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August 31, 2017

**MEMORANDUM TO:** Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance

**FROM:** James Maeder  
Senior Director  
performing the duties of Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Certain Frozen Fish Fillets from the Socialist Republic of Vietnam:  
Decision Memorandum for the Preliminary Results, Preliminary  
Determination of No Shipments, and Partial Rescission of the  
2015-2016 Antidumping Duty Administrative Review

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## SUMMARY

The Department of Commerce (the Department) is conducting the 13<sup>th</sup> administrative review of the antidumping duty (AD) order on certain frozen fish fillets (fish fillets) from the Socialist Republic of Vietnam (Vietnam).<sup>1</sup> The Department preliminarily determines that the application of facts available is warranted for mandatory respondent GODACO Seafood Joint Stock Company (GODACO). Furthermore, the Department preliminarily determines that the application of facts available with an adverse inference is warranted for GODACO because it has not cooperated to the best of its ability. The Department also preliminarily determines that mandatory respondent Golden Quality Seafood Corporation (Golden Quality) does not qualify for a separate rate and is, therefore, considered a part of the Vietnam-Wide Entity.

If we adopt these preliminary results in the final results of the review, we will instruct U.S. Customs and Border Protection (CBP) to assess ADs on all appropriate entries of subject merchandise during the POR. We invite interested parties to comment on these preliminary results. We expect to issue final results no later than 120 days from the date of publication of this notice pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

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



## *Case History*

On August 5, 2016, the Department published in the *Federal Register* an opportunity to request an administrative review on fish fillets from Vietnam.<sup>2</sup> On August 31, 2016, the Department received a request from the petitioners<sup>3</sup> to conduct an administrative review on 61 companies.<sup>4</sup> In August 2016, 19 companies self-requested an administrative review.<sup>5</sup> No party requested a review of the Vietnam-wide entity. On October 14, 2016, the Department initiated the 13<sup>th</sup> administrative review of fish fillets from Vietnam with respect to 61 companies.<sup>6</sup> On December 15, 2016, Vinh Hoan Corporation (Vinh Hoan) withdrew its request for review.<sup>7</sup> On the same day, the petitioners withdrew their request with respect to Vinh Hoan, Van Duc Food Export Joint Stock Company, and Van Duc Tien Giang Food Export Company.<sup>8</sup> On January 12, 2017, Bien Dong Seafood Co., Ltd. (Bien Dong) withdrew its request for review.<sup>9</sup> On the same day the petitioners withdrew their request for review, with respect to Bien Dong and 47 other companies.<sup>10</sup>

Because of the large number of exporters involved in this administrative review, the Department limited the number of respondents individually examined pursuant to section 777A(c)(2) of the Act and selected the largest exporters, Golden Quality Seafood Corporation (Golden Quality) and GODACO as mandatory respondents.<sup>11</sup> On February 24, 2017, the Department issued its standard AD questionnaire to Golden Quality<sup>12</sup> and GODACO.<sup>13</sup> On February 24, 2017, Golden Quality submitted a letter stating it will not participate in the review.<sup>14</sup> On March 7, 2017, Golden Quality additionally submitted a letter stating it will not answer the Department's antidumping duty questionnaire.<sup>15</sup>

On April 11, 2017, the Department fully extended the preliminary results until August 31, 2017.<sup>16</sup>

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<sup>2</sup> See *Antidumping or Countervailing Duty Order Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 81 FR 51850 (August 5, 2016).

<sup>3</sup> The Catfish Farmers of America and individual U.S. catfish processors, (collectively, the petitioners).

<sup>4</sup> See the petitioners' August 31, 2016, submission.

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

<sup>6</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 71061 (October 14, 2016) (*Initiation Notice*); see also Appendix I for the complete list of all companies upon which the Department initiated an administrative review.

<sup>7</sup> See Vinh Hoan's withdrawal of request, dated December 15, 2016.

<sup>8</sup> See the petitioners' withdrawal of request on Vinh Hoan dated December 15, 2016.

<sup>9</sup> See Bien Dong's withdrawal of request, dated January 12, 2017.

<sup>10</sup> See the petitioners' withdrawal of request on Bien Dong, dated January 12, 2017, and 47 other companies dated January 12, 2017.

<sup>11</sup> See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Selection of Respondents for Individual Review*, dated February 22, 2017 (Respondent Selection Memo).

<sup>12</sup> See Department's questionnaire to Golden Quality, dated February 24, 2017.

<sup>13</sup> See Department's questionnaire to GODACO, dated February 24, 2017.

<sup>14</sup> See Golden Quality's submission, dated February 24, 2017.

<sup>15</sup> See Golden Quality's submission, dated March 7, 2017.

<sup>16</sup> See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Deadline for Preliminary Results of 2015-2016 Administrative Review*, dated April 11, 2017.

## SCOPE OF THE ORDER

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

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

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

The subject merchandise will be hereinafter referred to as frozen “basa” and “tra” fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under tariff article code 0304.62.0020 (Frozen Fish Fillets of the species *Pangasius*, including basa and tra), and may enter under tariff article codes 0305.59.0000, 1604.19.2100, 1604.19.3100, 1604.19.4100, 1604.19.5100, 1604.19.6100 and 1604.19.8100 of the Harmonized Tariff Schedule of the United States (“HTSUS”).<sup>17</sup>

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

## DISCUSSION OF THE METHODOLOGY

### *Affiliations*

Section 771(33) of the Act provides that:

The following persons shall be considered to be ‘affiliated’ or ‘affiliated persons’:

- (A) Members of a family, including brothers and sisters (whether by the whole or half-blood), spouse, ancestors, and lineal descendants.
- (B) Any officer or director of an organization and such organization.
- (C) Partners.
- (D) Employer and employee.

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<sup>17</sup> Until June 30, 2004, these products were classifiable under HTSUS 0304.20.6030, 0304.20.6096, 0304.20.6043 and 0304.20.6057. From July 1, 2004, until December 31, 2006, these products were classifiable under HTSUS 0304.20.6033. From January 1, 2007, until December 31, 2011, these products were classifiable under HTSUS 0304.29.6033. On March 2, 2011, the Department added two HTSUS numbers at the request of U.S. Customs and Border Protection (“CBP”) that the subject merchandise may enter under: 1604.19.2000 and 1604.19.3000, which were changed to 1604.19.2100 and 1604.19.3100 on January 1, 2012. On January 1, 2012, the Department added the following HTSUS numbers at the request of CBP: 0304.62.0020, 0305.59.0000, 1604.19.4100, 1604.19.5100, 1604.19.6100 and 1604.19.8100.

- (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.
- (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.
- (G) Any person who controls any other person and such other person.

