

(served by Northeast Indiana Grain Inspection, Inc.).

#### Omaha

Pursuant to Section 7(f)(2) of the Act, the following geographic areas in the States of Iowa and Nebraska are assigned to this official agency.

- Bounded on the North by Nebraska State Route 91 from the western Washington County line east to U.S. Route 30; U.S. Route 30 east to the Missouri River; the Missouri River north to Iowa State Route 175; Iowa State Route 175 east to Iowa State Route 37; Iowa State Route 37 southeast to the eastern Monona County line;
- Bounded on the East by the eastern Monona County line; the southern Monona County line west to Iowa State Route 183; Iowa State Route 183 south to the Pottawattamie County line; the northern and eastern Pottawattamie County lines; the southern Pottawattamie County line west to M47; M47 south to Iowa State Route 48; Iowa State Route 48 south to the Montgomery County line;
- Bounded on the South by the southern Montgomery County line; the southern Mills County line west to Interstate 29; Interstate 29 north to U.S. Route 34; U.S. Route 34 west to the Missouri River; the Missouri River north to the Sarpy County line (in Nebraska); the southern Sarpy County line; the southern Saunders County line west to U.S. Route 77; and
- Bounded on the West by U.S. Route 77 north to the Platte River; the Platte River southeast to the Douglas County line; the northern Douglas County line east; the western Washington County line northwest to Nebraska State Route 91.

The following grain elevators, located outside of the above areas, are serviced by Omaha: Hancock Elevator, Elliot, Montgomery County, Iowa; Hancock Elevator (2 elevators), Griswold, Cass County, Iowa (located inside Central Iowa Grain Inspection Service, Inc.'s, area); United Farmers Coop, Rising City, Butler County, Nebraska; United Farmers Coop, Shelby, Polk County, Nebraska (located inside Fremont Grain Inspection Department, Inc.'s, area); and Goode Seed & Grain, McPaul, Fremont County, Iowa; Haveman Grain, Murray, Cass County, Nebraska (located inside Lincoln Inspection Service, Inc.'s, area).

The following grain elevators located within Omaha's assigned geographic area are serviced by Fremont Grain Inspection Department, Inc.: Farmers Cooperative, Saunders County, Nebraska and Krumel Grain and Storage, Saunders County, Nebraska.

#### Opportunity for Designation

Interested persons or governmental agencies may apply for designation to provide official services in the geographic areas specified above under the provisions of section 7(f) of the USGSA and 7 CFR 800.196(d). Designation in the specified geographic areas is for the period beginning January 4, 2010, and ending December 31, 2012. To apply for designation or for more information, contact Karen Guagliardo at the address listed above or visit GIPSA's Web site at <http://www.gipsa.usda.gov>.

#### Request for Comments

We are publishing this notice to provide interested persons the opportunity to comment on the quality of services provided by the Champaign, Detroit, Eastern Iowa, Enid, Keokuk, Michigan, and Omaha official agencies. In the designation process, we are particularly interested in receiving comments citing reasons and pertinent data supporting or objecting to the designation of the applicants. Submit all comments to Karen Guagliardo at the above address or at <http://www.regulations.gov>.

We consider applications, comments, and other available information when determining which applicant will be designated.

**Authority:** 7 U.S.C. 71–87k.

**J. Dudley Butler,**

*Administrator, Grain Inspection, Packers and Stockyards Administration.*

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#### DEPARTMENT OF COMMERCE

##### International Trade Administration

[A–552–801]

#### Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Preliminary Results of New Shipper Reviews and Fifth Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (“Department”) is conducting new shipper reviews and an administrative review of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam (“Vietnam”). See *Notice of Antidumping Duty Order: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 68 FR 47909

(August 12, 2003) (“Order”). We preliminarily find that QVD Food Company Ltd. (“QVD”),<sup>1</sup> Vinh Hoan Corporation (“Vinh Hoan”), Saigon-Mekong Fishery Co. (“SAMEFICO”), and Cadovimex II Seafood Import-Export & Processing Joint Stock Company (“Cadovimex II”) did not sell subject merchandise at less than normal value (“NV”) during the period of review (“POR”), August 1, 2007, through July 31, 2008.

