

during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate effective during the POR (i.e., 5.95 percent) if there is no rate for the intermediary involved in the transaction. See *Assessment Policy Notice* for a full discussion of this clarification.

### Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: 1) the cash deposit rate for each specific company listed above<sup>7</sup> will be that established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; 2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; 3) if the exporter is not a firm covered in this review or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will be 5.34 percent, the all-others rate made effective by the *Section 129 determination*. These requirements, when imposed, shall remain in effect until further notice.

### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the

relevant entries during this review period. 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.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: March 2, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E9-4924 Filed 3-6-09; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**A-552-802**

#### **Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results, Preliminary Partial Rescission and Request for Revocation, In Part, of the Third Administrative Review**

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

**SUMMARY:** The Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam ("Vietnam"), covering the period of review ("POR") of February 1, 2007, through January 31, 2008. As discussed below, we preliminarily determine that sales have been made below normal value ("NV"). If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the POR for which the importer-specific assessment rates are above *de minimis*.

**EFFECTIVE DATE:** March 9, 2009.

**FOR FURTHER INFORMATION CONTACT:** Irene Gorelik, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482-6905.

#### **SUPPLEMENTARY INFORMATION:**

#### **General Background**

On February 1, 2005, the Department published in the *Federal Register* the antidumping duty order on frozen

warmwater shrimp from Vietnam. See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam*, 70 FR 5152 (February 1, 2005) ("Order"). On February 4, 2008, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on frozen warmwater shrimp from Vietnam for the period February 1, 2007, through January 31, 2008. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 73 FR 6477 (February 4, 2008).

On February 29, 2008, we received requests to conduct administrative reviews of 145 companies from Petitioner,<sup>1</sup> two companies from the Louisiana Shrimp Association ("LSA"), and requests by certain Vietnamese companies.<sup>2</sup> See *Notice of Initiation of Administrative Reviews of the Antidumping Duty Orders on Frozen Warmwater Shrimp from the Socialist Republic of Vietnam and the People's Republic of China* 73 FR 18739 (April 7, 2008) ("Initiation Notice").

On April 7, 2008, the Department initiated an administrative review of 170 producers/exporters of subject merchandise from Vietnam. See *Initiation Notice*. However, after accounting for duplicate names and additional trade names associated with certain exporters, the number of companies upon which we initiated is actually 110 companies/groups. On April 8, 2008, the Department posted the separate rate certification and separate rate application on its website for Vietnamese exporters for whom a review was initiated to complete and submit to the Department.

On April 14, 2008, May 5, 2008, and May 7, 2008, the Department received letters from Vinh Hoan Corporation (formerly Vinh Hoan Co., Ltd.) ("Vinh Hoan"), Kim Anh Co., Ltd. ("Kim Anh"), Quoc Viet Seaproducts Processing Trading Import and Export Co., Ltd., ("Quoc Viet"), and C.P. Vietnam Livestock Company Limited ("CP Vietnam"), respectively, indicating that they made no shipments of subject merchandise during the POR.

Of the 110 companies/groups upon which we initiated an administrative review, 78 companies did not submit separate rate certifications or

<sup>1</sup> The Ad Hoc Shrimp Trade Action Committee is the Petitioner.

<sup>2</sup> Some of these requests created an overlap in the number of companies upon which an administrative review was requested.

<sup>7</sup> Effective January 16, 2009, there is no longer a cash deposit requirement for certain producers/exporters in accordance with the *Implementation of the Findings of the WTO Panel in United States Antidumping Measure on Shrimp from Thailand: Notice of Determination under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on Frozen Warmwater Shrimp from Thailand*, 74 FR 5638 (January 30, 2009) (*Section 129 Determination*).

applications. 28 companies submitted separate-rate certifications, and four companies stated that they did not export subject merchandise to the United States during the POR. The Department addresses the review status of each grouping of companies below.

### Respondent Selection

On April 8, 2008, the Department placed on the record data obtained from CBP with respect to the selection of respondents, inviting comments from interested parties. See Letter from the Department to Interested Parties, re: CBP data for respondent selection, dated April 8, 2008. On April 21, 2008, Petitioner provided comments on the Department's respondent selection methodology. On April 22, 2008, a number of Vietnamese companies<sup>3</sup> provided comments on the Department's respondent selection methodology. On April 24, 2008, Petitioner provided additional comments with respect to the Department's respondent selection methodology.