Additionally, section 771(33) of the Act states that: “For purposes of this paragraph, 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.” Finally, according to 19 CFR 351.401(f)(1), two or more affiliated companies may be treated as a single entity for AD purposes if: (1) the producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (2) there is a significant potential for manipulation of price or production.<sup>18</sup>

#### *Hung Vuong Group and QVD Companies Affiliations/Single Entity*

In the last review, the Department found the Hung Vuong Group (HVG)<sup>19</sup> were affiliated with certain related entities, pursuant to sections 771(33)(A), (E) and (F) of the Act.<sup>20</sup> The Department also determined to treat the QVD Companies<sup>21</sup> as a single entity for purposes of that review.<sup>22</sup> For these preliminary results, because HVG and QVD submitted that there were no changes to the facts that supported the decision in the last review, we preliminarily determine to treat HVG as a single entity, and the QVD Companies as a single entity.<sup>23</sup>

#### ***Partial Rescission***

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

As noted above, between December 15, 2016, and January 12, 2017, Bien Dong, Vinh Hoan and the petitioners withdrew their requests for review. Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation. Vinh Hoan, Bien Dong, and the petitioners’ respective withdrawals of their review requests were submitted within the deadline set forth under 19 CFR 351.213(d)(1). Thus, all administrative review requests have been timely withdrawn for 49 companies. Accordingly, the

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<sup>18</sup> See also 19 CFR 351.401(f)(2).

<sup>19</sup> HVG includes: An Giang Fisheries Import & Export Joint Stock Company (Agifish), Asia Pangasius Company Limited (Asia Pangasius), Europe Joint Stock Company, Hung Vuong Joint Stock Company, Hung Vuong Mascato Company Limited, Hung Vuong – Vinh Long Co., Ltd., and Hung Vuong – Sa Dec Co., Ltd.

<sup>20</sup> See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review; 2014-2015, 82 FR 15181 (March 27, 2017) (AR12 Final).

<sup>21</sup> These include QVD Food Co., Ltd., QVD Dong Thap Food Co., Ltd. (QVD DT) and Thuan Hung Co., Ltd. (Thufico).

<sup>22</sup> See AR12 Final at Comment 4.

<sup>23</sup> See HVG submissions dated May 26, 2017, and August 14, 2017; see also QVD submission dated May 26, 2017.

Department is rescinding this review, in part, with respect to these 49 entities, in accordance with 19 CFR 351.213(d)(1).<sup>24</sup>

Golden Quality also submitted a withdrawal request.<sup>25</sup> However, this request was not submitted within the deadline set forth under 19 CFR 351.213(d)(1), and, thus, is untimely. Accordingly, the review will continue with regard to Golden Quality.

### ***Selection of the Respondents***

Section 777A(c)(1) of the Act directs the Department to calculate an individual weighted-average dumping margin for each known exporter or producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters and producers if it is not practicable to make individual weighted-average dumping margin determinations because of the large number of exporters and producers involved in the review. Moreover, on June 29, 2015, the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and CVD law, including amendments to section 782(a) of the Act was signed into law.<sup>26</sup> The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this review.<sup>27</sup> When the Department limits the number of exporters examined in a review pursuant to section 777A(c)(2) of the Act, section 782(a) of the Act directs the Department to calculate individual weighted-average dumping margins for companies not initially selected for individual examination that voluntarily provide the information requested of the mandatory respondents if: (1) the information is submitted by the due date specified for the mandatory respondents and (2) the number of such companies subject to the review is not so large that any additional individual examination of such exporters or producers would be unduly burdensome to the administering authority and inhibit the timely completion of the review. Under Section 782(a) of the Act as recently amended by the TPEA, in determining whether it would be unduly burdensome to examine a voluntary respondent, the Department may consider: 1) the complexity of the issues or information presented in the proceeding, including questionnaires and any responses thereto; 2) any prior experience of the Department in the same or similar proceedings; 3) the total number of investigations or reviews being conducted by the Department; and 4) such other factors relating to the timely completion of these investigations and reviews.

As noted above, because of the large number of exporters involved in this administrative review, the Department limited the number of respondents individually examined pursuant to section 777A(c)(2) of the Act and on February 22, 2017, the Department determined that it was not

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<sup>24</sup> See Appendix III for a full list of rescinded companies.

<sup>25</sup> See Golden Quality's February 24, 2017, submission.

<sup>26</sup> See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (TPEA). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

<sup>27</sup> *Id.*, 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

practicable to examine more than two respondents in the instant administrative review.<sup>28</sup> Therefore, in accordance with section 777A(c)(2)(B) of the Act, the Department selected for individual examination the two exporters, that were still subject to the review, accounting for the largest volume of frozen fish fillets exported from Vietnam during the POR based on CBP data. The Department also noted that, if it received timely voluntary responses in accordance with section 782(a) of the Act and 19 CFR 351.204(d), it would evaluate the circumstances at that time in deciding whether to select an additional respondent for examination.<sup>29</sup>

As noted above, on February 22, 2017, the Department selected, for individual examination as mandatory respondents in this proceeding, the two largest exporters of subject merchandise during the POR that were still subject to the review, Golden Quality and GODACO.<sup>30</sup> With regard to voluntary treatment, on October 27, 2016, Hoang Long requested voluntary respondent status.<sup>31</sup> Hoang Long also submitted timely responses to the Department's questionnaire issued to the respondents selected for individual review.<sup>32</sup> However, given the Department's resource constraints,<sup>33</sup> we are not able to individually examine Hoang Long.

### ***Preliminary Determination of No Shipments***

On November 10, 2016, Saigon-Mekong Fishery Co., Ltd. (SAMEFICO) submitted its no shipments certification. On November 10, 2016, QVD Food Co., Ltd. (QVD), submitted its no shipments certification. On May 26, 2017, the Department issued QVD a supplemental questionnaire to clarify whether the certification was also applicable to entities the Department had collapsed in prior reviews, *i.e.*, QVD Dong Thap Food Co., Ltd. (QVD DT) and Thuan Hung Co., Ltd. (Thufico).<sup>34</sup> On June 2, 2017, QVD responded that the no shipments certification applied to "all members of the QVD entity as defined by the Department in these reviews: QVD Food Co., Ltd., QVD Dong Thap Food Co., Ltd. (QVD DT) and Thuan Hung Co., Ltd. (Thufico)."<sup>35</sup> The Department confirmed by examining the CBP data that SAMEFICO and the QVD collapsed entity, had no entries within the POR.<sup>36</sup> The Department also issued an instruction to the U.S. Customs and Border Protection (CBP) asking for any entry activity

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<sup>28</sup> See Respondent Selection Memo.

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

<sup>30</sup> See Respondent Selection Memo.

<sup>31</sup> See Hoang Long's submission, dated October 27, 2016.

<sup>32</sup> See Hoang Long's submissions dated March 17, 2017, April 14, 2017, and April 10, 2017.