**DATES:** *Effective Date:* September 4, 2009.

#### FOR FURTHER INFORMATION CONTACT:

Alan Ray (QVD), Javier Barrientos (Vinh Hoan), Alexis Polovina (SAMEFICO), and Tim Lord (Cadovimex II) Office 9, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5403, (202) 482–2243, (202) 482–3927, and (202) 482–7425, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Case History

On August 1, 2008, the Department published a notice of an opportunity to request an administrative review of the order. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 73 FR 44966 (August 1, 2008). By August 31, 2008, the Department received review requests for 20 companies from Petitioners<sup>2</sup> and certain individual companies. In addition, pursuant to 19 CFR 351.214(c), the Department also received new shipper review requests from SAMEFICO and Cadovimex II on August 8, 2008, and, August 24, 2008, respectively.

On September 30, 2008, the Department initiated an antidumping

<sup>1</sup> The Department is treating QVD, QVD Dong Thap Food Co., Ltd. (“QVD DT”), and Thuan Hung Co., Ltd. (“Thuan Hung”) as a single entity in these preliminary results. Similarly, the Department is treating Vinh Hoan, Vinh Hoan USA Inc. (“Vinh Hoan USA”), and Van Duc Food Export Joint Stock Company (“Van Duc”) as a single entity. Section 351.401(f) of the Department's regulations define single entities as those affiliated producers who have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production. For further analysis, see *Affiliations* section below.

<sup>2</sup> The Catfish Farmers of America and individual U.S. catfish processors, America's Catch, Consolidated Catfish Companies, LLC dba Country Select Catfish, Delta Pride Catfish, Inc., Harvest Select Catfish, Inc., Heartland Catfish Company, Pride of the Pond, Simmons Farm Raised Catfish, Inc., and Southern Pride Catfish Company LLC (“Petitioners”).

duty administrative review on frozen fish fillets from Vietnam covering 20 companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part* ("5th AR Initiation"), 73 FR 56795 (September 30, 2008).<sup>3</sup>

On October 1, 2008, the Department initiated the new shipper reviews for SAMEFICO and Cadovimex II. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Initiation of New Shipper Reviews*, 73 FR 57058 (October 1, 2008).

On October 29, 2008, the Department issued a letter to all interested parties informing them of its decision to select QVD and Vinh Hoan, the two largest exporters of subject merchandise during the POR, as mandatory respondents based on Customs and Border Protection ("CBP") import data for the fifth administrative review. *See Memorandum to the File from Alexis Polovina, Case Analyst, through Alex Villanueva, Program Manager, Antidumping Duty Administrative Review of Frozen Fish Fillets from the Socialist Republic of Vietnam: Selection of Respondents for Individual Review* ("Respondent Selection Memo"), dated October 29, 2008.

Between December 4, 2009, and June 23, 2009, QVD submitted responses to the original sections A, C, and D questionnaires and supplemental sections A, C, and D questionnaires. Between November 24, 2008, and June 10, 2009, Vinh Hoan submitted responses to the original sections A, C, and D questionnaires and supplemental sections A, C, and D questionnaires.

In the new shipper reviews, Cadovimex submitted responses to questionnaires between November 4, 2008, and July 15, 2009. SAMEFICO submitted responses to questionnaires between December 31, 2008, and March 31, 2009.

On March 20, 2009, the Department aligned the antidumping duty new shipper and administrative reviews. On April 23, 2009, the Department extended the deadline for the preliminary results of this review by 120 days, to August 31, 2009. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Time Limit for Preliminary Results of the Fifth Antidumping Duty Administrative Review* ("Prelim Extension"), 74 FR 18549 (April 23, 2009).

<sup>3</sup> We note that the initiation notice contained 20 companies. However, two of those companies (Vinh Hoan Co., Ltd. and Vinh Hoan Corporation) are the same company, existing with the former name prior to the POR and with the latter name during and after the POR.

On April 30, 2009, the Department rescinded the administrative review with respect to 13 companies because all requesting parties for those companies withdrew their requests for review in a timely manner. *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Partial Rescission of the Fifth Antidumping Duty Administrative Review*, 74 FR 19933 (April 30, 2009) ("5th AR Partial Rescission").<sup>4</sup> Therefore, seven companies remain in this administrative review: East Sea Seafoods Joint Venture Co., Ltd. ("East Sea"), the QVD single entity, representing three affiliated and collapsed companies, An Giang Fisheries Import and Export Joint Stock Company ("Agifish" or "AnGiang Fisheries Import and Export"), Vinh Hoan Corporation, and Vinh Hoan Company, Ltd.

