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March 2, 2015

**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; 2013-2014

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## SUMMARY

In response to requests from interested parties, the Department of Commerce (“Department”) is conducting this administrative review of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam (“Vietnam”) for the period of review (“POR”) February 1, 2013, through January 31, 2014. The Department preliminarily determines that sales of the subject merchandise by the Minh Phu Group<sup>1</sup> and Thuan Phuoc Seafoods and Trading Corporation (“Thuan Phuoc”) were at prices below normal value (“NV”). The Department preliminarily determines that sales of the subject merchandise by Sao Ta Foods Joint Stock Company (“Fimex VN”) were not at prices below NV.

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

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<sup>1</sup> Minh Phu Seafood Corporation, Minh Qui Seafood Co., Ltd., Minh Phat Seafood Co., Ltd. (collectively, “Minh Phu Group”).

## Background

On April 1, 2014, the Department initiated an administrative review of 246 producers and exporters of certain frozen warmwater shrimp from Vietnam for the period February 1, 2013, through January 31, 2014.<sup>2</sup>

## Extension of Preliminary Results

On August 22, 2014, the Department extended the deadline for the preliminary results by a total of 120 days, to March 2, 2015.<sup>3, 4</sup>

## Respondent Selection

Section 777A(c)(1) of the Act directs the Department to calculate individual weighted-average dumping margins for each known exporter and producer of the subject merchandise. However, because of the large number of exporters/producers involved in the investigation or review, it is not practicable to calculate individual weighted-average dumping margins, section 777A(c)(2) of the Act authorizes the Department to determine the weighted-average dumping margins for a reasonable number of exporters/producers by limiting its examination to: (1) a statistically valid sampling of exporters, producers, or types of products; or (2) to the exporters/producers accounting for the largest volume of subject merchandise that can be reasonably examined. The 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>5</sup>

On April 1, 2014, the Department placed U.S. Customs and Border Protection (“CBP”) data for the Harmonized Tariff Schedule (“HTS”) numbers listed in the scope of the order on the record of the review and requested comments on the data for use in respondent selection.<sup>6</sup> On April 3, 2014, we extended the comment deadline to April 8, 2014, with rebuttal comments due April 14,

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<sup>2</sup> See Initiation of Antidumping Duty Administrative Reviews and Request for Revocation in Part, 79 FR 18262 (April 1, 2014) (“Initiation Notice”). While there were 246 individual names on which we initiated an administrative review, the actual number of companies is 91, due to variations of names requested by multiple interested parties and the groupings of companies that we have collapsed. See the “Separate Rates” and “Vietnam-Wide Entity” sections below for additional information.

<sup>3</sup> See Memorandum to Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, “Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated August 22, 2014.

<sup>4</sup> A 120-day extension of the current deadline is February 28, 2015, which is a Saturday. Therefore, in accordance with our Next Business Day Rule, the deadline is moved to Monday March 2, 2015. See Notice of Clarification: Application of “Next Business Day” Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended, 70 FR 24533 (May 10, 2005) (“Next Business Day Rule”).

<sup>5</sup> See SAA, H.R. Doc. No. 103-316, vol. 1 at 872 (1994).

<sup>6</sup> See “Memorandum to All Interested Parties, from Alexis Polovina, re: Customs Data of U.S. Imports of Certain Frozen Warmwater Shrimp for Respondent Selection,” dated April 1, 2014.

2014.<sup>7</sup> On April 7, 2014, we again extended the comment deadline to April 11, 2014, with rebuttal comments due April 18, 2014.<sup>8</sup> On April 11, 2014, we received respondent selection comments from the Ad Hoc Shrimp Trade Action Committee (“Petitioner”), the Vietnam Shrimp Exporters’ Association (“VASEP”), and Quoc Viet Seaproducts Processing Trading and Import-Export Co., Ltd. (“Quoc Viet”).<sup>9</sup> Petitioner’s April 11, 2014, respondent selection comments included a request to sample to select respondents. On April 17, we set the sampling comment deadline to April 21, 2014, and rebuttal sampling comments due on April 28, 2014.<sup>10</sup> On April 18, 2014, we received respondent selection rebuttal comments from Petitioner. On April 21, 2014, we received sampling comments from VASEP. On April 28, 2014, we received sampling rebuttal comments from Petitioner. On May 9, 2014, we requested Petitioner provide additional information to provide a reasonable basis to believe or suspect that the average export price (“EP”) and/or dumping margins for the largest exporters differ from such information that would be associated with the remaining exporters, by May 16, 2014.<sup>11</sup> Additionally, on May 9, 2014, we set the comments deadline on Petitioner’s additional sampling information to May 27, 2014, and rebuttal comments on June 2, 2014.<sup>12</sup> On May 16, 2014, Petitioner submitted additional information in response to our request. On May 27, 2014, we received sampling comments from VASEP. On June 2, 2014, we received sampling rebuttal comments from Petitioner.

On September 2, 2014, the Department determined to limit the number of respondents selected for individual examination to a sample of exporters that is statistically valid based on the information available at the time of selection.<sup>13</sup> On September 9, 2014, Petitioner and VASEP provided comments on the proposed sampling methodology and proposed sampling pool. On September 29, 2014, we announced our sampling methodology, sampling pool, and invited interested parties to attend a meeting where we would use the sampling methodology to select respondents for this review.<sup>14</sup> On October 3, 2014, the Department selected the Minh Phu Group, Fimex VN, and Thuan Phuoc, as mandatory respondents.<sup>15</sup>

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<sup>7</sup> See “Memorandum to The File, from Alexis Polovina, re: Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam (“Vietnam”): Deadline for the Submission of Respondent Selection Comments,” dated April 3, 2014.

<sup>8</sup> See “Memorandum to The File, from Alexis Polovina, re: Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam (“Vietnam”): Extension of Time Limits,” dated April 7, 2014.

<sup>9</sup> See Respondent Selection Comments, from Petitioner, VASEP, and Quoc Viet, submitted April 11, 2014.

<sup>10</sup> See “Memorandum to The File, from Alexis Polovina, re: Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam (“Vietnam”): Time Limits for Sampling Comments,” dated April 17, 2014.

<sup>11</sup> See “Memorandum to The File, from Alexis Polovina, re: Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam (“Vietnam”): Request for Sampling,” dated May 9, 2014.

<sup>12</sup> See “Memorandum to The File, from Alexis Polovina, re: Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam (“Vietnam”): Time Limits for Sampling Comments,” dated May 9, 2014.

<sup>13</sup> See Memorandum to James C. Doyle, Office Director, through Alexis Polovina, Analyst, regarding Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Respondent Selection Methodology and Sampling Pool for Selection of Respondents, dated September 2, 2014. (“First Sampling Memo”).

<sup>14</sup> See Memorandum to James C. Doyle, Office Director, through Alexis Polovina, Analyst, regarding Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Respondent Selection Methodology and Sampling Pool for Selection of Respondents, dated September 29, 2014. (“Second Sampling Memo”).

<sup>15</sup> See Memorandum to the File, from Alexis Polovina, Analyst, Enforcement & Compliance, Re: “Respondent Selection for Frozen Warmwater Shrimp from Vietnam: Sampling Meeting with Outside Parties,” dated October 3, 2014, (“Respondent Selection Memo”).

On December 10, 2014, the Department determined not to select any voluntary respondents in this review, because doing so would be unduly burdensome and will inhibit the timely completion of the review, pursuant to section 782(a) of the Act.<sup>16</sup>

### Scope of the Order

The scope of the order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,<sup>17</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

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<sup>16</sup> See Memorandum to James C. Doyle, Office Director, through Catherin Bertrand, Program Manager, from Alexis Polovina, Analyst, regarding Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Selection of Voluntary Respondents, dated December 10, 2014.

<sup>17</sup> “Tails” in this context means the tail fan, which includes the telson and the uropods.

dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by these orders are currently classified under the following HTS subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. These HTS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.<sup>18</sup>

## DISCUSSION OF THE METHODOLOGY

### Preliminary Determination of No Shipments

As explained in the First Sampling Memo, between April 23 and May 30, 2014, the following eight companies filed no-shipment certifications indicating that they did not export subject merchandise to the United States during the POR: 1) Bien Dong Seafood Co., Ltd. (“Bien Dong”); 2) BIM Foods Joint Stock Company; 3) Cafatex Fishery Joint Stock Corporation; 4) Camau Seafood Processing and Service Joint-stock Corporation (“CASES”); 5) Camranh Seafoods Co., Ltd.; 6) Nhat Duc Co., Ltd.; 7) Phu Cuong Jostco Seafood Corporation; and 8) Seavina Joint Stock Company (“Seavina”).