<sup>33</sup> See Respondent Selection Memo at 4-5, AD/CVD Office V is conducting numerous concurrent and complex investigations, administrative reviews, and/or new shipper reviews involving, *e.g.*, certain carbon and alloy steel cut-to-length plate from Japan, certain carbon and alloy steel cut-to-length plate from the PRC, steel wire garment hangers from the PRC, honey from the PRC, calcium hypochlorite from the PRC, cement from Japan, 1-hydroxyethylidene-1, 1-diphosphonic acid from the PRC, chlorinated isocyanurates from the PRC, high pressure steel cylinders from the PRC, magnesia carbon bricks from the PRC, polyester staple fiber from the PRC, potassium permanganate from the PRC, steel nails from the PRC, steel nails from the United Arab Emirates, steel threaded rod from the PRC, uncovered innerspring units from the PRC, frozen fish fillets from Vietnam, stainless steel bar from Spain, emulsion styrene-butadiene rubber from Korea, and emulsion styrene-butadiene rubber from Mexico. Office V is also concurrently conducting a multitude of other proceedings, such as sunsets and remands.

<sup>34</sup> See Letter to QVD, RE: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Supplemental Questionnaire, dated May 26, 2017.

<sup>35</sup> See QVD submission dated June 2, 2017.

<sup>36</sup> See 2015-2016 Administrative Review of the Antidumping Duty Order of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: CBP Data for Respondent Selection, dated October 20, 2016.

regarding these companies.<sup>37</sup> To date CBP has not responded with an affirmative finding of entries.

Based on the evidence on the record thus far, we preliminarily determine that SAMEFICO and the QVD collapsed entity did not have shipments during the POR. In addition, we find that it is appropriate not to rescind the review in part in this circumstance but, rather, to complete the review with respect to the above-named companies and issue appropriate instructions to CBP based on the final results of the review.<sup>38</sup> Should evidence contrary to these companies' no shipments claims arise, we will pursue the issue in accordance with our governing statute and regulations.

### ***NME Country Status***

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

### ***Separate Rates***

Pursuant to section 771(18)(C)(i) of the Act, a designation of a country as an NME remains in effect until it is revoked by the Department. Accordingly, there is a rebuttable presumption that all companies within an NME are subject to government control, and thus, should be assessed a single AD rate.<sup>40</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>41</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>42</sup> as amplified by *Silicon Carbide*.<sup>43</sup> However, if the Department determines that a company is wholly foreign-owned by individuals or companies located in a

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<sup>37</sup> See Memorandum to the File, RE: No Shipments Inquiry, dated July 24, 2017.

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

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

<sup>40</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>41</sup> See *Initiation Notice*.

<sup>42</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*"), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*), and 19 CFR 351.107(d).

<sup>43</sup> See *Silicon Carbide*, 59 FR at 22585.

market economy (ME), then a separate rate analysis is not necessary to determine whether it is independent from government control.<sup>44</sup>

### *Separate Rate Applicants and Separate Rate Certifications*

The Department received separate rate applications or certifications from the companies listed below. These are the companies for which there is an outstanding review request, which answered the Department's supplemental questionnaire, and which have entries during the POR:

1. Cadovimex II Seafood Import-Export and Processing Joint Stock Company (CADOVIMEX II)
2. Can Tho Import-Export Joint Stock Company (CASEAMEX)
3. Cuu Long Fish Joint Stock Company (CL-Fish)
4. Dai Thanh Seafoods Company Limited (DATHACO)
5. Green Farms Seafood Joint Stock Company (Green Farms)
6. Hoang Long Seafood Processing Co., Ltd. (HLS)
7. Hung Vuong Corporation (HVG)
8. NTSF Seafoods Joint Stock Company (NTSF)
9. Vinh Quang Fisheries Corporation (Vinh Quang)

Collectively, these companies above are the separate rate applicants. The Department also received separate rate information from mandatory respondent GODACO.<sup>45</sup>

#### A. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.<sup>46</sup> The evidence submitted by the separate rate applicants supports a preliminary finding of *de jure* absence of government control based on the following: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of companies.<sup>47</sup>

#### B. Absence of *De Facto* Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by, or are subject to, the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy

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

<sup>45</sup> See GODACO's March 29, 2017, submission.

<sup>46</sup> See *Sparklers*, 56 FR at 20589.

<sup>47</sup> See, e.g., CL-Fish's October 30, 2015 submission at 6-12.

from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.<sup>48</sup> The Department determines that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.<sup>49</sup>

The evidence provided by the separate rate applicants and by GODACO, except as stated below, supports a preliminary finding of *de facto* absence of government control based on the following: (1) the companies set their own export prices independent of the government and without the approval of a government authority; (2) the companies have authority to negotiate and sign contracts and other agreements; (3) the companies have autonomy from the government in making decisions regarding the selection of management; and (4) there is no restriction on any of the companies' use of export revenue.<sup>50</sup>

#### *Dumping Margin for the Separate Rate Applicants Not Individually Examined*

The statute and the Department's regulations do not directly address the establishment of a rate to be applied to companies not selected for individual examination where the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. The Department's practice in cases involving limited selection based on exporters or producers accounting for the largest volumes of trade has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any rates that are zero, *de minimis* or based entirely on facts available. Section 735(c)(5)(B) of the Act also provides that, where all rates are zero, *de minimis*, or based entirely on facts available, we may use "any reasonable method" for assigning the rate to all other respondents. The SAA states that the "expected method" under "any reasonable method" is that we will weight-average the rates that are zero, *de minimis*, and based entirely on facts available.<sup>51</sup> In this review, we have preliminarily determined a dumping margin for GODACO, the sole company participating that we selected for individual examination. Applying the method set forth in section 735(c)(5)(B) of the Act and described as the "expected method" in the SAA, we preliminarily determine to apply to companies not selected for individual examination in this review the rate determined for GODACO, the sole company participating that is being individually examined.<sup>52</sup>

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<sup>48</sup> See *Silicon Carbide*, 59 FR at 22586-87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

<sup>49</sup> *Id.*, 60 FR at 22544, 22544.

<sup>50</sup> See, e.g., CL-Fish's October 30, 2015 submission at 6-12.

<sup>51</sup> See Uruguay Round Agreements Act Statement of Administrative Action, attached to H.R. Rep. No. 103-316 Vol. I at 873 (1994), reprinted in 1994 U.S.C.C.A.N 3773, 4163 (SAA).

<sup>52</sup> In previous cases, the Department determined that a "reasonable method" to use when, as here, the rate of the respondent selected for individual examination is based on AFA, is to apply to those companies not selected for individual examination the average of the most recently determined rates that are not zero, *de-minimis*, or based entirely on facts available (which may be from the investigation or a prior administrative review). See, e.g., *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum, at Comment 16. However, the U.S. Court of Appeals for the Federal Circuit recently rejected the Department's reliance on methodologies that pulled forward rates from

Accordingly, we preliminarily assign to the non-selected companies the dumping margin of \$2.39/kg.

### *Cadovimex and HLS*

Cadovimex and HLS submitted separate rate applications,<sup>53</sup> and as noted above, HLS submitted questionnaire responses.<sup>54</sup> These two companies are a part of a group of companies, and are affiliated through common ownership.<sup>55</sup> As noted above, Cadovimex II and HLS provided information which indicates they are separate from the Vietnam-wide entity, and we have preliminarily granted them a separate rate.