#### QVD's Revocation Request

On August 29, 2008, in QVD's request for an administrative review, QVD requested that the antidumping order be revoked for QVD, pursuant to section 351.222(b)(2) of the Department's regulations. Section 351.222(b)(2) permits, in relevant part, the Department to revoke an order in part with regard to a particular company if that company has not sold the subject merchandise at less than NV for a period of at least three consecutive years. QVD participated in the second, third, and fourth administrative reviews. QVD received a weighted-average margin of 0.0 percent in the second and third administrative reviews, but received a weighted-average margin of 0.52 percent in the fourth administrative review. Because QVD sold merchandise at less than NV during the fourth administrative review, it does not qualify for revocation under the Department's regulations.

#### Vietnam-Wide Entity

As discussed above, in this administrative review we limited the selection of respondents using CBP import data. *See Respondent Selection Memo* at 2. In this case, we made available to the companies who were not selected, the separate rates

<sup>4</sup> Pursuant to 5th AR Partial Rescission, the Department rescinded on the 13 following companies: An Xuyen Co., Ltd.; Asia Commerce Fisheries Joint Stock Company (aka Acomfish JSC); Ben Tre Forestry Aquaprodukt Import-Export Company (aka FAQUIMEX); Binh An Seafood Joint Stock Co.; Hiep Thanh Seafood Joint Stock Co.; Hung Vuong Corporation; Nam Viet Company Limited (aka NAVICO); Phuong Nam Co., Ltd.; Da Nang Seaproducts Import-Export Corporation (aka Da Nang or Seaprodex Danang); Southern Fishery Industries Company, Ltd. (aka South Vina); Thien Ma Seafood Co., Ltd.; Vinh Quang Fisheries Corporation; and Anvifish Co., Ltd.

application and certification, which were put on the Department's Web site. *See 5th AR Initiation*, dated September 30, 2008. Those companies which did not apply for separate rates will continue to be part of the Vietnam-wide entity. Because the Department determines preliminarily that there were exports of merchandise under review from Vietnam producers/exporters that did not demonstrate their eligibility for separate-rate status, the Vietnam-wide entity is now under review.

#### Separate Rates

A designation as a non-market economy ("NME") remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Tariff Act of 1930, as amended ("the Act"). 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. It is the Department's standard 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 the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("Sparklers"), as amplified by the *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").

##### 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; and (2) any legislative enactments decentralizing control of companies.

Although the Department has previously assigned a separate rate to all of the companies eligible for a separate rate in the instant proceeding, it is the Department's policy to evaluate separate rates questionnaire responses each time a respondent makes a separate rates claim, regardless of whether the respondent received a separate rate in the past. *See Manganese Metal from the People's Republic of China, Final*

*Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 12440 (March 13, 1998).

In this review, Agifish, Vinh Hoan, QVD, and East Sea<sup>5</sup> submitted complete separate rates certifications and applications. SAMEFICO and Cadovimex II provided separate rate information in their questionnaire responses. The evidence submitted by these companies includes government laws and regulations on corporate ownership, business licenses, and narrative information regarding the companies' operations and selection of management. The evidence provided by these companies support a finding of a *de jure* absence of government control over their export activities, based on: (1) An absence of restrictive stipulations associated with the exporter's business license; and (2) the legal authority on the record decentralizing control over the respondents.

#### B. Absence of De Facto Control

The absence of *de facto* government control over exports is based on whether the respondent: (1) Sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management. See *Silicon Carbide*, 59 FR at 22587; *Sparklers*, 56 FR at 20589; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

In this review, Agifish, Vinh Hoan, QVD, SAMEFICO, Cadovimex II, and East Sea submitted evidence indicating an absence of *de facto* government control over their export activities. Specifically, this evidence indicates that: (1) Each company sets its own export prices independent of the government and without the approval of a government authority; (2) each company retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) each company has a general manager, branch manager or division manager with the authority to negotiate and bind the company in an agreement; (4) the general managers are selected by the board of directors or

company employees, and the general managers appoint the deputy managers and the manager of each department; and (5) there is no restriction on any of the companies' use of export revenues. Therefore, the Department preliminarily finds that Agifish, Vinh Hoan, QVD, and East Sea have established *prima facie* that they qualify for separate rates under the criteria established by *Silicon Carbide* and *Sparklers*.