On June 9, 2008, the Department issued its respondent selection memorandum. Based upon section 777A(c)(2)(B) of the Tariff Act of 1930 as amended, ("the Act"), the Department selected Camimex, Minh Phu Group<sup>4</sup> ("MPG"), and Phuong Nam

<sup>3</sup> These were: Grobest & I-Mei Industrial (Vietnam) Co., Ltd.; and Ca Mau Seafood Joint Stock Company ("SEAPRIMEXICO"); Cadovimex Seafood Import-Export and Processing Joint-Stock Company ("Cadovimex-Vietnam"); Cafatex Fishery Joint Stock Corporation ("CAFATEX CORP"); Camau Frozen Seafood Processing Import Export Corporation ("CAMIMEX"); Can Tho Agricultural and Animal Products Import Export Company ("CATACO"); Cuulong Seaproducts Company ("Cuulong Seapro"); Danang Seaproducts Import Export Corporation (and its affiliate Tho Quong Seafood Processing and Export Company) ("Seaprodex Danang"); Minh Hai Export Frozen Seafood Processing Joint-Stock Company ("Minh Hai Jostoco"); Minh Hai Joint-Stock Seafoods Processing Company ("Sea Minh Hai"); Minh Phu Seafood Export Import Corporation (and its affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.) (collectively "Minh Phu Group"); Ngoc Sinh Private Enterprise; Nha Trang Seaproduct Company ("NHA TRANG SEAFOODS"); Phu Cuong Seafood Processing & Import-Export Co., Ltd.; Sao Ta Foods Joint Stock Company ("FIMEX"); Soc Trang Aquatic Products and General Import-Export Company ("STAPIMEX"); Thuan Phuoc Seafoods and Trading Corporation (and its affiliates Frozen Seafoods Pty, Frozen Seafoods Factor No. 32, Seafoods and Foodstuff Factory); UTXI Aquatic Products Processing Company; Viet Foods Co., Ltd.; Vinh Loi Import Export Company ("VIMEX"); Coastal Fisheries Development Corporation ("COFIDEC"); Investment Commerce Fisheries Corporation ("INCOMFISH"); Nha Trang Fisheries Joint Stock Company ("Nha Trang FISCO"); and Bac Lieu Fisheries Company Limited ("Bac Lieu").

<sup>4</sup> Minh Phu Group includes the following companies: Minh Phu Seafood Export Import Corporation (and affiliated Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.); Minh Phu

Co., Ltd. for individual review (hereinafter "mandatory respondents") because they were the largest exporters, by volume, within the CBP data. See Memorandum to James C. Doyle, Office Director, Office 9, from Paul Walker, Senior Analyst, Re: Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Selection of Respondents for Individual Review ("Respondent Selection Memo").

### Questionnaires

On June 9, 2008, the Department issued its non-market economy questionnaire to the mandatory respondents, Camimex, MPG, and Phuong Nam. Camimex, MPG, and Phuong Nam responded to the Department's non-market economy questionnaire and subsequent supplemental questionnaires between July 2008 and February 2009.

### Extension of the Preliminary Results

On September 18, 2008, the Department extended the deadline for the preliminary results until March 2, 2009. See *Third Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Extension of Time Limit for the Preliminary Results*, 73 FR 54139 (September 18, 2008).

### Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,<sup>5</sup> deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn

Seafood Corporation; Minh Phu Seafood Corp.; Minh Qui Seafood Co., Ltd.; Minh Qui Seafood; Minh Phat Seafood Co., Ltd.; Minh Phat Seafood.

<sup>5</sup> "Tails" in this context means the tail fan, which includes the telson and the uropods.

(*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not "prepared meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: 1) breaded shrimp and prawns (HTS subheading 1605.20.10.20); 2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; 3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.00.20 and 0306.23.00.40); 4) shrimp and prawns in prepared meals (HTS subheading 1605.20.05.10); 5) dried shrimp and prawns; 6) canned warmwater shrimp and prawns (HTS subheading 1605.20.10.40); 7) certain dusted shrimp; and 8) certain battered shrimp. Dusted shrimp is a shrimp-based product: 1) that is produced from fresh (or thawed-from-frozen) and peeled shrimp; 2) to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; 3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; 4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and 5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for

convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

#### Preliminary Partial Rescission of Administrative Review

As stated above, Vinh Hoan, Kim Anh, Quoc Viet, and CP Vietnam informed the Department that they did not export subject merchandise to the United States during the POR. The Department sent an inquiry to CBP to determine whether CBP entry data is consistent with these statements.<sup>6</sup> With respect to Vinh Hoan and Quoc Viet, CBP has not provided any information that contradicted these companies' claims. Therefore, because the record indicates that Vinh Hoan and Quoc Viet did not sell subject merchandise to the United States during the POR, we are preliminarily rescinding this administrative review with respect to Vinh Hoan and Quoc Viet. See 19 CFR 351.213(d)(3). However, we are not preliminarily rescinding the instant administrative review with respect to Kim Anh and CP Vietnam, because CBP provided a response to the Department's inquiry that contradicted the no-shipment claims from Kim Anh and CP Vietnam. See Memorandum to the File, from Irene Gorelik, Senior Analyst, re: CBP Inquiry Results, dated March 2, 2009. We have requested information from the companies to address the discrepancy between the CBP data and the no-shipments certifications.<sup>7</sup> Thus, pending additional information from the companies and CBP, we are not preliminarily rescinding the reviews with respect to Kim Anh and CP Vietnam. Therefore, the Department must preliminarily assign a rate to these companies. We note that Kim Anh and CP Vietnam have not provided any information on the record to indicate their eligibility for a rate separate from the Vietnam-wide entity. Consequently, we are preliminarily assigning Kim Anh and CP Vietnam the Vietnam-wide entity rate.