However, the petitioners placed on the record public information which indicates that Cadovimex may have engaged in a duty reimbursement scheme during a prior review (2010). The information placed on the record by the petitioners includes a contract, signed by the General Director of Cadovimex, which states that Cadovimex will reimburse importers for antidumping duties.<sup>56</sup> After this information was placed on the record, the Department issued supplemental questionnaires to Cadovimex II and HLS,<sup>57</sup> to which these companies responded.<sup>58</sup> While Cadovimex and HLS provided responses to the Department's questions, they did not directly address the information placed on the record by the petitioners. For example, we requested all duty reimbursement contracts from the current POR back to 2007, but Cadovimex and HLS did not provide any contracts. In another example, we requested that Cadovimex and HLS provide reconciliations for the amounts of duties reimbursed (cash deposits), importation fees and retroactive duties paid (duties assessed). Cadovimex and HLS provided this information for certain years and noted this information may not be available for other years.<sup>59</sup>

The Department will continue to examine this issue, and intends to issue supplemental questionnaires to Cadovimex II and HLS after the preliminary results with respect to this issue.

### *Golden Quality, Anvish and Tafishco*

As noted above, we selected Golden Quality as a mandatory respondent in the review. However, Golden Quality did not respond to the AD questionnaire, and therefore, did not demonstrate that

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prior segments of the proceeding for non-selected companies in light of, inter alia, section 735(c)(5)(B) of the Act and the SAA's identification of an "expected method." *See Albemarle Corp. v. United States*, Case No. 2015-1288, 2015-1289, 2015-1290 at 16-28 & n. 8 (May 2, 2016). *See also, Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4 1/2 Inches) From Japan: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2014-2015*, 81 FR 45124 (July 12, 2016) and Accompanying Preliminary Decision Memorandum at V(b); unchanged for the final results, 81 FR 80635 (November 16, 2016).

<sup>53</sup> *See* CADOVIMEX's November 14, 2016 submission; HLS November 14, 2016 submission.

<sup>54</sup> *See* Hoang Long's submissions dated March 17, 2017, April 14, 2017, and April 10, 2017.

<sup>55</sup> *Id.*; *see also* Section 771(33) of the Act and 19 CFR 351.401(f)(1).

<sup>56</sup> *See, e.g.*, the petitioners' April 26, 2017 submission at Attachment I, Central District of California (Southern Division) Court Case - *Oceanwide Seafood LLC v. Cadovimex II, US Cado Holdings, Inc.*, at Exhibit A "AGREEMENT (Reference no.: CADIOWUS-10)," Articles 5, 9 and 10.

<sup>57</sup> *See* the Department's May 25, 2017 letter to Cadovimex; the Department's May 25, 2017 letter to HLS.

<sup>58</sup> *See* CADOVIMEX's June 15, 2017 submission; HLS' June 15, 2017 submission.

<sup>59</sup> *See* CADOVIMEX's November 14, 2016 submission; HLS November 14, 2016 submission.

it was entitled to a separate rate. Anvifish and Tafishco submitted separate rate applications, but did not respond to the Department's supplemental questionnaire.<sup>60</sup> Accordingly, we determine that Golden Quality, Anvifish and Tafishco did not demonstrate their entitlement to a separate rate and are a part of the Vietnam-Wide Entity. Because no review was requested of the Vietnam-Wide entity, the pre-existing Vietnam-Wide rate of \$2.39 per kilogram will apply to entries of their subject merchandise into the United States during the POR.<sup>61</sup>

#### *Application of Facts Available and Use of Adverse Inference*

Section 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that if necessary information is not available on the record or if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party "promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner," the Department shall consider the ability of the interested party and may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person an opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Further, section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for

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<sup>60</sup> See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Separate Rate Companies Supplemental Questionnaire*, dated July 26, 2017.

<sup>61</sup> See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 15181 (March 27, 2017).

information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available. In addition, the SAA explains that the Department may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>62</sup> Further, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.<sup>63</sup>

#### A. Application of Facts Available

The Department finds that the use of facts otherwise available is warranted with respect to GODACO, pursuant to section 776(a) of the Act.

##### 1. GODACO’s FOP and U.S. Sales Databases

In order to compare NVs to U.S. prices on an apples-to-apples basis, the Act instructs the Department to determine the NV of the subject merchandise based on the FOPs utilized in producing the merchandise.<sup>64</sup> To achieve this end, the Department utilizes a CONNUM which defines the key physical characteristics of the subject merchandise as those that are commercially meaningful in the U.S. marketplace, and impact costs of production.<sup>65</sup> In NME proceedings in particular, the Department requires respondents to report FOPs that are specific to each CONNUM sold to the United States “to construct the value of the product sold by {the respondent} company in the United States.”<sup>66</sup>

The Department has consistently requested CONNUM-specific FOP information in each questionnaire issued in every segment of this case since the investigation. In fact, the agency’s requirement for CONNUM-specific FOPs is explicitly set forth in the Department’s standard NME questionnaire, which has been publicly available on the Department’s website for years.<sup>67</sup> Although the respondents participating in the original investigation were excused from reporting CONNUM-specific FOPs, the Department recognized the inaccuracies that could result in future administrative reviews if respondents did not report CONNUM-specific FOPs.<sup>68</sup> As a result, in

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<sup>62</sup> See *Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. 103-316, Vol. 1, 103d Cong. at 870 (1994) (SAA).

<sup>63</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (CAFC 2003) (*Nippon Steel*).

<sup>64</sup> See 19 USC 1677b(a) and b(c) of the Act.

<sup>65</sup> See, e.g., *Large Residential Washers from the People’s Republic of China: Initiation of Less-Than-Fair-Value Investigation*, 81 FR 1398, 1399 (January 12, 2016) (*Washers Initiation*) and *Stainless Steel Wire Rod from Sweden: Final Results of Antidumping Duty Administrative Review*, 73 FR 12950 (March 11, 2008) and accompanying Issues and Decision Memorandum at Comment 1 (where the Department stated that, consistent with Department practice, model-matching criteria were developed to account for the salient characteristics of the subject merchandise and not the specific experience of any one respondent).

<sup>66</sup> See the Department’s original antidumping duty questionnaires at D-1.

<sup>67</sup> See <http://enforcement.trade.gov/questionnaires/questionnaires-ad.html>.