In order to examine these claims, we sent an inquiry to CBP requesting that any CBP office which had any information contrary to the no-shipments claims alert the Department. We received no such response from CBP. Therefore, we determined for the purposes of sampling, these eight companies did not have any reviewable shipments during the POR. We continue to determine for these preliminary results that Bien Dong, BIM Foods Joint Stock Company, Cafatex Fishery Joint Stock Corporation, CASES, Camranh Seafoods Co., Ltd., Nhat Duc Co., Ltd., Phu Cuong Jostco Seafood Corporation and Seavina, did not have any reviewable transactions during the POR. In addition, the Department finds that, consistent with its refinement to its assessment practice in non-market economy (“NME”) cases, it is appropriate not to rescind the review in part in this circumstance but, rather, to complete the review with respect to the above-named companies.<sup>19</sup>

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<sup>18</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>19</sup> See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties, 76 FR 65694-65695 (October 24, 2011).

## Non-Market Economy Country

The Department considers Vietnam to be an NME country.<sup>20</sup> In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Therefore, we continue to treat Vietnam as an NME country for purposes of these preliminary results.

## Separate Rates

Pursuant to section 771(18)(C) of the Act, a designation of a country as an NME remains in effect until it is revoked by the Department. Accordingly, there is a rebuttable presumption that all companies within Vietnam are subject to government control and, thus, should be assessed a single antidumping duty rate.<sup>21</sup> In the Initiation Notice, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.<sup>22</sup> It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in Sparklers,<sup>23</sup> as amplified by Silicon Carbide.<sup>24</sup> However, if the Department determines that a company is wholly foreign-owned or located in a market economy ("ME"), then a separate rate analysis is not necessary to determine whether it is independent from government control.<sup>25</sup>

As explained in the First and Second Sampling Memos, for the purposes of sampling, the Department determined which exporters were entitled to a separate rate in order to be eligible for inclusion in the sampling pool. As outlined in the First Sampling Memo, 40 companies filed separate rate applications or certifications.<sup>26</sup> Three companies<sup>27</sup> could not demonstrate they had their own sale or export during the POR and CBP demonstrated no entries for these companies,

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<sup>20</sup> See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review, 2011-2012, 78 FR 15699 (March 12, 2013) and accompanying Decision Memorandum at 6, unchanged in Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2012-2013, 78 FR 56211 (September 9, 2013) ("AR7 VN Shrimp Final").

<sup>21</sup> See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079, 53082 (September 8, 2006); Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China, 71 FR 29303, 29307 (May 22, 2006).

<sup>22</sup> See Initiation, 79 FR at 18263.

<sup>23</sup> See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China, 56 FR 20588 (May 6, 1991) ("Sparklers").

<sup>24</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>25</sup> See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China, 72 FR 52355, 52356 (September 13, 2007).

<sup>26</sup> See First Sampling Memo, at 8.

<sup>27</sup> 1) Camimex Seafood Company Limited, 2) Ngo Bros Seaproducts Import-Export One Member Company Limited, 3) Thong Thuan-Cam Ranh Seafood Joint Stock Company.

and therefore, we determined these three companies did not meet the criteria for a separate rate. We determined four companies<sup>28</sup> that reported 100 percent ownership by foreign entities, met the criteria for a separate rate. The Department explained that two companies, Costal Fisheries Development Corporation (“COFIDEC”) and Danang Sea Products Import-Export Corporation (“Seaprodex Danang”), did not demonstrate an absence of governmental control, and therefore, for the purposes of sampling, did not meet the criteria for separate rates.<sup>29</sup> For one company, Investment Commerce Fisheries Corporation (“Incomfish”), the Department explained that for the purposes of sampling, we would include Incomfish in the sampling pool, but due to certain discrepancies on the record, we would pursue the matter further to determine if Incomfish is entitled to a separate rate at the preliminary results.<sup>30</sup> Therefore, the Department determined that of the 40 separate rate applicants, 35 companies met the requirements for a separate rate, including the three mandatory respondents.<sup>31</sup>

Subsequent to respondent selection, the Department issued additional questionnaires to Incomfish, and Incomfish reconciled the discrepancies.<sup>32</sup> The Department did not receive any additional information that changed the separate rate decisions made for the purposes of sampling. Therefore, the Department has preliminarily determined that the 35 companies listed in Appendix I have demonstrated that they are eligible for a separate rate.

Additionally, we note that some of the separate rate applicants requested separate rate status for various names which were not included on their business license or who have not submitted separate rate applications. Further, we note the Initiation Notice included variations of company names not included in either the separate rate applications or certifications of the separate rate applicants.<sup>33</sup> Because these names (1) have not been granted separate rate status in a previous administrative review, and (2) have not individually submitted separate rate applications or certifications to the Department, we are preliminarily not including these names on the list of companies for which separate rate status applies.<sup>34</sup> Policy Bulletin 5.1, states “{e}ach applicant seeking separate rate status must submit a separate and complete individual application regardless of any common ownership or affiliation between firms . . . .”<sup>35</sup> Further, a company that has not filed a separate rate application/certification is not eligible for a separate rate, even if it is affiliated with another company seeking a separate rate. Additionally, a company that did not export subject merchandise to the United States during the relevant period

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<sup>28</sup> 1) C.P. Vietnam Corporation, 2) Gallant Ocean (Vietnam) Co., Ltd., 3) Gallant Dachan Seafood Co., Ltd., and 4) Viet I-Mei Frozen Foods Co., Ltd.

<sup>29</sup> See First Sampling Memo at 10, and Second Sampling Memo at 6-7.

<sup>30</sup> See First Sampling Memo at 10-11, and Second Sampling Memo at 8.

<sup>31</sup> See First Sampling Memo at 11, and Second Sampling Memo.

<sup>32</sup> See Incomfish’s Response to Separate Rate Certification Second Supplemental Questionnaire, submitted November 10, 2014; and Incomfish’s Response to Separate Rate Certification Second Supplemental Questionnaire, submitted November 19, 2014.

<sup>33</sup> See Initiation Notice, 79 FR 18264-18267.

<sup>34</sup> See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 74 FR 47191 (September 15, 2009), and accompanying Issues and Decision Memorandum at Comment 17.

<sup>35</sup> See Policy Bulletin 5.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries (“Policy Bulletin 5.1”), dated April 5, 2005 found at: <http://enforcement.trade.gov/policy/bull05-1.pdf>; see also Separate Rate Application at page 3; found at: <http://enforcement.trade.gov/nme/sep-rate-files/20121031/srv-sr-app-20121031.pdf>.

is also not eligible for a separate rate.<sup>36</sup> Policy Bulletin 5.1 also very clearly states that “firms that produce the subject merchandise are not required to demonstrate their eligibility for separate rate status unless they also export the merchandise to the United States.”<sup>37</sup> The Department’s practice when the record does not contain either a separate rate application, certification or no-shipment letter is to consider that company not eligible for a separate rate.<sup>38</sup>

Further, the Department notes that in the current and previous reviews, many names appearing in the Initiation Notice and previous reviews have become duplicative or vary in minor ways.<sup>39</sup> The Department removed duplicative and minor variations of the company names from the company names listed in the published Federal Register notice accompanying this decision memo. Additionally, we are providing parties an opportunity to comment on the names used in these preliminary results and will consider those comments for the final results.

### Sample Rate Calculation

As explained above, it is the Department’s policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (de jure) and in fact (de facto), with respect to exports. In this review, the Department employed a stratified random probability-proportional-to-size sampling procedure to select respondents for individual examination. Therefore, we must calculate a sample rate to apply to the non-selected companies. In the Sampling Methodology Notice, we stated that in order to calculate a rate to assign the non-selected companies when using a sampling procedure:

{T}he Department will calculate a “sample rate” based upon an average of the rates for the selected respondents, weighted by the import share of their corresponding strata. The respondents selected for individual examination through the sampling process will receive their own rates; all companies in the sample population who were not selected for individual examination will receive the sample rate.<sup>40</sup>

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<sup>36</sup> See Policy Bulletin 5.1.

<sup>37</sup> Id., at 6.

<sup>38</sup> See, e.g., Honey From the People’s Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2011-2012, 78 FR 38941 (June 28, 2013) and accompanying Preliminary Decision Memorandum at page 3 (“during the review, Dongtai Peak did not file a separate rate application or certification, nor did it file a no shipments certification. Accordingly, because Dongtai Peak did not demonstrate its eligibility for a separate rate, the Department will preliminarily treat Dongtai Peak as part of the PRC-wide Entity.”), unchanged in Honey From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 56860 (September 16, 2013) (“Honey 2011-2012”); see also Steel Wire Garment Hangers From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review; 2011-2012, 78 FR 70271, 70272 (November 25, 2013) unchanged in PRC Hangers 2014.

<sup>39</sup> See Initiation Notice, 79 FR 18264-18267.

<sup>40</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, 65965 (November 4, 2013) (“Sampling Methodology Notice”).