#### Rate for Non-Selected Companies

In this review there are two companies that were not selected for individual examination, East Sea and Agifish. The statute and the Department's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally we have looked to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents we did not examine in an administrative review. Section 735(c)(5)(A) of the Act instructs that we are not to calculate an all-others rate using any zero or *de minimis* margins or any margins based entirely on facts available. Accordingly, the Department's practice in this regard, in reviews involving limited respondent selection based on exporters accounting for the largest volumes of trade, has been to average the rates for the selected companies, excluding zero and *de minimis* rates and rates based entirely on facts available. See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 52273, 52275 (September 9, 2008) and accompanying Issues and Decision Memorandum at Comment 6 ("Shrimp from Vietnam I & D"). Section 735(c)(5)(B) of the Act also provides that, where all margins are zero, *de minimis*, or based entirely on facts available, we may use "any reasonable method" for assigning the rate to non-selected respondents, including "averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated."

In this case, the rates for both individually examined respondents are *de minimis* and accordingly, the Department will determine a reasonable method for assigning a rate to East Sea and Agifish. The Department has available in administrative reviews information that would not be available

in an investigation, namely rates from prior administrative and new shipper reviews. Accordingly, since the determination in the investigation in this proceeding, the Department has determined that in cases where we have found dumping margins in previous segments of a proceeding, a reasonable method for determining the rate for non-selected companies is to use the most recent rate calculated for the non-selected company in question unless we calculated in a more recent review a rate for any company that was not zero, *de minimis* or based entirely on facts available. See *Shrimp from Vietnam I & D* at Comment 6; *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Review in Part*, 73 FR 52823, 52824 (September 11, 2008) and accompanying Issues and Decision Memorandum at Comment 6; *Certain Fish Fillets from the Socialist Republic of Vietnam: Notice of Preliminary Results of the New Shipper Review and Fourth Antidumping Duty Administrative Review and Partial Rescission of the Fourth Administrative Review*, 73 FR 52015 (September 8, 2008) (changed in final results as final calculated rate for mandatory respondent was above *de minimis*, which remained unchanged in the amended final results); see also *Certain Polyester Staple Fiber From the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review and Extension of Time Limits for the Final Results*, 74 FR 32125 (July 7, 2009). Agifish recently received an assigned non-*de minimis* per-unit rate of \$0.02 per kilogram in an antidumping duty new shipper and administrative review.<sup>6</sup> See *Notice of Amended Final Results of Antidumping Duty Administrative Review: Certain Frozen Fish Fillets from Vietnam ("4th AR Final")*, 74 FR 17816 (April 17, 2009). We have assigned a non-selected separate rate of \$0.02 per kilogram for Agifish and East Sea for the purposes of these preliminary results, as it is the assigned rate from the most recently completed segment of the proceeding that is above *de minimis* and not based on adverse facts available ("AFA"). The \$0.02 per kilogram is a non-*de minimis* per unit rate. For the Vietnam-wide entity, we have assigned the entity's current rate and only rate ever determined for the entity in this proceeding, which is \$2.11 per

<sup>5</sup> East Sea addressed the separate rates section of the Department's questionnaire in its November 25, 2008, submission as the certification it had submitted was no longer valid given that there had been a change in ownership and in name.

<sup>6</sup> The rate assigned for Agifish was, in *ad valorem* terms, above *de minimis*.

kilogram, which is a non-*de minimis* per-unit rate.

### Verification

Pursuant to 19 CFR 351.307(b)(iv), we conducted verification of the sales and factors of production (“FOP”) for SAMEFICO between April 13–15, 2009, in Tra Vinh City Vietnam. *See* Memorandum to the File from Alexis Polovina and Timothy Lord, Case Analysts through Alex Villanueva, Program Manager, Verification of the Sales and Processing Response of Saigon-Mekong Fishery Co., Ltd. (“SAMEFICO”) in the Antidumping New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam (“Vietnam”), dated June 30, 2009 (“SAMEFICO Verification Report”). We conducted a verification of the sales and FOP for Vinh Hoan between June 22 and July 1, 2009 in Cao Lanh, Dong Thap Province and in Ho Chi Minh City Vietnam. *See* Memorandum to the File from Javier Barrientos and Alan Ray, Senior and Case Analysts, through Alex Villanueva, Program Manager, Verification of the Sales and Processing Response of Vinh Hoan Co., Ltd/Corp. (“Vinh Hoan”) in the Antidumping Duty New Shipper and Administrative Reviews of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam (“Vietnam”), dated August 28, 2009 (“Vinh Hoan Verification Report”).

