must state in the upper right-hand corner of the cover letter accompanying your questionnaire response whether you agree or object to release of the submitted information under APO (e.g., May Be Released Under APO or

May Not Be Released Under APO). (See section 351.304 of the Department's regulations for specific instructions.22)

5. Place brackets ("[ ]") around information for which you request business proprietary treatment. Place double brackets ("[[ ]]") around information for which you request proprietary treatment and which you do not agree to release under APO.[23]

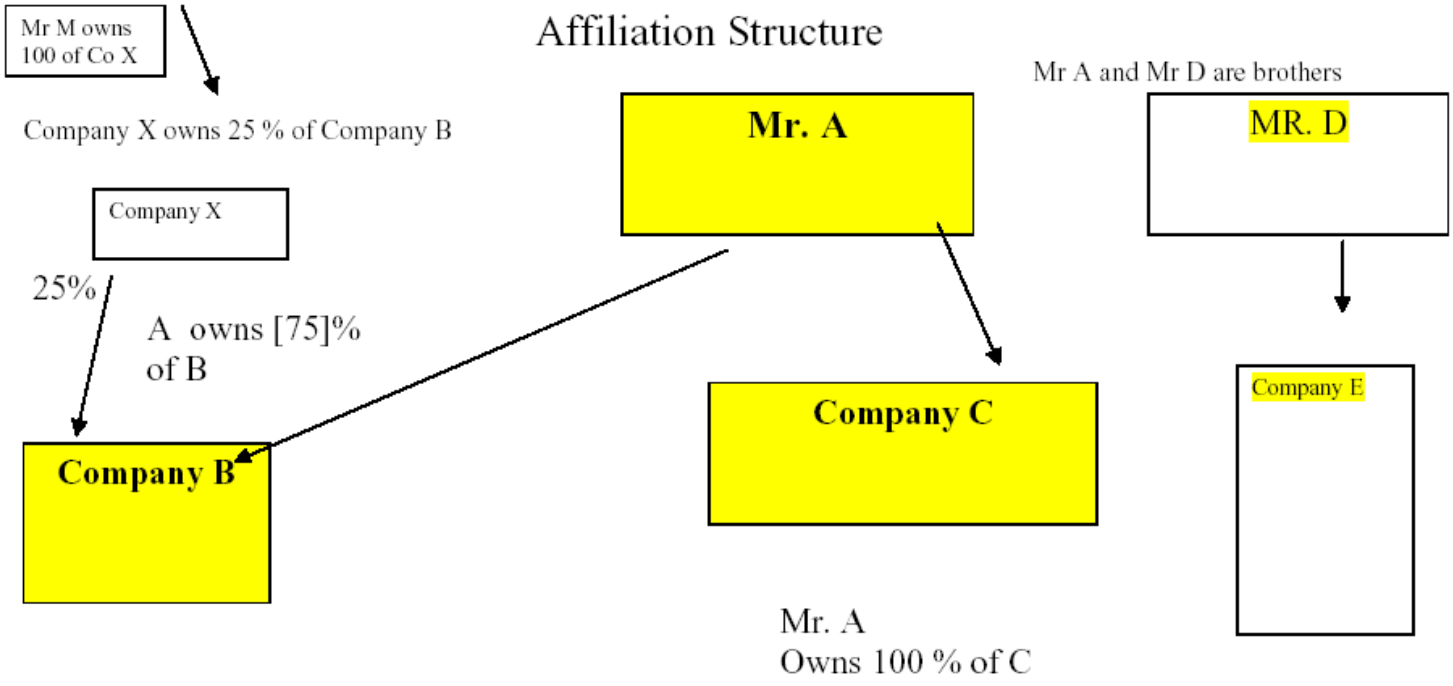
6. Provide to all parties whose representatives have been granted APO access and who are listed on the Department's most recent APO Service List, a complete copy of the submission--proprietary document and public version, except for that information which you do not agree to release under APO. (APO service lists, as well as public service lists, are maintained at http://web.ita.doc.gov/ia/webapotrack.nsf under Vietnam and the case name. If you exclude information because you do not agree to release it under APO, you must submit the complete business proprietary version, wherein information in double brackets has been excluded. This version of the response must be marked "Business Proprietary/APO Version-- May Be Released Under APO" on the cover page. For parties that do not have access to information under APO, please provide a public version only.

Note: A chart summarizing AD/CVD document filing requirements can be found at http://enforcement.trade.gov/filing/index.html. Detailed and supplemental information concerning APOs, including the APO Handbook, a complete set of APO regulations, and APO application forms and service lists, can be found at http://enforcement.trade.gov/apo/index.html.

[22] If you do not agree to release under APO all or part of the proprietary information, but we determine that the information should be released, you will have the opportunity to withdraw the information (see section 351.304(d) of our regulations). However, any information which you withdraw will be taken out of the official record and will not be used in our determination.

[23] The Department will not disclose proprietary customer names under APO during an antidumping or countervailing duty investigation until either an order is published or the investigation is suspended. To ensure that proprietary customer names are properly treated in this case, place double brackets ("[[ ]]") around all proprietary customer names in your submissions to the Department during the course of this investigation.

APPENDIX A


Affiliation Structure
Mr M owns
100 of Co X
Company X owns 25 % of Company B
Company X
25%
A owns [75]%
of B
Company B
Mr. A
Company C
Mr. A
Owns 100 % of C
Mr A and Mr D are brothers
MR. D
Company E

APPENDIX B

Appendix B must be completed by all firms for whom it is not possible to submit completely legible unaltered photocopies of all of the supporting documentation required in the application. This appendix applies both to firms that are not able to submit all the required supporting documentation, and to those who are not able to submit completely legible photocopies thereof. To complete this section, you must make the certification below and provide an explanation of why the submission of completely legible copies of all of the required supporting documentation is not possible.

I, _____ certify that I am not able to submit completely legible photocopies of the following documents _____ that are requested in the fields _____. I certify that I have made the maximum effort to obtain and submit the most complete and legible photocopies possible, and that I am submitting with the application the most legible photocopies of the documents possible. This reasons I cannot supply completely legible photocopies of all the required are (supply an explanation for each document that is missing or not completely legible):

I have therefore, in place of these photocopies, provided the following documents to reflect or explain what is contained in the documents that are missing or not completely legible:

_____ (name)