In these preliminary results, two mandatory respondents, the Minh Phu Group and Thuan Phuoc, have weighted-average dumping margins which are above de minimis. One mandatory respondent, Fimex VN, has a weighted-average dumping margin below de minimis. “[I]n line with the Department’s practice heretofore, the Department will include all rates in the sample.”<sup>41</sup> Accordingly, we have averaged the rates for the three selected respondents, weighted by the import share of their corresponding strata.<sup>42</sup>

### Vietnam-Wide Entity

Upon initiation of this administrative review, we provided the opportunity for all companies upon which the review was initiated to complete either the separate rate application or certification.<sup>43</sup> As explained in the First Sampling Memo, 51 companies<sup>44</sup> did not submit either a separate rate or certification, and therefore, we determined were part of the Vietnam-wide entity.<sup>45</sup> In addition, as we explained in the First Sampling Memo, three companies<sup>46</sup> did not demonstrate they had their own sale or export during the POR and CBP data demonstrates no entries for these companies.<sup>47</sup> Therefore, we determined these three companies did not meet the criteria for separate rates.<sup>48</sup> Furthermore, as explained above, two companies, COFIDEC and Seaprodex Danang, did not demonstrate an absence of government control. We have not received any additional information to change our sampling decision, therefore, we preliminary determine that 56 companies did not demonstrate their eligibility for a separate rate and are properly considered part of the Vietnam-wide entity.

The Department’s change in policy regarding conditional review of the Vietnam-wide entity applies to this administrative review.<sup>49</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. Further, as explained in the policy notice, the Department preliminarily finds that the 56 companies for which a review was requested that do not qualify for a separate rate are part of the Vietnam-wide entity.

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<sup>41</sup> Id. at 65969; see e.g., Brake Rotors From the People’s Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice Rescission of the 2004/2005 New Shipper Review, 71 FR 6304 (November 14, 2006) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>42</sup> See Memorandum to the File, from Alexis Polovina, Analyst, Enforcement & Compliance, Re: “Preliminary Results of the Ninth Antidumping Administrative Review of Certain Warmwater Shrimp from the Socialist Republic of Vietnam: Calculation of the Sample Margin for Respondents Not Selected for Individual Examination,” dated March 2, 2015.

<sup>43</sup> The separate-rate certification and separate-rate applications were available at: <http://ia.ita.doc.gov/nme/nme-sep-rate.html>.

<sup>44</sup> Although we stated in the First Sampling Memo that the number of companies that did not submit either a separate rate application or certification was 43, the number of companies has increased from 43 to 51 due to several “doing business as” names and a few companies that we inadvertently overlooked.

<sup>45</sup> See First Sampling Memo, at 11.

<sup>46</sup> 1) Camimex Seafood Company Limited; 2) Ngo Bros Seaproducts Import-Export One Member Company Limited; and 3) Thong Thuan-Cam Ranh Seafood Joint Stock Company.

<sup>47</sup> See First Sampling Memo, at 9.

<sup>48</sup> Id.

<sup>49</sup> 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).

### Affiliation and Collapsing

Pursuant to 19 CFR 351.401(f), the Department will collapse producers and treat them as a single entity where: (1) those producers are affiliated, (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (3) there is a significant potential for manipulation of price or production.

To the extent that this provision does not conflict with the Department's application of separate rates and enforcement of the NME provision, section 773(c) of the Act, the Department will collapse two or more affiliated entities in a case involving an NME country if the facts of the case warrant such treatment. Furthermore, we note the factors listed in 19 CFR 351.401(f)(2) are not exhaustive, and in the context of an NME investigation or administrative review, other factors unique to the relationship of business entities within the NME country may lead the Department to determine that collapsing is either warranted or unwarranted, depending on the facts of the case.<sup>50</sup>

In summary, if there is evidence of significant potential for manipulation between or among affiliates which produce and/or export similar or identical merchandise, the Department may find such evidence sufficient to apply the collapsing criteria in an NME context in order to determine whether all or some of those affiliates should be treated as one entity.<sup>51</sup>

The decision of whether to collapse two or more affiliated companies is specific to the facts presented in the proceeding and is based on several considerations, including the structure of the collapsed entity, the level of control between and among affiliates, and the level of participation by each affiliate in the proceeding. Given the unique relationships which arise in NMEs between individual companies and the government, the same separate rate will be assigned to each individual company that is part of the collapsed entity only if the facts, taken as a whole, support such a finding.<sup>52</sup>

### *Minh Phu Group*

As indicated above, the Department selected the Minh Phu Group as one of the mandatory respondents in this review. In responding to the Department's antidumping questionnaire, the Minh Phu Group noted that its affiliated producer, Minh Phu Hau Giang Seafood Co., Ltd. experienced a name change during the POR. We have analyzed the information on the record supplied by the Minh Phu Group and Minh Phu Hau Giang Seafood Joint Stock Company (formerly, Minh Phu Hau Giang Seafood Co., Ltd.) and determine that the Minh Phu Group is a significant shareholder in Minh Phu Hau Giang Seafood Joint Stock Company and Minh Phu

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<sup>50</sup> See *Hontex Enterprises, Inc. v. United States*, 248 F. Supp. 2d 1323, 1342 (CIT 2003) (noting that the application of collapsing in the NME context may differ from the standard factors listed in the regulation).

<sup>51</sup> See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China*, 66 FR 22183 (May 3, 2001); *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China*, 66 FR 49632 (September 28, 2001); and *Anshan Iron & Steel Co., Ltd. v. United States*, 27 C.I.T. 1234, 1246-47 (CIT 2003).

<sup>52</sup> See "Separate Rates" section for further discussion.

Hau Giang Seafood Joint Stock Company is controlled by the Minh Phu Group through shared management.

Based on the reasons explained in the Collapsing Memo, and pursuant to 19 CFR 351.401(f), we have preliminarily collapsed Minh Phu Hau Giang Seafood Joint Stock Company and the Minh Phu Group (comprised of collapsed affiliates Minh Phu Seafood Corporation, Minh Qui Seafood Co., Ltd., and Minh Phat Seafood Co., Ltd.).<sup>53</sup> All subsequent references in these preliminary results to the Minh Phu Group will be to the collapsed entity that includes the Minh Phu Group and Minh Phu Hau Giang Seafood Joint Stock Company.

#### *Thuan Phuoc*

Section 771(33)(F) of the Act defines affiliated persons to include “two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.” Section 771(33) further provides that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person. The Department preliminarily determines that Thuan Phuoc and An Seafoods Company Limited (“An Seafoods”) are affiliated. Thuan Phuoc owns 100 percent of An Seafoods and these companies share common management.<sup>54</sup> Accordingly, the Department finds that these companies are under common control and, therefore are affiliated in accordance with section 771(33)(F) of the Act. Thuan Phuoc reported that An Seafoods does not operate production facilities that produce similar or identical products nor was it in some other manner involved with the production, export or sale of the subject merchandise to the United States during the POR.<sup>55</sup> Accordingly, based on the totality of the facts, we preliminarily determine that Thuan Phuoc and An Seafoods should not be collapsed and treated as a single entity.

#### Surrogate Country and Surrogate Value Data

On October 3, 2014, the Department issued interested parties a letter identifying six countries at the same level of economic development as Vietnam, and invited comments on the surrogate country list, surrogate country selection and surrogate value (“SV”) data.<sup>56</sup> On October 24, 2014, Quoc Viet submitted comments on the list of economically comparable countries provided by the Department.<sup>57</sup> On November 14, 2014, VASEP submitted surrogate country comments.<sup>58</sup>

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<sup>53</sup> See Memorandum to Catherine Bertrand, Program Manager, Office V, from Irene Gorelik, Senior Analyst, re: “Collapsing Determination for the Minh Phu Seafood Corporation and its Affiliates with Minh Phu Hau Giang Seafood Joint Stock Company,” dated March 2, 2015 (“Collapsing Memo”).

<sup>54</sup> See Thuan Phuoc Section A Questionnaire Response, dated October 31, 2014, (“SAQR”) at 16 and Exhibit A-1; see also Thuan Phuoc Supplemental Section A Questionnaire Response, dated November 19, 2014, (“SSAQR”) at 6.  
<sup>55</sup> See SSAQR at 9-10.

<sup>56</sup> See Department’s Letter to All Interested Parties, “Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Request for Surrogate Country and Surrogate Value Comments and Information,” dated October 3, 2014 (“Surrogate Country and Value Memo”).

<sup>57</sup> See Letter from Quoc Viet, “Frozen Warmwater Shrimp from Vietnam: Economic Comparability,” dated October 24, 2014.

<sup>58</sup> See Letter from VASEP, “Certain Frozen Warmwater Shrimp from Vietnam: Surrogate Country Comments,” dated November 14, 2014.

On December 15, 2014, Petitioner, VASEP, and American Shrimp Processors Association, (“Domestic Processors”), submitted SV comments.<sup>59</sup>

### Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer’s factors of production (“FOP”), valued in a surrogate ME country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.<sup>60</sup> The Department determined that Bangladesh, India, Nicaragua, Nigeria, Pakistan, and the Philippines are countries whose per capita gross national incomes (“GNI”) are at the same level of economic development as Vietnam.<sup>61</sup> The sources of the SVs we used in this investigation are discussed under the “Normal Value” section below.