### Scope of the Order

The product covered by this 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), 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 codes

1604.19.4000, 1604.19.5000, 0305.59.4000, 0304.29.6033 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the Harmonized Tariff Schedule of the United States (“HTSUS”).<sup>7</sup> This Order covers all frozen fish fillets meeting the above specification, regardless of tariff classification. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the Order is dispositive.

### Non-Market Economy Country Status

In every case conducted by the Department involving Vietnam, Vietnam has been treated as a non-market economy (“NME”) country. In accordance with section 771(18)(C)(i) of the Act (“the Act”), any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See Notice of Final Results of Administrative Review: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 73 FR 15479 (March 17, 2008) and accompanying Issues and Decision Memorandum (“3rd AR Final Results”). None of the parties to this proceeding have contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

### Surrogate Country and Surrogate Values

On April 2, 2009, the Department sent interested parties a letter setting a deadline to submit comments on surrogate country selection and information pertaining to valuing factors of production (“FOP”). QVD, Cadovimex II, SAMEFICO, and Petitioners submitted surrogate country comments and surrogate value data on April 20, 2009. On April 30, 2009, Respondents submitted a rebuttal to Petitioners’ comments. On August 10, 2009, Respondents reiterated their April 20 and April 30, 2009, comments.

### 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 FOPs, valued in a surrogate market economy 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 market economy countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the “Normal Value” section below and in the Memorandum to the File through Alex Villanueva, Program Manager, Office 9, from Alexis Polovina, Case Analyst, dated August 27, 2009.

The Department determined that Bangladesh, Pakistan, India, Indonesia, the Philippines, and Sri Lanka are countries comparable to Vietnam in terms of economic development.<sup>8</sup> Once it has identified economically comparable countries, the Department’s practice is to select an appropriate surrogate country from the list based on the availability and reliability of data from the countries. *See* Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004).

In this case, we have found that Bangladesh is a significant producer of comparable merchandise. We find Bangladesh to be a reliable source for surrogate values because Bangladesh is at a similar level of economic development pursuant to section 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has more complete publicly available and reliable data. Thus, we have selected Bangladesh as the primary surrogate country for this administrative review. However, in certain instances where Bangladeshi data was not available, we looked to see if Philippine data was available, and if not, we used data from Indian or Indonesian sources. For a more complete explanation of the surrogate country selection, *see* Memorandum to the File, through James C. Doyle, Office 9 Director, through Alex Villanueva, Office 9 Program Manager, from Timothy Lord, Office 9 Case Analyst, dated August 28, 2009, Fifth Antidumping Duty Administrative Review and Aligned Fourth New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of

<sup>7</sup> Until July 1, 2004, these products were classifiable under tariff article codes 0304.20.60.30 (Frozen Catfish Fillets), 0304.20.60.96 (Frozen Fish Fillets, NESOI), 0304.20.60.43 (Frozen Freshwater Fish Fillets) and 0304.20.60.57 (Frozen Sole Fillets) of the HTSUS. Until February 1, 2007, these products were classifiable under tariff article code 0304.20.60.33 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the HTSUS.

<sup>8</sup> *See* Memorandum from Kelly Parkhill, Acting Director of Office of Policy, to Alex Villanueva, Program Manager, China/NME Group, Office 9: Antidumping Duty Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam (Vietnam): Request for a List of Surrogate Countries (“Surrogate Country List”) (January 15, 2009).

Vietnam: Selection of a Surrogate Country (“Surrogate Value Memo”).

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results.

#### 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;

(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 stipulates 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.”