<sup>68</sup> See *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003) (*Investigation*) and accompanying Issues and Decision Memorandum at Comment 18.

the investigation, the Department placed respondents on notice that in future segments it would require CONNUM-specific FOPs.<sup>69</sup> In the 8<sup>th</sup> AR Final, the Department reminded respondents of their obligation to report CONNUM-specific FOPs, noting that the Department “may require Vinh Hoan and other respondents to report {their} FOPs on a CONNUM-specific basis...”<sup>70</sup> In the 11<sup>th</sup> AR Final, the Department applied facts available to the respondents because they failed to report their FOPs on a CONNUM-specific basis.<sup>71</sup> In the subsequent NSR Final, the Department applied facts available to the respondent for again failing to report its FOPs on a CONNUM-specific basis.<sup>72</sup>

The Department’s CONNUM is comprised of seven characteristics, and one of them is “Net Weight Factor” (NETWGTU).<sup>73</sup> With regard to this characteristic, in the original questionnaire, we asked GODACO to report the percentage of weight as sold accounted for by any added ice, water, glazing, soaking etc., in both the FOP and U.S sales databases.<sup>74</sup> The Department also stated that, for example, if the product is soaked with a weight gain additive and additional water weight accounts for 15 percent of the weight of the merchandise as sold, report the numeric characters “15” in this field.<sup>75</sup> In response, GODACO stated that only the percentage of glazing was reported in this field.<sup>76</sup> Thus, GODACO only partially answered this question and failed to report the amount of water weight gain due to any soaking (which is by far the largest contributor to the weight gain of a fillet).<sup>77</sup>

Subsequently, the Department issued GODACO a supplemental questionnaire asking it to revise all per-unit FOP calculations to account for only the production of frozen fish fillets having the same physical characteristics (including NETWGTU, which includes any added ice, water, glazing, soaking etc.) as the fillets subject to the Order.<sup>78</sup> In response, GODACO provided an explanation of how it calculated its claimed “CONNUM-specific” FOPs, but it did not address whether it had revised its FOPs to reflect and include the amount of water weight gain by soaking in the NETWGTU field. In fact, GODACO did not revise its FOP database with regard to NETWGTU, which is evident because the original and supplemental databases are the same in this regard.<sup>79</sup> Moreover, GODACO stated that the CONNUMs are not specific with regard to NETWGTU, as the company confirmed that other products which have higher amounts of

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<sup>69</sup> *Id.*

<sup>70</sup> See 8<sup>th</sup> AR Final at Comment XXII.

<sup>71</sup> See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review*; 2013–2014, 81 FR 17435 (March 29, 2016) and accompanying Issues and Decision Memorandum at Comment 1 (11<sup>th</sup> AR Final).

<sup>72</sup> See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty New Shipper Review*; 2014–2015, 81 FR 44272 (July 7, 2016) and accompanying Issues and Decision Memorandum at Comment 1 (NSR Final).

<sup>73</sup> This characteristic should be reported uniformly on both the FOP and U.S. sales databases for proper matching purposes, and this characteristic is percentage-specific and not ranged.

<sup>74</sup> See Original Questionnaire at C-6 and D-7.

<sup>75</sup> *Id.*

<sup>76</sup> See GODACO’s April 13, 2017, submission at 12.

<sup>77</sup> See BPI Memo.

<sup>78</sup> See Supplemental Questionnaire at question 37.

<sup>79</sup> See Godaco’s April 19, 2017, and July 17, 2017, submissions.

water added by soaking were in the CONNUMs.<sup>80</sup> Thus, GODACO again failed to report its FOP information to the Department as requested.

This failure carries over to the U.S. sales database as well, given that each observation therein is misreported on a glazing only NETWGTU basis, *i.e.*, sales are grouped/matched by glazed weight only and not by the total amount of water weight gain, including soaking, as requested. Thus, GODACO's failure prevents the Department from properly matching any U.S. sales to a proper and accurate NV, and, thus, calculating an accurate margin.

## 2. GODACO Withheld information

In the original questionnaire response GODACO stated that it was able to report CONNUM-specific factors for the whole fish input based on daily CONNUM-specific recordation of consumption for each production lot, and that the company totals the weight of fish consumed at each processing step for each CONNUM and creates CONNUM-specific total weights.<sup>81</sup>

Subsequently the Department asked GODACO to revise and provide production records substantiating that its reported FOPs have the same physical characteristics as those that entered the United States. In response, GODACO provided an explanation with an attached worksheet, as an example, of the daily consumption of whole live fish on a CONNUM-specific basis.<sup>82</sup> GODACO then explained that the amount of whole live fish consumed for that CONNUM is based on an allocation of the finished production quantity of that CONNUM in relation to all products produced.<sup>83</sup> However, a review of the worksheet reveals that the numbers reported in the worksheet do not correspond to the number generated by its allocation methodology.<sup>84</sup> GODACO withheld the allocation formulas in the worksheets, and the Department was unable to: 1) determine whether the allocations were done on a CONNUM-specific basis; and 2) link/reconcile the daily worksheets to the POR totals.<sup>85</sup>

GODACO stated that it used the same methodology for the other FOPs, *e.g.*, preservatives.<sup>86</sup> The information regarding the other FOP exhibits demonstrate the same pattern of missing formulas and numbers that do not reconcile to the reported allocation methodology.<sup>87</sup>

By withholding this information, despite the Department's repeated requests, GODACO has significantly hindered the Department's ability to determine whether GODACO's reported FOPs reconcile to its reported allocation methodology. Furthermore, because GODACO stated that the

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<sup>80</sup> See Supplemental Response at 26.

<sup>81</sup> See GODACO April 19, 2017, submission at 22.

<sup>82</sup> See GODACO July 17, 2017, submission at 12-13 and Exhibit S-16.

<sup>83</sup> *Id.*

<sup>84</sup> See BPI Memo.

<sup>85</sup> The Department noted further discrepancies such as the description of the CONNUM in the worksheet does not match the reported CONNUM with regard to net weight, further casting doubt as to the reliability of the data. Also, GODACO reported that it only produced a very limited number of sizes that day, when it has been the Department's experience that many sizes are generated given even a small amount of input, *e.g.*, 100kg. See BPI Memo at Attachment 2.

<sup>86</sup> *Id.* at 13, and Exhibit-S-16.

<sup>87</sup> See BPI Memo.

total amounts for the POR were derived from these daily amounts, the Department's inability to reconcile the information undermines the reliability of its reported FOPs.

As explained above, the Department finds that it is missing accurate, complete, and reliable sales and FOP databases to calculate an accurate margin for GODACO. Without these two critical pieces of information the Department finds that GODACO's reported databases are so incomplete with respect to necessary elements of the calculation that they cannot be relied upon in the calculation of an accurate antidumping duty margin.<sup>88</sup> Accordingly, because the Department finds it does not have complete, accurate, and reliable sales and FOP information to calculate a margin, the entirety of the responses need to be disregarded for the preliminary results.

### *Application of Facts Available to GODACO*

Pursuant to sections 776(a)(2)(A), (B), and (C) of the Act, the Department determines that the use of facts otherwise available is warranted with respect to GODACO. During the course of this review, the Department discovered that GODACO withheld key information that was requested by the Department for calculating an accurate margin for GODACO. Specifically, GODACO failed to provide in the form and manner requested by the Department: (1) an accurate, reliable factors of production (FOP) database that is reported on a CONNUM-specific basis; (2) a sales database reported on a CONNUM-specific basis; and (3) complete farming FOPs.<sup>89</sup> As such, GODACO significantly impeded the proceeding by not providing this information.