Domestic Processors submit that for purposes of the Department’s selection of an appropriate surrogate, India is a significant producer of comparable merchandise with contemporaneous and publicly available data with which to obtain SVs. Domestic Processors state that India provides a contemporaneous count-size specific price for shrimp as well as other contemporaneous data for the primary inputs used to produce subject merchandise. Therefore, Domestic Processors propose India as the appropriate primary surrogate country for this review.

Petitioner contends that the Department cannot select Bangladesh as the primary surrogate country because of alleged labor abuses and alleged oppressive conditions in the shrimp industry in Bangladesh result in aberrational labor wage rate.<sup>62</sup> Petitioner’s submitted publically available information describing methodological and practical limitations and deficiencies in the collection and reporting of data in Bangladesh by the Bangladeshi government.<sup>63</sup>

VASEP argues that both Bangladesh and India are suitable as surrogate country candidates because they are both at the same level of economic development as Vietnam and are both significant producers of comparable merchandise. However, VASEP notes that they were unable to locate any Indian SVs for fresh, whole shrimp, the main input, while Bangladesh provides fresh, whole shrimp data that satisfies the Department’s SV selection criteria. VASEP, therefore, argues that because Bangladesh is at the same level of economic development as Vietnam, is a significant producer of comparable merchandise, and has count-size specific values for fresh, whole shrimp, the Department should select Bangladesh as the primary surrogate country to value FOPs.

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<sup>59</sup> See e.g., Letters from Petitioner, VASEP, and Domestic Processors, “Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Comments on Surrogate Values,” dated December 15, 2014.

<sup>60</sup> See Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (“Policy Bulletin”).

<sup>61</sup> See Surrogate Country and Value Memo.

<sup>62</sup> See Petitioners’ SV Comments.

<sup>63</sup> *Id.*, at 2.

## Economic Comparability

As explained in our Surrogate Country and Value Memo, the Department considers Bangladesh, India, Nicaragua, Nigeria, Pakistan, and the Philippines to be at the same level of economic development comparable to Vietnam. The Department treats each of these countries as equally comparable.<sup>64</sup> Accordingly, unless we find that all of these countries are not significant producers of comparable merchandise, do not provide a reliable source of publicly available surrogate data, or are unsuitable for use for other reasons, or we find that another equally comparable country is an appropriate surrogate, we will rely on data from one of these countries.<sup>65</sup> Therefore, we consider all six countries identified in the Surrogate Country and Value Memo to have met this prong of the surrogate country selection criteria.

## Significant Producers of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department's regulations provide further guidance on what may be considered comparable merchandise. The Policy Bulletin, however, states that "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."<sup>66</sup> Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.<sup>67</sup> Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.<sup>68</sup> "In cases where the identical merchandise is not produced, the Department must determine if other merchandise that is comparable is produced. How the Department does this depends on the subject merchandise."<sup>69</sup> In this regard, the Department recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

In other cases, however, where there are major inputs, i.e., inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, e.g., processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.<sup>70</sup>

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<sup>64</sup> See Surrogate Country and Value Memo.

<sup>65</sup> See Certain Steel Wheels From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination, 76 FR 67703, 67708 (November 2, 2011), unchanged in Certain Steel Wheels From the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances, 77 FR 17021, March 23, 2012.

<sup>66</sup> See Policy Bulletin, at 2.

<sup>67</sup> The Policy Bulletin also states that "if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise." Id., at note 6.

<sup>68</sup> See Sebacic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 62 FR 65674, 65675-76 (December 15, 1997) ("To impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.").

<sup>69</sup> See Policy Bulletin, at 2.

<sup>70</sup> Id., at 3.

Further, the statute grants the Department discretion to examine various data sources for determining the best available information.<sup>71</sup> Moreover, while the legislative history provides that the term “significant producer” includes any country that is a significant “net exporter,”<sup>72</sup> it does not preclude reliance on additional or alternative metrics. In this case, we reviewed shrimp production information from the Food and Agriculture Organization of the United Nations Fisheries Statistics (“UN FAO Statistics”).<sup>73</sup> After an examination of this information, Bangladesh, India, Nicaragua, Nigeria, Pakistan and the Philippines reported significant production of shrimp. Thus, among Bangladesh, India, Nicaragua, Nigeria, Pakistan and the Philippines, the Department evaluated the availability of SV data to determine the most appropriate surrogate country.

### Data Availability

When evaluating SV data, the Department considers several factors including whether the SV is publicly available, contemporaneous with the POR, represents a broad-market average, from an approved surrogate country, tax and duty-exclusive, and specific to the input.<sup>74</sup> There is no hierarchy among these criteria. It is the Department’s practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.<sup>75</sup> In this case, data or surrogate financial statements are unavailable for Nicaragua, Nigeria, Pakistan, and the Philippines, therefore, these countries will not be considered for primary surrogate country selection purposes at this time.

The Department notes that the value of the main input, head-on, shell-on shrimp, is a critical FOP in the dumping calculation as it accounts for the majority of the NV.<sup>76</sup> Consequently, the Department places great weight on the available sources of whole shrimp prices—more so than for non-shrimp FOPs. The record contains publicly available SV information for most FOPs from Bangladesh and India. With respect to the main raw material input, shrimp, Domestic Processors provided two Indian sources of fresh, whole shrimp prices, one of which reports several non-contemporaneous months of *P. vannamei* shrimp prices for a number of count size ranges.<sup>77</sup> The other source contains *P. vannamei* shrimp prices for a number of count sizes for three days in February 2014, outside the POR.<sup>78</sup> Both sources provided by petitioners are

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<sup>71</sup> See section 773(c) of the Act; see also Nation Ford Chem. Co. v. United States, 166 F.3d 1373, 1377 (Fed. Cir. 1990).

<sup>72</sup> See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).

<sup>73</sup> See VASEP’s Surrogate Country Comments at Exhibit 1.

<sup>74</sup> See, e.g., First Administrative Review of Certain Polyester Staple Fiber From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 75 FR 1336 (January 11, 2010), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>75</sup> See Policy Bulletin.

<sup>76</sup> See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results Antidumping Duty Administrative Review, 79 FR 15944 (March 24, 2014) (“Preliminary Results”) and accompanying Preliminary Decision Memorandum at 14, unchanged in Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2012–2013, 79 FR 57047 (September 24, 2014) and accompanying Issues and Decision Memorandum at Comment 6 (“VN Shrimp AR8 Final”).

<sup>77</sup> See Domestic Processors’ SV Comments at Exhibit 1.

<sup>78</sup> Id., at Exhibit 2.

“blogs” of uncertain provenance, which are published price quotes. Neither source ([indianvannamei.blogspot.com](http://indianvannamei.blogspot.com) and [seafoodsolutions.wordpress.com](http://seafoodsolutions.wordpress.com)) provides a discussion of the methodology of data collection or survey methods, such that the reliability of the data can be evaluated. While the Department was able to independently locate the Indian shrimp data from the two blog sources provided by Domestic Processors, the origin of the shrimp prices is uncertain as the blog only states that “prices were collected from local traders, farmers during purchase and reliable sources.”<sup>79</sup> However, the method of the data collection and the identity of those “local” traders, farmers, and reliable sources are unknown. The second Indian source, a blog, provides even less information regarding the origin of the shrimp prices quoted in three blog posts from February 2014.<sup>80</sup> Indeed, the [indianvannamei.blogspot.com](http://indianvannamei.blogspot.com) site offers a long list of names and addresses identified as “List of Hatchery operators permitted for import of Broodstock and Seed production of SPF L. vannamei for the year 2013-2014,” which provides no link between the three days of shrimp prices in February 2014 and the long list of company names that may or may not have been surveyed for the price data. The origin, derivation, surveying methods, lack of data points over longer time period of the Indian shrimp data on the record cannot overcome its mitigating factors. Specifically, both blog sites provide far less data points over a longer period of time than the NACA data. There is no objective information on how the prices were derived and how many farmers and traders were surveyed.<sup>81</sup> The Department preliminarily determines that the sources and the lack of information regarding the collection of these data render the Indian shrimp prices on the record unusable and unreliable.

VASEP provided shrimp SV data for Bangladesh from a study conducted by the Network of Aquaculture Centers in Asia-Pacific (“NACA”), an intergovernmental organization affiliated with the United Nation’s (“UN”) Food and Agricultural Organization (“FAO”) which provides prices for several shrimp count-sizes.<sup>82</sup>

As stated above, the Department’s practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, SVs which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR and exclusive of taxes and duties.<sup>83</sup> As a general matter, among other factors, the Department prefers to use publicly available data representing a broad-market average to value SVs.<sup>84</sup>

#### Public Availability and Broad-Market Average

The Bangladeshi shrimp values within the NACA study are compiled by the UN’s FAO from actual pricing records kept by Bangladeshi farmers, traders, depots, agents, and processors.<sup>85</sup> Moreover, unlike the Indian sources for shrimp prices, the NACA study is a reliable and

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<sup>79</sup> See Domestic Processors’ SV Comments at Exhibit 1.