In the final results of the third antidumping duty administrative review, the Department determined that QVD Choi Moi Farming Cooperative (“QVD Choi Moi”) would no longer be collapsed with QVD, QVD DT, and Thuan Hung, pursuant to sections 771(33)(A), (B), (E), (F), and (G) of the Act and 19 CFR 351.401(f). See Memorandum to David M. Spooner, Assistant Secretary for Import Administration, from Stephen J. Claeys, Deputy Assistant Secretary: Issues and Decision Memorandum for the Final Results of the Administrative Review: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam (“Vietnam”) (“3rd I & D”) (March 17, 2008). The Department also determined that QVD USA is affiliated with QVD, QVD Dong Thap, and Thuan Hung pursuant to sections 771(33)(A), (B), (E), (F), and (G) of the Act. Therefore, the Department determined to calculate a constructed export price (“CEP”) through QVD USA to its first unaffiliated U.S. customer. See 3rd I &

D at Comment 5. The Department also determined that Beaver Street Fisheries (“BSF”) and QVD USA were not affiliated. See *Id.*

In QVD’s Section A Questionnaire Response, it stated that during the POR “the QVD shareholders sold the land and all shareholdings in QVD Choi Moi on May 4, 2008.” See QVD’s December 4, 2008, Section A Questionnaire at 3. Therefore, based on the record evidence in this review we find QVD Choi Moi is no longer affiliated with QVD entities as of May 4, 2008.

For these preliminary results, based on the information on the record of this proceeding, the Department continues to find that QVD, QVD DT, and Thuan Hung should be collapsed and treated as a single entity. See 3rd I & D at Comment 5. Similarly, for these preliminary results, based on the information on the record of this proceeding, the Department continues to find that QVD and QVD USA are affiliated pursuant to sections 771(33)(A), (B), (E), (F), and (G) of the Act. For these preliminary results, we also continue to find that BSF and QVD USA are not affiliated.

Based on evidence submitted by Vinh Hoan and explained at verification, we preliminarily find that Vinh Hoan is affiliated Vinh Hoan 1 Feed Joint Stock Company (“Vinh Hoan Feed”) and Van Duc, pursuant to section 771(33) of the Act. Because much of the facts underlying this determination are business proprietary, for a detailed discussion of affiliations, please see Vinh Hoan Verification Report at pages 4–8 and 15–18. In addition, based on evidence found at verification of Vinh Hoan, we preliminarily find that Vinh Hoan, and Van Duc, but not Vinh Hoan Feed, should be treated as a single entity for purposes of this new shipper review. See 19 CFR 351.401(f)(1).

Also based on evidence submitted by Vinh Hoan and explained at verification, we preliminarily find that Vinh Hoan is affiliated Vinh Hoan USA, pursuant to section 771(33) of the Act. *Id.*

Based on evidence submitted by Cadovimex II in their questionnaire responses, we preliminarily find that Cadovimex II is affiliated with Oceanwide Seafood, LLC (“Oceanwide”), pursuant to section 771(33) of the Act. *Id.*

#### Fair Value Comparisons

To determine whether sales of the subject merchandise made by QVD, Vinh Hoan, SAMEFICO or Cadovimex II to the United States were at prices below NV, we compared each company’s export price (“EP”) or CEP,

where appropriate, to NV, as described below.

#### U.S. Price

For SAMEFICO’s and Vinh Hoan’s EP sales, we used the EP methodology, pursuant to section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation and CEP was not otherwise warranted by the facts on the record. We calculated EP based on the Free-on-board foreign port price to the first unaffiliated purchaser in the United States. For the EP sales, we also deducted foreign inland freight, foreign cold storage, and international ocean freight from the starting price (or gross unit price), in accordance with section 772(c) of the Act.

In accordance with section 772(b) of the Act, we used the CEP methodology when the first sale to an unaffiliated purchaser occurred after importation of the merchandise into the United States. In this instance, we calculated CEP for all of QVD’s, Cadovimex II’s, and Vinh Hoan’s U.S. sales through their respective U.S. affiliates, QVD USA, Oceanwide, and Vinh Hoan USA to unaffiliated customers.

For QVD’s, Cadovimex II’s, and Vinh Hoan’s CEP sales, we made adjustments to the gross unit price for billing adjustments, rebates, foreign inland freight, international freight, foreign cold storage, U.S. marine insurance, U.S. inland freight, U.S. warehousing, U.S. inland insurance, other U.S. transportation expenses, and U.S. customs duties. In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States, including commissions, credit expenses, advertising expenses, indirect selling expenses, inventory carrying costs, and U.S. re-packing costs. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

Where movement expenses were provided by NME-service providers or paid for in NME currency, we valued these services using either Bangladeshi or Indian surrogate values. See Surrogate Value Memo. Where applicable, we used the actual reported expense for those movement expenses provided by ME suppliers and paid for in ME currency.