Additionally, where the request for information was clear and relates to some of the central issues in an antidumping case, such as accurate sales and FOP databases, the Court of International Trade (CIT) has found that the respondent has "a statutory obligation to prepare an accurate and complete record in response to questions plainly asked by Commerce."<sup>90</sup> Further, the CIT has stated that the terms of sections 782(d) and (e) do not give rise to an obligation for the Department to permit a remedial response from the respondent where the respondent has not met all of the criteria of 782(e).<sup>91</sup>

Here, the requests for information were not unclear and the respondent cannot claim that it was unaware of its obligation to submit the information, or in need of further notification by the Department. Record evidence clearly shows that GODACO was aware of its obligation to report complete, accurate, and reliable sales and FOP data for its total sales of subject merchandise to

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<sup>88</sup> See *Lightweight Thermal Paper from Germany: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 23220 (April 18, 2013) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>89</sup> See the Department's original questionnaire dated February 24, 2017, (Original Questionnaire) and extensive supplemental questionnaire, dated June 13, 2017 (Supplemental Questionnaire).

<sup>90</sup> See *Tung Mung Dev. Co. v. United States*, 25 CIT 752, 758 (CIT 2001) (*Tung Mung*); *Reiner Brach GmbH & Co. KG v. United States*, 206 F. Supp. 2d 1323, 1332-3 (CIT 2002) (stating that, where the initial questionnaire was clear as to the information requested, where Commerce questioned the respondent regarding the information, and where Commerce was unaware of the deficiency, Commerce is in compliance with 782(d), and it is the respondent's obligation to create an accurate record and provide Commerce with the information requested).

<sup>91</sup> See *Tung Mung*, 25 CIT at 789 (stating that the remedial provisions of 782(d) are not triggered unless the respondent meets all of the five enumerated criteria of 782(e)).

the United States during the POR.<sup>92</sup> Therefore, the Department finds that GODACO had ample notification of the significance of the issues, as well as ample opportunity to provide complete, accurate, and reliable sales and FOP databases. However, it chose to not do so.

### *B. Use of Adverse Inference*

In selecting from among the facts otherwise available, pursuant to section 776(b) of the Act, an adverse inference is warranted when the Department has determined that a respondent has “failed to cooperate by not acting to the best of its ability to comply with a request for information.”<sup>93</sup> In such a case, the Act permits the Department to use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.<sup>94</sup> Adverse inferences are appropriate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>95</sup> The Court of Appeals for the Federal Circuit (Federal Circuit), in *Nippon Steel*, provided an explanation of the “failure to act to the best of its ability,” stating that the ordinary meaning of “best” means “one’s maximum effort,” and that the statutory mandate that a respondent act to the “best of its ability” requires the respondent to do the maximum it is able to do.<sup>96</sup> The Federal Circuit acknowledged, however, that while there is no willfulness requirement, “deliberate concealment or inaccurate reporting” would certainly be sufficient to find that a respondent did not act to the best of its ability, although it indicated that inadequate responses to agency inquiries “would suffice” as well.<sup>97</sup> Compliance with the “best of its ability” standard is determined by assessing whether a respondent has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in an investigation.<sup>98</sup> The Federal Circuit further noted that, while the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.<sup>99</sup>

### *Selection of AFA Rate*

In applying an adverse inference, the Department may rely on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record.<sup>100</sup> In selecting an AFA rate, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.<sup>101</sup>

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<sup>92</sup> See the Department’s original questionnaire dated February 24, 2017, and extensive supplemental questionnaire on this issue, dated June 13, 2017.

<sup>93</sup> See section 776(b) of the Act.

<sup>94</sup> *Id.*; see also SAA at 870.

<sup>95</sup> See SAA at 870.

<sup>96</sup> See *Nippon Steel*, 337 F.3d at 1382.

<sup>97</sup> *Id.*, at 1380.

<sup>98</sup> *Id.*, at 1382.

<sup>99</sup> *Id.*

<sup>100</sup> See section 776(b) of the Act.

<sup>101</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 (SAA) at 870.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the antidumping and countervailing duty law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.<sup>102</sup> The amendments to section 776 of the Act are applicable to all determinations made on or after August 6, 2015 and, therefore, apply to this administrative review.<sup>103</sup>

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.<sup>104</sup> Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the antidumping duty investigation, a previous administrative review, or other information placed on the record.<sup>105</sup> The SAA explains that the Department may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>106</sup> Further, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.<sup>107</sup>

Section 776(c) of the Act provides that, in general, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.<sup>108</sup> Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.<sup>109</sup> Further, and under the TPEA, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.

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<sup>102</sup> See TPEA, Pub. L. No. 114-27, 129 Stat. 362 (2015). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the International Trade Commission. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*). The text of the TPEA may be found at <https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl>.

<sup>103</sup> See *Applicability Notice*, 80 FR at 46794-95.

<sup>104</sup> See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

<sup>105</sup> See also 19 CFR 351.308(c).

<sup>106</sup> See Statement of Administrative Action (SAA), H.R. Doc. No. 103-316, 103d Cong., 2d Session, Vol. 1 (1994) at 870.

<sup>107</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (CAFC 2003) (*Nippon Steel*).

<sup>108</sup> See also 19 CFR 351.308(d).

<sup>109</sup> See SAA at 870.

Finally, under the new section 776(d) of the Act, the Department may use a dumping margin from any segment of the proceeding under the applicable antidumping order when applying an adverse inference, including the highest of such margins.<sup>110</sup> The TPEA also makes clear that, when selecting facts available with an adverse inference (*i.e.*, AFA), the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.<sup>111</sup>

Under the TPEA, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding,<sup>112</sup> and the Department may use any dumping margin from any segment of a proceeding under an AD order when applying an adverse inference, including the highest of such margins.<sup>113</sup> The highest margin applied in a separate segment of this proceeding and currently in effect is the Vietnam-wide rate of 2.39/kg.<sup>114</sup> Accordingly, we preliminarily determine that the AFA rate is the Vietnam-wide rate of 2.39/kg for purposes of this review. Pursuant to the TPEA,<sup>115</sup> this rate does not need to be corroborated because it is a calculated rate applied in a prior segment of this proceeding. Our decision to apply this AFA rate to GODACO does not affect its separate rate eligibility.

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<sup>110</sup> See section 776(d)(1)(B) and 776(d)(2) of the Act; TPEA, section 502(3).

<sup>111</sup> See section 776(d)(3)(B) of the Act; TPEA, section 502(3).

<sup>112</sup> See section 776(c)(2) of the Act; TPEA, section 502.

<sup>113</sup> See section 776(d)(1)-(2) of the Act; TPEA, section 502(3).

<sup>114</sup> See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review*; 82 FR 15181 (March 27, 2017); see *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 2394 (January 16, 2015).

<sup>115</sup> See section 776(c)(2) of the Act; TPEA, section 502.