<sup>80</sup> Id., at Exhibit 2.

<sup>81</sup> Id.

<sup>82</sup> See VASEP SV Comments at Exhibit SV-2.

<sup>83</sup> See Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of the Eleventh Administrative Review and New Shipper Reviews, 72 FR 34438 (June 22, 2007), and accompanying Issues and Decision Memorandum at Comment 2A.

<sup>84</sup> Id.

<sup>85</sup> See VASEP SV Comments at Exhibit SV-2.

objective source of fresh, whole shrimp prices and available to the public. Indeed, the Department has continually relied on the NACA study for numerous administrative reviews. In this case, the superiority of the NACA data to the Indian data is that the NACA data is compiled within a multinational study of the regional shrimp trade and supported by an academic method of data collection which is detailed within the study.<sup>86</sup> Therefore, with respect to the data considerations, we find that the record contains shrimp values for Bangladesh that better meet our selection criteria than the Indian sources. We find that of the shrimp prices on the record, the only reliable objective (and official) source is the Bangladeshi NACA study conducted by, as noted above, an intergovernmental agency affiliated with the UN FAO.

With respect to Petitioners' concerns that Bangladesh is not a suitable surrogate country due to alleged labor abuses causing aberrations in wage data, the CIT has previously rejected Petitioners' arguments that the Bangladeshi wage rate is aberrational, affirming the Department's use of Bangladeshi wage rate data.<sup>87</sup> We also addressed this argument in the final results of the immediately preceding administrative review, where we explained citing the CIT "AHSTAC does not offer any basis for finding the Bangladeshi labor values aberrational beyond the fact that the Bangladeshi values are the lowest on the record... On this record, the Bangladeshi data are not aberrational, it is merely the lowest price in a range of prices."<sup>88</sup> Nevertheless, as we stated in the previous administrative review, the largest component of the normal value in this proceeding is shrimp, not labor.<sup>89</sup> It is reasonable to conclude that, in this case, the Department selects the most appropriate surrogate country by reviewing and analyzing the availability of reliable shrimp SVs. Thus, Petitioners' concern over allegedly aberrational wage rates, an argument dismissed by the CIT, does not overcome the fact that Bangladeshi NACA study provides the most reliable data on the record with respect to shrimp, the main input. Finally, because the NACA study was conducted by a non-governmental organization, the UN's FAO, Petitioners' allegations regarding "methodological and practical limitations and deficiencies in the collection and reporting of data in Bangladesh by the Bangladeshi government"<sup>90</sup> are unfounded based on the information on the record.

### Specificity

The Department notes that the Bangladeshi NACA data is for Black Tiger shrimp only, whereas Indian data is for white shrimp (*P. Vannamei*) only. The Department also notes that all the mandatory respondents produce and sell *P. Vannamei* to varying degrees in addition to Black Tiger. Accordingly, neither data set (Bangladeshi and Indian) would cover all shrimp species produced and exported by the respondents. As we stated in the final results of the immediately preceding administrative review, the absence of white shrimp price data in the Bangladeshi

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<sup>86</sup> Id.

<sup>87</sup> See Camau Frozen Seafood Processing Import Export Corporation v. United States, 929 F. Supp. 2d 1352, 1356 (CIT 2013) ("Camau II").

<sup>88</sup> See VN Shrimp AR8 Final at Comment 6. While Petitioners provided additional data on the record regarding its wage rate arguments, due to the close proximity of the preliminary results, the Department has not had sufficient time to properly review Petitioners' additional comments or analyze the data presented therein. See Petitioners' February 2, 2015, submission.

<sup>89</sup> Id., at Comment 1, where we stated that "shrimp is, by far, the largest component of the NV..."

<sup>90</sup> See Petitioners' SV Comments at 2.



NACA study does not render it inferior or unusable.<sup>91</sup> Specifically, as we stated in VN Shrimp AR8 Final, “what the data for Bangladesh lacks in vannamei prices is outweighed by other factors, such as Bangladesh’s economic comparability to Vietnam, as well as the availability of Bangladeshi surrogate financial statements, labor SV, and a larger range of pricing for count sizes of black tiger shrimp, particularly the largest, most expensive shrimp count size.”<sup>92</sup>

Furthermore, the ability to value shrimp on a count-size basis is a significant consideration with respect to the data available on the record, as the subject merchandise and the raw shrimp input are both sold on a count-size specific basis. The Department’s long-standing reliance on the NACA study rests on the fact that it provides useable and reliable pricing data for a large majority of shrimp count-sizes, which is a fundamental element of the Department’s margin calculations, as our Control Number (“CONNUM”) categories place a greater weight on count-sizes of shrimp versus the species of shrimp. As we stated in VN Shrimp AR8 Final, “the CIT affirmed our placement of great weight on count size stating that ‘because the count size of shrimp is unquestionably an important consideration, Commerce reasonably placed more weight on its specificity criterion than on its four other criteria.’”<sup>93</sup> Moreover, for these reasons, in prior administrative reviews, the Department rejected shrimp SVs with limited count sizes.<sup>94</sup> Accordingly, we find that the Bangladeshi data to be specific to the main input.

#### Contemporaneity and Tax and Duty Exclusive

Neither the NACA study nor the Indian shrimp sources indicate whether the prices are tax and duty exclusive. Additionally, none of the shrimp SV sources on the record provide data that is contemporaneous with the POR. Thus, this factor does not favor one data set over the other.

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

#### Date of Sale

The Minh Phu Group, Fimex VN, and Thuan Phuoc, all reported the invoice date as the date of sale because they claim that for their U.S. sales of subject merchandise made during the POR, the material terms of sale were established based on the invoice date. In this case, as the Department found no evidence contrary to their claims that invoice date was the appropriate date of sale, the Department used invoice date as the date of sale for these preliminary results in accordance with 19 CFR 351.401(i).<sup>95</sup>

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<sup>91</sup> See VN Shrimp AR8 Final at Comments 1 and 3.

<sup>92</sup> Id., at Comment 3.

<sup>93</sup> See Allied Pacific Food (Dalian) Co. Ltd., v. United States, 716 F. Supp. 2d 1339, 1344-1345 (CIT 2010). See also VN Shrimp AR8 Final at Comment 1.

<sup>94</sup> See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 74 FR 47191 (September 15, 2009), and accompanying Issues and Decision Memorandum at Comment 6.

<sup>95</sup> See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10.

## Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates individual dumping margins by comparing weighted-average NVs to weighted-average EPs or Constructed Export Prices (“CEPs”) (the average-to-average (“A-A”) method) unless the Secretary determines that another method is appropriate in a particular situation. In antidumping duty investigations, the Department examines whether to compare weighted-average NVs to the EPs or CEPs of individual transactions (the average-to-transaction (“A-T”) method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department’s examination of this question in the context of administrative reviews, the Department finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in antidumping duty investigations.<sup>96</sup> In recent investigations and reviews, the Department applied a “differential pricing” analysis to determine whether application of A-T comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.<sup>97</sup> The Department finds that the differential pricing analysis may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department’s additional experience with addressing the potential masking of dumping that can occur when the Department uses the A-A method in calculating weighted-average dumping margins.<sup>98</sup>

The differential pricing analysis used in these preliminary results requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differs significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the A-A method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer code. Regions are defined using the reported destination code (e.g., zip codes or cities) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region, and time period, that the

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<sup>96</sup> See Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010-2011, 77 FR 73415 (December 10, 2012).

<sup>97</sup> See, e.g., Hardwood and Decorative Plywood From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 58273 (September 23, 2013). Differential pricing was also used in the recent antidumping duty administrative review of certain activated carbon from the People’s Republic of China: Certain Activated Carbon From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 26748 (May 8, 2013), unchanged in Certain Activated Carbon From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 70533 (November 26, 2013) and accompanying Issues and Decisions Memorandum at Comments 2-4.

<sup>98</sup> Id.

Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the net prices to a particular purchaser, region, or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant, and the sales are considered to have passed the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (i.e., 0.8) threshold. Next, the “ratio test” – the second stage of the analysis – assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the A-T method to all sales as an alternative to the A-A method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an A-T method to those sales identified as passing the Cohen’s *d* test as an alternative to the A-A method, and application of the A-A method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the A-A method.