#### Bona Fide New Shipper Analysis

Consistent with the Department’s practice, we investigated the *bona fide* nature of the sales made by SAMEFICO and Cadovimex II for the new shipper review. In evaluating whether a sale is *bona fide*, the Department considers,

*inter alia*, such factors as: (1) The timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arms-length basis. We preliminarily find that the new shipper sales made by SAMEFICO and Cadovimex II are *bona fide* transactions. See Memo to the File Through Alex Villanueva, Program Manager, Office 9 from Alexis Polovina, Case Analyst: Antidumping Duty New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Bona Fide Nature of the Sale Under Review for Saigon-Mekong Fishery Co., Ltd. and Memo to the File Through Alex Villanueva, Program Manager, Office 9 from Tim Lord, Case Analyst: Antidumping Duty New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Bona Fide Nature of the Sale Under Review for Cadovimex II Seafood Import-Export & Processing Joint Stock Company, dated August 27, 2009. Based on our investigation into the *bona fide* nature of the sales, the questionnaire responses submitted by SAMEFICO and Cadovimex, as well as the companies' eligibility for a separate rate (see "Separate Rates" section above), and the Department's preliminary determination that SAMEFICO and Cadovimex II were not affiliated with any exporter or producer that had previously shipped subject merchandise to the United States, we preliminarily determine that SAMEFICO and Cadovimex II have met the requirements to qualify as new shippers during the POR. Therefore, for purposes of these preliminary results of review, we are treating SAMEFICO's and Cadovimex II's respective sales of subject merchandise to the United States as appropriate transactions for this new shipper review. We will continue to evaluate all aspects of SAMEFICO's and Cadovimex II's sales during the final results.

#### Normal Value

Section 773(c)(1) of the Act provides that, in the case of an NME, the Department shall determine 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. Because information on the record does not permit the calculation of NV using home-market prices, third-country prices, or constructed value and no party has argued otherwise, we

calculated NV based on FOPs reported by QVD, Vinh Hoan, SAMEFICO, and Cadovimex II, pursuant to sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

As the basis for NV, QVD, Vinh Hoan, SAMEFICO, and Cadovimex II provided FOPs used in each of the stages for processing frozen fish fillets. Our general policy, consistent with section 773(c)(1)(B) of the Act, is to value the FOPs that a respondent uses to produce the subject merchandise.

To calculate NV, we valued QVD's, Vinh Hoan's, SAMEFICO's, and Cadovimex II's reported per-unit factor quantities using publicly available Bangladeshi, Philippine, Indian, and Indonesian surrogate values. Bangladesh was our first surrogate country source from which to obtain data to value inputs, and when data was not available from there, we used Philippine, Indian, or Indonesian sources. In selecting surrogate values, we considered the quality, specificity, and contemporaneity of the available values. As appropriate, we adjusted the value of material inputs to account for delivery costs. Specifically, we added surrogate freight costs to surrogate values using the reported distances from the Vietnam port to the Vietnam factory or from the domestic supplier to the factory, where appropriate. This adjustment is in accordance with the decision of the CAFC in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997).

For those values not contemporaneous with the POR, we adjusted for inflation using data published in the International Monetary Fund's International Financial Statistics. Import data from South Korea, Thailand and Indonesia were excluded from the surrogate country import data due to generally available export subsidies. See *China Nat'l Mach. Import & Export Corp. v. United States*, CIT 01–1114, 293 F. Supp. 2d 1334 (CIT 2003), aff'd 104 Fed. Appx. 183 (Fed. Cir. 2004), and *Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651, and accompanying issues and Decision Memorandum at Comment 4 (March 15, 2005). Additionally, we excluded prices from NME countries and imports that were labeled as originating from an "unspecified" Asian country. The Department excluded these imports because it could not ascertain whether they were from either an NME country or a country with general export

subsidies. We converted the surrogate values to U.S. dollars as appropriate, using the official exchange rate recorded on the dates of sale of subject merchandise in this case, obtained from <http://www.ia.ita.doc.gov/exchange/index.html>. For further detail, see Surrogate Values Memo.