**RECOMMENDATION**

We recommend applying the above methodology for these preliminary results.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

8/31/2017

X

*Gary Taverman*

Signed by: GARY TAVERMAN

\_\_\_\_\_  
Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance

## Appendix I

### Companies on which we Initiated a Review

- 1) An Giang Agriculture and Food Import-Export Joint Stock Company (also known as An Giang Fisheries Import and Export Joint Stock Company (also known as Agifish or AnGiang Fisheries Import and Export)
- 2) An My Fish Joint Stock Company (also known as Anmyfish or Anmyfishco)
- 3) An Phat Seafood Co. Ltd. (also known as An Phat Import-Export Seafood Co., Ltd.)
- 4) An Phu Seafood Corporation (also known as ASEAFood or An Phu Seafood Corp.)
- 5) Anvifish Joint Stock Company (ANVIFISH)
- 6) Asia Commerce Fisheries Joint Stock Company (also known as Acomfish JSC or Acomfish)
- 7) Asia Pangasius Company Limited
- 8) Basa Joint Stock Company (BASACO)
- 9) Ben Tre Aquaproduct Import and Export Joint Stock Company (also known as Bentre Aquaproduct, Bentre Aquaproduct Import & Export Joint Stock Company or Aquatex Bentre)
- 10) Bentre Forestry and Aquaproduct Import Export Joint Stock Company (also known as Ben Tre Forestry and Aquaproduct Import-Export Company or Ben Tre Forestry Aquaproduct Import- Export Company or Ben Tre Frozen Aquaproduct Export Company or Faquimex)
- 11) Bien Dong Seafood Company Ltd. (also known as Bien Dong, Bien Dong Seafood, Bien Dong Seafood Co., Ltd., or Biendong Seafood Co., Ltd.)
- 12) Binh An Seafood Joint Stock Company (also known as Binh An or Binh An Seafood Joint Stock Co.)
- 13) C.P. Vietnam Corporation
- 14) Cadovimex II Seafood Import-Export and Processing Joint Stock Company (also known as Cadovimex II or Cadovimex II Seafood Import-Export)
- 15) Cafatex Corporation (also known as Cafatex)
- 16) Can Tho Animal Fishery Products Processing Export Enterprise (also known as Cafatex)
- 17) Cantho Import-Export Seafood Joint Stock Company (also known as CASEAMEX, Can Tho Import-Export Seafood Joint Stock Company, Cantho Import- Export Joint Stock Company, or Can Tho Import- Export Joint Stock Company)
- 18) Cuu Long Fish Import-Export Corporation (also known as CL Panga Fish)
- 19) Cuu Long Fish Joint Stock Company (also known as CL-Fish or Cuu Long Fish Joint Stock Company)
- 20) Da Nang Seaproducts Import-Export Corporation (also known as Da Nang)
- 21) Dai Thanh Seafoods (also known as DATHACO or Dai Thanh Seafoods Co., Ltd.)
- 22) East Sea Seafoods LLC (also known as ESS LLC, ESS, East Sea Seafoods Limited Liability Company, East Sea Seafoods Joint Venture Co., Ltd.)
- 23) Europe Joint Stock Company
- 24) Fatifish Company Limited (also known as FATIFISH)
- 25) GODACO Seafood Joint Stock Company (also known as GODACO or GODACO Seafood J.S.C.)

- 26) Golden Quality Seafood Corporation (also known as Golden Quality, GOLDENQUALITY, or GoldenQuality, Seafood Corporation)
- 27) Green Farms Seafood Joint Stock Company (also known as Green Farms, GreenFarm SeaFoods Joint Stock Company or Green Farms Seafoods Joint Stock Company).
- 28) Hai Huong Seafood Joint Stock Company (also known as HHFish, HH Fish, or Hai Huong Seafood)
- 29) Hiep Thanh Seafood Joint Stock Company (also known as Hiep Thanh or Hiep Thanh Seafood Joint Stock Co.)
- 30) Hoa Phat Seafood Import-Export and Processing J.S.C. (also known as HOPAFISH or Hoa Phat Seafood Import-Export and Processing Joint Stock Company)
- 31) Hoang Long Seafood Processing Company Limited (also known as HLS, Hoang Long Seafood, or Hoang Long Seafood Processing Co., Ltd.)
- 32) Hung Vuong Corporation (Hung Vuong)
- 33) Hung Vuong Joint Stock Company
- 34) Hung Vuong Mascato Company Limited
- 35) Hung Vuong Seafood Joint Stock Company
- 36) Hung Vuong-Sa Dec Co., Ltd.
- 37) Hung Vuong-Vinh Long Co., Ltd.
- 38) Lian Heng Investment Co., Ltd. (also known as Lian Heng or Lian Heng Investment)
- 39) Lian Heng Trading Co., Ltd. (also known as Lian Heng or Lian Heng Trading)
- 40) Nam Viet Corporation (also known as NAVICO)
- 41) Ngoc Ha Co. Ltd. Food Processing and Trading (also known as Ngoc Ha or Ngoc Ha Co., Ltd. Foods Processing and Trading)
- 42) Nha Trang Seafoods, Inc. (also known as Nha Trang Seafoods-F89, Nha Trang Seafoods, or Nha Trang Seaproduct Company)
- 43) NTSF Seafoods Joint Stock Company (also known as NTSF or NTSF Seafoods)
- 44) Quang Minh Seafood Company Limited (also known as Quang Minh, Quang Minh Seafood Co., Ltd., or Quang Minh Seafood Co.)
- 45) QVD Dong Thap Food Co., Ltd. (also known as Dong Thap)
- 46) QVD Food Company, Ltd. (also known as QVD)
- 47) Saigon-Mekong Fishery Co., Ltd. (also known as SAMEFICO or Saigon Mekong Fishery Co., Ltd.)
- 48) Seafood Joint Stock Company No. 4 Branch Dongtam Fisheries Processing Company (also known as DOTASEAFOODCO or Seafood Joint Stock Company No. 4--Branch Dong Tam Fisheries Processing Company)
- 49) Southern Fishery Industries Company, Ltd. (also known as South Vina, South Vina Co., Ltd., or Southern Fisheries Industries Company, Ltd.)
- 50) Sunrise Corporation
- 51) TG Fishery Holdings Corporation (also known as TG)
- 52) Thuan An Production Trading and Service Co., Ltd. (also known as TAFISHCO, Thuan An Production Trading and Services Co., Ltd., or Thuan An Production & Trading Service Co., Ltd.)
- 53) Thuan Hung Co., Ltd. (also known as THUFICO)
- 54) To Chau Joint Stock Company (also known as TOCHAU)
- 55) Van Duc Food Export Joint Stock Company
- 56) Van Duc Tien Giang Food Export Company

- 57) Viet Hai Seafood Company Limited (also known as Viet Hai or Vietnam Fish-One Co., Ltd.)
- 58) Viet Phu Foods & Fish Co., Ltd.
- 59) Viet Phu Foods and Fish Corporation (also known as Vietphu, Viet Phu, Viet Phu Food and Fish Corporation, or Viet Phu Food & Fish Corporation)
- 60) Vinh Hoan Corporation (also known as Vinh Hoan or Vinh Hoan Co.)
- 61) Vinh Quang Fisheries Corporation (also known as Vinh Quang, Vinh Quang Fisheries Joint-Stock Company, or Vinh Quang Fisheries Co., Ltd.)