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

## Results of the Differential Pricing Analysis

Based on the results of the differential pricing analysis, the Department finds that for the Minh Phu Group, Fimex VN, and Thuan Phuoc, 64.2, 54.2, and 56.2 percent, respectively, of the respondents' U.S. sales confirm the existence of a pattern of EPs and CEPs for comparable merchandise that differ significantly among purchasers, regions, or time periods.<sup>99</sup> As such, the Department finds that these results support consideration of an alternative to the A-A method. When comparing the weighted-average dumping margins calculated using the standard A-A method for all U.S. sales and the appropriate alternative comparison method, there is no meaningful difference in the results for Fimex VN. Accordingly, the Department has determined to use the A-A method in making comparisons of EP and NV for all of Fimex VN's sales. However, for the Minh Phu Group and Thuan Phuoc, when comparing the weighted-average dumping margins calculated using the standard A-A method for all U.S. sales and the appropriate alternative comparison method, there is a meaningful difference in the results. Accordingly, the Department has determined to apply the A-T method to those sales identified as passing the Cohen's *d* test and the A-A method for those sales identified as not passing the Cohen's *d* test, in making comparisons of CEP and EP and NV for the Minh Phu Group and Thuan Phuoc's sales.

### U.S. Price

#### *Export Price*

In accordance with section 772(a) of the Act, the Department calculated EP for sales to the United States for Fimex VN, Thuan Phuoc, and a portion of sales to the United States for the Minh Phu Group because the first sale to an unaffiliated party was made before the date of importation and the use of CEP was not otherwise warranted. The Department calculated EP based on the sales price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, as appropriate, the Department deducted from the sales price certain foreign inland freight, lift, containerization, and international movement costs. Because the inland freight, lift, and containerization services were either provided by a NME vendor or paid for using an NME currency, the Department based the deduction of these charges on SVs. For international freight provided by an ME provider and paid in U.S. dollars, the Department used the actual cost per kilogram of the freight.<sup>100</sup>

#### *Constructed Export Price*

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

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<sup>99</sup> See Memorandum Through Catherine Bertrand, Program Manager, Office V, from Irene Gorelik, Senior International Trade Analyst, Office V, re: "Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Analysis for the Preliminary Results for the Minh Phu Group," dated concurrently with this preliminary decision memorandum.

<sup>100</sup> See "Factor Valuations" section below for further discussion.

foreign movement expenses, international movement expenses, U.S. movement expenses, and appropriate selling adjustments, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, the Department also deducted those selling expenses associated with economic activities occurring in the United States. The Department deducted, where appropriate, commissions, inventory carrying costs, interest revenue, credit expenses, warranty expenses, and indirect selling expenses. Where foreign movement expenses, international movement expenses, or U.S. movement expenses were provided by NME service providers or paid for in an NME currency, the Department valued these services using SVs.<sup>101</sup> For those expenses that were provided by an ME provider and paid for in an ME currency, the Department used the reported expense. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for each company, see the company-specific analysis memoranda, dated concurrently with these preliminary results.

### Normal Value

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

### Factor Valuations

In accordance with section 773(c) of the Act, for subject merchandise produced by the Minh Phu Group, Fimex VN, and Thuan Phuoc, the Department calculated NV based on the FOPs reported by these companies for the POR. The Department used Bangladeshi import data and other publicly available Bangladeshi sources in order to calculate SVs for the majority of the respondents' FOPs. Instances in which the Department used data from a country other than Bangladesh are described further below. To calculate NV, the Department multiplied the reported per-unit FOP quantities by publicly available SVs. The Department's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.<sup>102</sup>

As appropriate, the Department adjusted input prices by including freight costs to render them delivered prices. Specifically, the Department added to Bangladeshi import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where it relied on an import value. This adjustment is in accordance with the decision of the Federal Circuit in Sigma Corp. v. United States, 117 F.3d 1401, 1408 (Fed. Cir. 1997). Additionally, where necessary, the Department

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<sup>101</sup> Id.

<sup>102</sup> See, e.g., Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 48195 (August 18, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

adjusted SVs for inflation and exchange rates, taxes, and the Department converted all applicable FOPs to a per-kilogram basis.

Furthermore, with regard to the Bangladeshi import-based SVs, we disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from India, Indonesia, South Korea, and Thailand may have been subsidized because we have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies.<sup>103</sup> Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.<sup>104</sup> Further, guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized.<sup>105</sup> Rather, the Department bases its decision on information that is available to it at the time it makes its determination. Additionally, consistent with our practice, we disregarded prices from NME countries and excluded imports labeled as originating from an "unspecified" country from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.<sup>106</sup> Therefore, we have not used prices from these countries either in calculating the Bangladeshi import-based SVs or in calculating ME input values.

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (i.e., not insignificant quantities) and pays in an ME currency, the Department uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping and/or subsidization.<sup>107</sup> Where the Department finds ME purchases to be of significant quantities (i.e., 85 percent or more), in accordance with our statement of policy as outlined in Antidumping Methodologies: Market Economy Inputs,<sup>108</sup> the Department uses the actual purchase prices to value the inputs. Alternatively, when the volume of an NME firm's purchases of an input from ME suppliers

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<sup>103</sup> See, e.g., Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination; 2011-2012, 78 FR 42492 (July 16, 2013), and accompanying Issues and Decision Memorandum at 7-19; see also Certain Lined Paper Products From Indonesia: Final Results of the Expedited Sunset Review of the Countervailing Duty Order, 76 FR 73592 (November 29, 2011), and accompanying Issues and Decision Memorandum at 1; see also Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2012, 79 FR 46770 (August 11, 2014), and accompanying Issues and Decision Memorandum at 4; see also Certain Frozen Warmwater Shrimp From Thailand: Final Negative Countervailing Duty Determination, 78 FR 50379 (August 19, 2013), and accompanying Issues and Decision Memorandum at IV.

<sup>104</sup> See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 7.

<sup>105</sup> See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988); see also Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China, 72 FR 30758, 30763 (June 4, 2007), unchanged in Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 60632 (October 25, 2007).

<sup>106</sup> See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates From the People's Republic of China, 69 FR 75294, 75300 (December 16, 2004), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China, 70 FR 24502 (May 10, 2005).

<sup>107</sup> See, e.g., Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27366 (May 19, 1997).

<sup>108</sup> See ME Inputs Final Rule, 78 FR 46799 (August 2, 2013).

during the period is below 85 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department will weight-average the ME purchase price with an appropriate SV, according to their respective shares of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption.<sup>109</sup> When a firm has made ME input purchases that may have been dumped or subsidized, are not bona fide, or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair determination of whether valid ME purchases meet the 85 percent threshold.<sup>110</sup> The Department addresses respondents' reported ME purchases of inputs during the POR that were paid for in ME currency within the Prelim SV Memo and in their respective preliminary analysis memoranda, if applicable.

The shrimp values within the NACA study conducted by an intergovernmental agency affiliated with the UN FAO, submitted by VASEP, are compiled from actual pricing records kept by Bangladeshi farmers, traders, depots, agents, and processors, are count-specific, and publicly available. Therefore, to value the main input, head-on, shell-on shrimp, the Department used data contained in the NACA study.<sup>111</sup>

Minh Phu Group, Fimex VN, and Thuan Phuoc, each requested that the Department excuse reporting of FOPs or purchase price data for certain purchased, farmed or toll processed shrimp. Each of these requests and the Department's responses are described below:

#### *Minh Phu Group's Exclusion Request*

On December 11, 2014, the Minh Phu Group sent a letter to the Department requesting to be excused from reporting purchase price data for certain purchases of frozen headless shell-on shrimp from ME sources.<sup>112</sup> On December 12, 2014, the Department notified the Minh Phu Group that due to the minor quantity of purchases of frozen shrimp compared to purchases of raw, fresh shrimp during the POR, the Minh Phu Group is excused from reporting purchase price data.<sup>113</sup> Specifically, the Department did not require the Minh Phu Group to report purchase price data for its ME purchases of frozen headless shell-on shrimp.<sup>114</sup> Further, we also granted Minh Phu Group's request to exclude the upstream FOPs for fresh shrimp obtained from its affiliated farms.<sup>115</sup>

#### *Fimex VN's Exclusion Request*

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<sup>109</sup> Id.

<sup>110</sup> Id.

<sup>111</sup> For a detailed explanation of the Department's valuation of shrimp, see Memorandum to Catherine Bertrand, Program Manager, Office V, from Irene Gorelik, Senior International Trade Analyst, Office V, re: "Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results," dated concurrently with this preliminary decision memorandum, ("Prelim SV Memo").

<sup>112</sup> See Minh Phu Group's Request for Exclusions, dated December 11, 2014.

<sup>113</sup> See the Department's Letter to Minh Phu Group, dated December 12, 2014.

<sup>114</sup> Id.

<sup>115</sup> See the Department's Letter to Minh Phu Group dated December 2, 2014.