#### Preliminary Results of the Review

As a result of our review, we preliminarily find that the following margins exist for the period August 1, 2007, through July 31, 2008:

#### CERTAIN FROZEN FISH FILLETS FROM VIETNAM

Manufacturer/exporter	Weighted-average margin (dollars per kilogram)
QVD <sup>9</sup> .....	0.00
Vinh Hoan .....	0.00
Agifish .....	0.02
SAMEFICO .....	0.00
Cadovimex II .....	0.00
East Sea .....	0.02
Vietnam-wide Entity .....	2.11

#### Public Comment

The Department will disclose to parties of this proceeding the calculations performed in reaching the preliminary results within ten days of the date of announcement of the preliminary results. An interested party may request a hearing within 30 days of publication of the preliminary results. See 19 CFR 351.310(c). Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, within five days after the time limit for filing case briefs. See 19 CFR 351.309(c)(1)(ii) and 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this

<sup>9</sup> This rate is applicable to the QVD Single Entity which includes QVD, QVD DT, and Thuan Hung.



administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days of publication of the preliminary results. The assessment of antidumping duties on entries of merchandise covered by this review and future deposits of estimated duties shall be based on the final results of this review.

#### Assessment Rates

Upon completion of this administrative review, pursuant to 19 CFR 351.212(b), the Department will calculate an assessment rate on all appropriate entries. For the mandatory respondents, QVD and Vinh Hoan, and new shippers, SAMEFICO and Cadovimex II, we will calculate importer-specific duty assessment rates on a per-unit basis.<sup>10</sup> Where the assessment rate is *de minimis*, we will instruct CBP to assess no duties on all entries of subject merchandise by that importer. We will instruct CBP to liquidate entries containing merchandise from the PRC-wide entity at the PRC-wide rate we determine in the final results of review. We will issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

#### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, except for Cadovimex II and SAMEFICO, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis*, the cash deposit will be zero); (2) for previously investigated or reviewed Vietnam and non-Vietnam exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all Vietnam exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the Vietnam-wide rate of \$2.11 per

kilogram; and (4) for all non-Vietnam exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Vietnam exporters that supplied that non-Vietnam exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

The following cash deposit requirements will be effective upon publication of the final results of this review for all shipments of subject merchandise from new shippers Cadovimex II or SAMEFICO entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For subject merchandise produced and exported by Cadovimex II or produced and exported by SAMEFICO, the cash deposit rate will be zero; (2) for subject merchandise exported by Cadovimex II or SAMEFICO but not manufactured by Cadovimex II or SAMEFICO, the cash deposit rate will continue to be the Vietnam-wide rate (*i.e.*, \$2.11 per kilogram); and (3) for subject merchandise manufactured by Cadovimex II or SAMEFICO, but exported by any other party, the cash deposit rate will be the rate applicable to the exporter. If the cash deposit rate calculated in the final results is zero or *de minimis*, no cash deposit will be required for those specific producer-exporter combinations. These cash deposit requirements, when imposed, shall remain in effect until further notice.

#### Notification to Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 28, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E9-21429 Filed 9-3-09; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration (C-552-805)

#### **Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of polyethylene retail carrier bags (PRCBs) from the Socialist Republic of Vietnam (Vietnam). For information on the estimated subsidy rates, see the "Suspension of Liquidation" section of this notice. This notice also serves to align the final countervailing duty (CVD) determination in this investigation with the final determination in the companion antidumping duty (AD) investigation of PRCBs from Vietnam.

**EFFECTIVE DATE:** September 4, 2009.

**FOR FURTHER INFORMATION CONTACT:** Jun Jack Zhao or Gene Calvert, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1396 and (202) 482-3586, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Case History**

The following events have occurred since the April 20, 2009 initiation of this investigation. *See Polyethylene Retail Carrier Bags From the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigation and Request for Public Comment on the Application of the Countervailing Duty Law to Imports From the Socialist Republic of Vietnam*, 74 FR 19064 (April 27, 2009) (*Initiation Notice*).

On April 21, 2009, the Department met with officials of the government of Vietnam (GOV) to provide an overview of the procedures and timetable of the investigation. *See Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, "Meeting with the Government of Socialist Republic of Vietnam (GOV): Countervailing Duty Investigation of Polyethylene Retail Carrier Bags from the Socialist Republic*

<sup>10</sup> We divided the total dumping margins (calculated as the difference between NV and EP or CEP) for each importer by the total quantity of subject merchandise sold to that importer during the POR to calculate a per-unit assessment amount. We will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (*i.e.*, per-kilogram) rates by the weight in kilograms of each entry of the subject merchandise during the POR.