## Appendix II

### Companies which Self-Requested a Review

- 1) Anvifish Joint Stock Company (ANVIFISH)
- 2) Bien Dong Seafood Company Ltd. (also known as Bien Dong, Bien Dong Seafood, Bien Dong Seafood Co., Ltd., or Biendong Seafood Co., Ltd.)
- 3) Cadovimex II Seafood Import-Export and Processing Joint Stock Company (also known as Cadovimex II or Cadovimex II Seafood Import-Export)
- 4) Cantho Import-Export Seafood Joint Stock Company (also known as CASEAMEX, Can Tho Import-Export Seafood Joint Stock Company, Cantho Import- Export Joint Stock Company, or Can Tho Import- Export Joint Stock Company)
- 5) Cuu Long Fish Import-Export Corporation (also known as CL Panga Fish)
- 6) Dai Thanh Seafoods (also known as DATHACO or Dai Thanh Seafoods Co., Ltd.)
- 7) GODACO Seafood Joint Stock Company (also known as GODACO or GODACO Seafood J.S.C.)
- 8) Golden Quality Seafood Corporation (also known as Golden Quality, GOLDENQUALITY, or GoldenQuality, Seafood Corporation)
- 9) Green Farms Seafood Joint Stock Company (also known as Green Farms, GreenFarm SeaFoods Joint Stock Company or Green Farms Seafoods Joint Stock Company).
- 10) Hoang Long Seafood Processing Company Limited (also known as HLS, Hoang Long Seafood, or Hoang Long Seafood Processing Co., Ltd.)
- 11) Hung Vuong Corporation (Hung Vuong)
- 12) NTSF Seafoods Joint Stock Company (also known as NTSF or NTSF Seafoods)
- 13) QVD Dong Thap Food Co., Ltd. (also known as Dong Thap)
- 14) QVD Food Company, Ltd. (also known as QVD)
- 15) Saigon-Mekong Fishery Co., Ltd. (also known as SAMEFICO or Saigon Mekong Fishery Co., Ltd.)
- 16) Southern Fishery Industries Company, Ltd. (also known as South Vina, South Vina Co., Ltd., or Southern Fisheries Industries Company, Ltd.)
- 17) Thuan An Production Trading and Service Co., Ltd. (also known as TAFISHCO, Thuan An Production Trading and Services Co., Ltd., or Thuan An Production & Trading Service Co., Ltd.)
- 18) Vinh Hoan Corporation (also known as Vinh Hoan or Vinh Hoan Co.)
- 19) Vinh Quang Fisheries Corporation (also known as Vinh Quang, Vinh Quang Fisheries Joint-Stock Company, or Vinh Quang Fisheries Co., Ltd.)

### Appendix III

#### Companies for which the Review was Rescinded

- 1) An My Fish Joint Stock Company (also known as Anmyfish or Anmyfishco)
- 2) An Phat Seafood Co. Ltd. (also known as An Phat Import-Export Seafood Co., Ltd.)
- 3) An Phu Seafood Corporation (also known as ASEAFood or An Phu Seafood Corp.)
- 4) Asia Commerce Fisheries Joint Stock Company (also known as Acomfish JSC or Acomfish)
- 5) Basa Joint Stock Company (BASACO)
- 6) Ben Tre Aquaproduct Import and Export Joint Stock Company (also known as Bentre Aquaproduct, Bentre Aquaproduct Import & Export Joint Stock Company or Aquatex Bentre)
- 7) Bentre Forestry and Aquaproduct Import Export Joint Stock Company (also known as Ben Tre Forestry and Aquaproduct Import-Export Company or Ben Tre Forestry Aquaproduct Import- Export Company or Ben Tre Frozen Aquaproduct Export Company or Faquimex)
- 8) Binh An Seafood Joint Stock Company (also known as Binh An or Binh An Seafood Joint Stock Co.)
- 9) C.P. Vietnam Corporation
- 10) Cafatex Corporation (also known as Cafatex)
- 11) Can Tho Animal Fishery Products Processing Export Enterprise (also known as Cafatex)
- 12) Cuu Long Fish Import-Export Corporation (also known as CL Panga Fish)
- 13) Da Nang Seaproducts Import-Export Corporation (also known as Da Nang)
- 14) East Sea Seafoods LLC (also known as ESS LLC, ESS, East Sea Seafoods Limited Liability Company, East Sea Seafoods Joint Venture Co., Ltd.)
- 15) Fatifish Company Limited (also known as FATIFISH)
- 16) Hai Huong Seafood Joint Stock Company (also known as HHFish, HH Fish, or Hai Huong Seafood)
- 17) Hiep Thanh Seafood Joint Stock Company (also known as Hiep Thanh or Hiep Thanh Seafood Joint Stock Co.)
- 18) Hoa Phat Seafood Import-Export and Processing J.S.C. (also known as HOPAFISH or Hoa Phat Seafood Import-Export and Processing Joint Stock Company)
- 19) Hung Vuong Seafood Joint Stock Company
- 20) Lian Heng Investment Co., Ltd. (also known as Lian Heng or Lian Heng Investment)
- 21) Lian Heng Trading Co., Ltd. (also known as Lian Heng or Lian Heng Trading)
- 22) Nam Viet Corporation (also known as NAVICO)
- 23) Ngoc Ha Co. Ltd. Food Processing and Trading (also known as Ngoc Ha or Ngoc Ha Co., Ltd. Foods Processing and Trading)
- 24) Nha Trang Seafoods, Inc. (also known as Nha Trang Seafoods-F89, Nha Trang Seafoods, or Nha Trang Seaproduct Company)
- 25) Quang Minh Seafood Company Limited (also known as Quang Minh, Quang Minh)

- Seafood Co., Ltd., or Quang Minh Seafood Co.)
- 26) Seafood Joint Stock Company No. 4 Branch Dongtam Fisheries Processing Company (also known as DOTASEAFOODCO or Seafood Joint Stock Company No. 4--Branch Dong Tam Fisheries Processing Company)
  - 27) Sunrise Corporation
  - 28) TG Fishery Holdings Corporation (also known as TG)
  - 29) To Chau Joint Stock Company (also known as TOCHAU)
  - 30) Van Duc Food Export Joint Stock Company
  - 31) Van Duc Tien Giang Food Export Company
  - 32) Viet Hai Seafood Company Limited (also known as Viet Hai or Vietnam Fish-One Co., Ltd.)
  - 33) Viet Phu Foods & Fish Co., Ltd.
  - 34) Viet Phu Foods and Fish Corporation (also known as Vietphu, Viet Phu, Viet Phu Food and Fish Corporation, or Viet Phu Food & Fish Corporation)