On December 11, 2014, Fimex VN sent a letter to the Department requesting to be excused from reporting certain FOP and purchase price data for purchases of frozen headless shell-on shrimp from ME and Vietnamese sources.<sup>116</sup> On December 12, 2014, the Department notified Fimex VN that due to the minor quantity of purchases of frozen shrimp compared to purchases of raw, fresh shrimp during the POR, Fimex VN is excused from reporting certain FOP and purchase price data.<sup>117</sup> Specifically, the Department did not require Fimex VN to report certain FOP and purchase price data for its Vietnamese and ME purchases of frozen headless shell-on shrimp.<sup>118</sup> In its December 11, 2014 letter, Fimex VN also requested that it be excluded from reporting its farming FOP.<sup>119</sup> The Department denied this request.<sup>120</sup>

#### *Thuan Phuoc's Exclusion Request*

On December 5, 2014, Thuan Phuoc sent a letter to the Department requesting to be excused from reporting certain FOP and purchase price data for purchases of frozen headless shell-on shrimp from ME and Vietnamese sources.<sup>121</sup> Additionally, Thuan Phuoc requested that it be excused from reporting FOP data for its toll processors.<sup>122</sup> On December 12, 2014, the Department notified Thuan Phuoc that due to the minor quantity of purchases of frozen shrimp compared to purchases of raw, fresh shrimp during the POR, Thuan Phuoc is excused from reporting certain FOP and purchase price data. Additionally, on December 12, 2014, the Department denied Thuan Phuoc's request to be excused from reporting FOP data for its toll processors of frozen shrimp. On December 22, 2014, Thuan Phuoc requested that it be excused from reporting its toll processor which produced the smallest quantity of frozen shrimp.<sup>123</sup> On December 23, 2014, the Department notified Thuan Phuoc that it was excused from reporting FOP data for its smallest producer.<sup>124</sup>

In the Department's responses to each of the respondent's "exclusion" requests, we noted that, in accepting the granted exclusions (i.e., upstream FOP data for purchased frozen shrimp or purchases prices from all imported purchased frozen shrimp), the Department would apply an appropriate facts available to account for the value of the reported quantities of purchased frozen shrimp.<sup>125</sup> Where a respondent reported tolling activities, we excused that respondent, in part, from obtaining and reporting the upstream FOP data for the frozen shrimp. Where a respondent reported NME purchases of frozen shrimp, we, likewise, excused that respondent from obtaining and reporting the upstream FOP data for the frozen shrimp. Finally, where a respondent reported

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<sup>116</sup> See Fimex VN's Request for Exclusions, dated December 11, 2014.

<sup>117</sup> See the Department's Letter to Fimex VN, dated December 12, 2014.

<sup>118</sup> Id.

<sup>119</sup> See Fimex VN's Request for Exclusions, dated December 11, 2014.

<sup>120</sup> See the Department's Letter to Fimex VN, dated December 12, 2014.

<sup>121</sup> See Thuan Phuoc's Request for Exclusions, dated December 5, 2014.

<sup>122</sup> Id.

<sup>123</sup> See Thuan Phuoc's Request, dated December 22, 2014.

<sup>124</sup> See the Department's Letter to Thuan Phuoc, dated December 23, 2014.

<sup>125</sup> See, e.g., the Department's Letter to Minh Phu Group, dated December 12, 2014; the Department's Letter to Fimex VN, dated December 12, 2014; and the Department's Letter to Thuan Phuoc, dated December 23, 2014.



ME purchases of frozen shrimp, none had usable purchase prices to value the frozen shrimp.<sup>126</sup> Consequently, in accordance with section 776(a)(1) of the Act, as facts available to value the quantity of frozen shrimp that the respondents purchased and re-processed for production of subject merchandise, in lieu of: 1) the upstream FOPs used to produce the purchased frozen shrimp and 2) purchase prices, we applied an SV for frozen shrimp to the respondents' respective reported quantity of purchased frozen shrimp.<sup>127</sup> The SV we preliminarily applied to the respondents' respective reported quantities of frozen shrimp purchases is discussed in detail in the Prelim SV Memo and the company-specific analysis memoranda.

The Department used United Nations ComTrade Statistics, provided by the UN Department of Economic and Social Affairs' Statistics Division,<sup>128</sup> as its primary source of Bangladeshi SV data to value nearly all other raw materials, certain energy inputs and packing material inputs that the respondents used to produce subject merchandise during the POR, except where listed below. The data represent cumulative values for the calendar year 2007, 2010, and 2011 for inputs classified by the Harmonized Commodity Description and Coding System number. For each input value, we used the average value per unit for that input imported into Bangladesh from all countries that the Department has not previously determined to be NME countries. Import statistics from countries that the Department determines to be countries which subsidized exports (i.e., India, Indonesia, South Korea, and Thailand) and imports from unspecified countries also were excluded in the calculation of the average value. We inflated the value using the POR average CPI rate.

For three inputs, shrimp larvae, frozen shrimp, and byproduct scrap, the Department was unable to locate any SV within UN ComTrade for Bangladesh, nor within any other Bangladeshi source. As noted above, while our preference is to value factors in a single surrogate country when possible; our decision necessarily is guided by considering the best available information on the record.<sup>129</sup> While we did not select India as the primary surrogate country, India was determined to be at the same level of economic development as Vietnam and was included on the SC list. As a result, where we could not obtain Bangladeshi values for larvae, frozen shrimp, and scrap, we looked to Indian sources for appropriate SV for shrimp larvae, frozen shrimp, and scrap byproduct. With respect to shrimp larvae, consumed in the farming process of whole shrimp, as reported by Fimex, the Department relied on a SV obtained from an Indian company, Sharat Industries' 2009-2010 Annual Report. The Department previously relied on this same source in PRC Shrimp AR5 Final Results to obtain a shrimp larvae SV.<sup>130</sup> We inflated the shrimp larvae SV using the POR average PPI rate. With respect to frozen shrimp, the Department obtained a contemporaneous SV for frozen shrimp from Indian import statistics in the Global Trade Atlas.

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<sup>126</sup> The ME purchases either: 1) did not meet the 85 percent threshold established in Use of Market Economy Input Prices in Nonmarket Economy Proceedings, 78 FR 46799 (August 2, 2013) ("ME Inputs Final Rule"), or 2) were purchased from countries that maintain broadly available, non-industry-specific export subsidies.

<sup>127</sup> See the company-specific analysis memoranda, dated concurrently with these preliminary results.

<sup>128</sup> This can be accessed online at: <http://www.unstats.un.org/unsd/comtrade/>.

<sup>129</sup> See, e.g., High Pressure Steel Cylinders From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 77 FR 26739 (May 7, 2012), and the accompanying I&D Memo at Comments I and II.

<sup>130</sup> See Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 76 FR 51940 (August 19, 2011) ("PRC Shrimp AR5 Final Results") and accompanying Issues and Decision Memorandum at Comment 3. See also Prelim SV Memo.

With respect to scrap byproduct, the Department obtained a contemporaneous SV for scrap from Indian import statistics in the Global Trade Atlas.

The Department valued water using publicly available Bangladeshi data from the Dhaka Water Supply and Sewage Authority, which is contemporaneous with the POR.<sup>131</sup> We valued brokerage and handling costs incurred at the domestic port using a price list of export procedures necessary to export a standardized cargo of goods in Bangladesh. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in Bangladesh that is published in Doing Business 2014: Bangladesh by the World Bank.<sup>132</sup> This World Bank report gathers information concerning the cost to transport 10,000 kilograms in a 20-foot container. The brokerage and handling SV is calculated based on the itemized charges for various export procedures such as “Documents Preparation” valued at \$225/10,000 kilograms, “Customs clearance and technical control” valued at \$150/10,000 kilograms, and “Ports and Terminal Handling” valued at \$450/10,000 kilograms. The total of all itemized charges is \$825/10,000 kilograms. We valued brokerage and handling specific to each respondent’s brokerage and handling expense incurred.<sup>133</sup>

We used Bangladeshi transport information in order to value the freight-in cost of the raw materials. The Department determined the best available information for valuing truck and boat freight to be from Bangladesh Statistical Yearbook for 2012. We inflated the value using the POR average CPI rate. We valued ocean freight using data obtained from the Descartes Carrier Rate Retrieval Database (Descartes), accessed via <http://descartes.com>, which publishes international ocean freight rates offered by numerous carriers.<sup>134</sup> These rates are publicly available and cover a wide range of shipping rates which are reported on a daily basis. We did not inflate or deflate the rate cited in this survey because it is contemporaneous with the POR.

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings.<sup>135</sup> In Labor Methodologies, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 5B: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics (“Yearbook”). However, in this case, the Department notes the ILO does not contain labor data for Bangladesh.

The record contains a labor wage rate for shrimp processing in Bangladesh, published by the Bangladesh Bureau of Statistics (“BBS”). When selecting possible SVs for use in an NME proceeding, the Department’s preference is to use SVs that are publicly available, broad market averages, contemporaneous with the POR, specific to the input in question, and exclusive of

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<sup>131</sup> See Prelim SV Memo.

<sup>132</sup> Id.

<sup>133</sup> Id.

<sup>134</sup> Id.

<sup>135</sup> See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092 (June 21, 2011) (“Labor Methodologies”).

taxes.<sup>136</sup> Pursuant to section 773(c)(1) of the Act, it is also the Department's practice to use the best available information to derive SVs. The Department considers several factors, including quality, specificity and contemporaneity, to determine the best available information in accordance with the Act. The Department finds this labor wage rate to be the best available information on the record from the surrogate country we selected to value factors of production. These data are publicly available, represent a broad market average, specific to the shrimp processing industry, and collected from an official Bangladeshi government source in the surrogate country that the Department selected. Therefore, we note that the BBS data are consistent with the Department's statement of policy regarding the calculation of the SV for labor. Moreover, the Department's use of the BBS for a wage rate SV has been affirmed by the CIT.<sup>137</sup> A more detailed description of the wage rate calculation methodology is provided in the Prelim SV Memo.<sup>138</sup>

To value factory overhead, selling, general, and administrative expenses ("SG&A"), and profit, the Department used the 2013-2014 financial statements of Gemini Seafood Limited ("Gemini"), a Bangladeshi producer of identical merchandise.<sup>139</sup>

#### Currency Conversion

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

#### Conclusion

We recommend applying the above methodology for these preliminary results.

✓                                            
Agree                      Disagree

Paul Piquado  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

2 MARCH 2015  
(Date)

<sup>136</sup> See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Second Administrative Review, 72 FR 13242 (March 21, 2007) and accompanying Issues and Decision Memorandum at Comment 8B.

<sup>137</sup> See Camau II, 929 F. Supp. 2d 1352, 1356 (CIT 2013).

<sup>138</sup> See Prelim SV Memo.

<sup>139</sup> Id.

## **Appendix I**

### **Companies Preliminarily Granted Separate Rates**

1. Bac Lieu Fisheries Joint Stock Company
2. Bentre Forestry and Aquaproduct Import-Export Joint Stock Company
3. C.P. Vietnam Corporation
4. Ca Mau Seafood Joint Stock Company
5. Cadovimex Seafood Import-Export and Processing Joint-Stock Company
6. Camau Frozen Seafood Processing Import Export Corporation
7. Can Tho Import Export Fishery Limited Company
8. Cuulong Seaproduct Company
9. Fine Foods Company
10. Gallant Dachan Seafood Co., Ltd.
11. Gallant Ocean (Vietnam) Co., Ltd.
12. Goldenquality Seafood Corporation
13. Hai Viet Corporation
14. Investment Commerce Fisheries Corporation
15. Kim Anh Company Ltd.
16. Minh Cuong Seafood Import Export Frozen Processing Joint Stock Co
17. Minh Hai Export Frozen Seafood Processing Joint Stock Company
18. Minh Hai Joint-Stock Seafoods Processing Company
19. Minh Phu Seafood Corporation (and its affiliates Minh Qui Seafood Co., Ltd., and Minh Phat Seafood Co., Ltd.) (collectively “Minh Phu Group”)
20. Ngoc Tri Seafood Joint Stock Company
21. Nha Trang Fisheries Joint Stock Company
22. Nha Trang Seaproduct Company
23. Phuong Nam Foodstuff Corp.
24. Quoc Viet Seaproducts Processing Trading and Import-Export Co., Ltd.
25. Sao Ta Foods Joint Stock Company
26. Soc Trang Seafood Joint Stock Company
27. Tacvan Seafoods Company
28. Tan Phong Phu Seafoods Co., Ltd.
29. Thong Thuan Company Limited
30. Thuan Phuoc Seafoods and Trading Corporation
31. UTXI Aquatic Products Processing Corporation
32. Viet Foods Co., Ltd.
33. Viet Hai Seafood Co., Ltd.
34. Viet I-Mei Frozen Foods Co., Ltd.
35. Vietnam Clean Seafood Corporation

## Appendix II

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

1. An Giang Coffee JSC
2. Agrex Saigon
3. Amanda Foods (Vietnam) Ltd.  
Amanda Seafood Co., Ltd.
4. Amanda Foods (Vietnam) Ltd. Ngoc Tri Seafood Company (Amanda's affiliate)
5. Anvifish Joint Stock Co.
6. Binh An Seafood Joint Stock Company
7. Camimex Seafood Company Limited
8. Ca Mau Foods and Fishery Export Joint Stock Company
9. Can Tho Agricultural and Animal Products Import Export Company, aka,  
Can Tho Agricultural Products, aka  
Can Tho Agricultural and Animal Products Imex Company, aka  
CATACO, aka  
Can Tho Agricultural and Animal Product Import Export Company ("CATACO"), aka  
Can Tho Agricultural and Animal Product Import Export Company ("CATACO") and/or  
Can Tho Agricultural and Animal Products Import Export Company ("CATACO"), aka  
Can Tho Agricultural & Animal Product Import Export Company ("CATACO") and/or Can  
Tho Agricultural and Animal Products Import Export Company ("CATACO")
10. Can Tho Import Export Seafood Joint Stock Company, aka  
CASEAMEX
11. Cau Tre Enterprise (C.T.E.)
12. Cautre Export Goods Processing Joint Stock Company
13. Chang Shin Vietnam Co., Ltd.
14. CL Fish Co., Ltd. (Cuu Long Fish Company)
15. Cautre Export Goods Processing Joint Stock Company
16. Coastal Fisheries Development Corporation  
Coastal Fisheries Development Corporation ("COFIDEC")  
Coastal Fisheries Development Corporation ("Cofidec")  
Coastal Fishery Development  
COFIDEC
17. D & N Foods Processing (Danang Company Ltd.)
18. Danang Seaproduct Import-Export Corporation ("Seaprodex Danang") (and its affiliates)  
Danang Seaproducts Import Export Corporation  
Danang Seaproducts Import Export Corporation ("Seaprodex Danang")  
Danang Seaproducts Import-Export Corporation (and its affiliate, Tho Quang Seafood  
Processing and Export Com-pany) (collectively "Seaprodex Danang")  
Tho Quang  
Tho Quang Co.  
Tho Quang Seafood Processing and Export Company  
Tho Quang Seafood Processing & Export Company  
Seaprodex Danang
19. Duy Dai Corporation

20. Gallant Ocean (Quang Ngai) Co., Ltd.
21. Gn Foods
22. Hai Thanh Food Company Ltd.
23. Hai Vuong Co., Ltd.
24. Hoa Phat Aquatic Products Processing And Trading Service Co., Ltd.
25. Hoang Hai Company Ltd.
26. Hua Heong Food Industries Vietnam Co. Ltd.
27. Interfood Shareholding Co.
28. Khanh Loi Seafood Factory
29. Kien Long Seafoods Co. Ltd.
30. Luan Vo Fishery Co., Ltd.
31. Lucky Shining Co., Ltd.
32. Minh Chau Imp. Exp. Seafood Processing Co., Ltd.
33. Mp Consol Co., Ltd.
34. Ngoc Chau Co., Ltd. and/or Ngoc Chau Seafood Processing Company
35. Ngoc Sinh
  - Ngoc Sinh Seafoods Processing and Trading Enterprise
  - Ngoc Sinh Fisheries
  - Ngoc Sinh Private
  - Ngoc Sinh Private Enterprises
  - Ngoc Sinh Seafood Processing Company
  - Ngoc Sinh Seafood Trading & Processing
  - Ngoc Sinh Seafood Trading & Processing Enterprise
  - Ngoc Sinh Seafoods
  - Ngoc Sinh Seafoods (Private Enterprise)
  - Ngoc Sinh Seafoods Processing and Trading Enterprises
36. Ngo Bros Seaproducts Import-Export One Member Company Limited (“Ngo Bros”)
37. Quang Ninh Export Aquatic Products Processing Factory
38. Quang Ninh Seaproducts Factory
39. S.R.V. Freight Services Co., Ltd.
40. Sustainable Seafood
41. Tai Kim Anh Seafood Joint Stock Company
42. Tan Thang Loi Frozen Food Co., Ltd.
43. Thanh Doan Seaproducts Import & Export Processing Joint-Stock Company (THADIMEXCO)
44. Thanh Hung Frozen Seafood Processing Import Export Co., Ltd.
45. Thanh Tri Seafood Processing Co. Ltd.
46. The Quang Co.
47. The Quang Seafood Processing & Export Company
48. Thong Thuan-Cam Ranh Seafood Joint Stock Company
49. Tien Tien Garment Joint Stock Company
50. Tithi Co., Ltd.
51. Trang Corporation
52. Viet Cuong Seafood Processing Import Export Joint-Stock Company
  - Viet Cuong Seafood Processing Import Export
53. Vietnam Northern Viking Technologies Co. Ltd.

- 54. Vinatex Danang
- 55. Vinh Hoan Corp.
- 56. Vinh Loi Import Export Company (“Vimexco”), aka  
Vinh Loi Import Export Company (“VIMEX”), aka  
VIMEXCO aka  
VIMEX aka  
Vinh Loi Import/Export Co., aka  
Vinhloi Import Export Company aka  
Vinh Loi Import-Export Company  
Vinh Loi Import Export Company (“Vimexco”) and/or Vinh Loi Import Export Company  
 (“VIMEX”)