#### Vietnam-Wide Entity

Upon initiation of the administrative review, we provided the opportunity for all companies upon which the review

was initiated to complete either the separate-rates application or certification. The separate-rate certification and separate-rate applications are available at: <http://ia.ita.doc.gov/download/nme-sep-rates/vietnam-shrimp/AR0708/vietnam-shrimp-sr-cert-040708.pdf>.

As noted above, Kim Anh and CP Vietnam did not apply for a separate rate in this administrative review. Therefore, Kim Anh and CP Vietnam will be part of the Vietnam-wide entity. Additionally, as stated above, 78<sup>8</sup> additional companies upon which a review was initiated did not apply for a separate rate. Because the Department preliminarily determines that there were exports of subject merchandise under review from Vietnamese producers/exporters that did not demonstrate their eligibility for separate-rate status, the

<sup>8</sup> These companies are: AAAS Logistics; Agrimex; Amerasian Shipping Logistics Corp.; American Container Line; An Giang Fisheries Import and Export Joint Stock Company (Agifish); An Xuyen, Angiang Agricultural; Technology Service Company; Aquatic Products Trading Company; Bentre Aquaproduct Imports & Exports; Bentre Forestry and Aquaproduct Import-Export Company ("FAQUIMEX"); Bentre Frozen Aquaproduct Exports; Bentre Seafood Joint Stock; Beseaco, Binh Dinh Fishery Joint Stock; Ca Mau Seaproducts Exploitation and Service Corporation ("SES"); Camau Seafood Pty; Can Tho Seafood Exports; Cautre Enterprises; Chun Cheng Da Nang Co., Ltd.; Co Hieu; Cong Ty Do Hop Viet Cuong; Dao Van Manh; Dong Phuc Huynh; Dragon Waves Frozen Food Pty.; Duyen Hai Bac Lieu Company ("T.K. Co."); Duyen Hai Foodstuffs Processing Factory ("COSEAFEX"); General Imports & Exports; Hacota; Hai Ha Private Enterprise; Hai Thuan Export Seaproduct Processing Co., Ltd.; Hai Viet; Hai Viet Corporation ("HAVICO"); Hanoi Seaproducts Import Export Corporation ("Seaprodex Hanoi"); Seaprodex Hanoi; Hatrang Frozen Seaproduct Pty; Hoa Nam Marine Agricultural; Hoan An Fishery; Hoan Vu Marine Product Co., Ltd.; Hua Heong Food Ind Vietnam; Khanh Loi Trading; Kien Gang Sea Products Import - Export Company (Kisimex); Kien Gang Seaproduct Import and Export Company ("KISIMEX"); Konoike Vinatrans Logistics; Lamson Import-Export Foodstuffs Corporation; Long An Food Processing Export Joint Stock Company ("LAFOOCO"); Lucky Shing; Nam Hai; Nha Trang Company Limited; Nha Trang Fisheries Co. Ltd.; Pataya Food Industry (Vietnam) Ltd.; Phat Loc Seafood; Phung Hung Private Business; Saigon Orchide; Sea Product; Sea Products Imports & Exports; Seafood Company Zone II ("Thusaco2"); Seafood Processing Joint Stock Company No.9 (previously Seafood Processing Imports Exports); Seafoods and Foodstuff Factory; Seaprodex; Seaprodex Quang Tri; Sonacos; Song Huong ASC Import-Export Company Ltd.; Song Huong ASC Joint Stock Company; Special Aquatic Products Joint Stock Company ("Seaspimex"); SSC; T & T Co., Ltd.; Tacvan Frozen Seafoods Processing Export Company; Thami Shipping & Airfreight; Thang Long; Thanh Long; Thanh Doan Seaproducts Import; Thien Ma Seafood; Tourism Material and Equipment Company (Matourimex Hochiminh City Branch); Truc An Company; Trung Duc Fisheries Private Enterprise; VN Seafoods; Vien Thang Private Enterprise; Viet Nhan Company; Vietfracht Can Tho; Vietnam Northern Viking Technology Co.; Vietnam Northern Viking Technology Co. Ltd.; Vietnam Tomec Co., Ltd.; Vilfood Co.; and Vita.

Vietnam-wide entity is now under review.

#### Request for Revocation, In Part

On February 29, 2008, Fish One, one of the non-selected separate rate respondents in this proceeding, requested an administrative review and revocation of the *Order*. Although the Department acknowledged the review request within the Initiation Notice, we inadvertently omitted Fish One's request for revocation within the Initiation Notice. On October 8, 2008, and January 2, 2009, Fish One filed comments arguing that the Department must comply with certain statutory and regulatory obligations related to revocation requests. Further, on January 8, 2009, Petitioner filed comments opposing Fish One's request for verification of its data.

In its initial request for revocation, Fish One argued that it has maintained three consecutive years of sales at not less than normal value. Fish One argued that, as a result of its alleged three consecutive years of no dumping, it is eligible for revocation under section 751(d)(1) of the Act and section 351.222(b)(2) of the Department's regulations.

We preliminarily determine not to revoke the *Order* with respect to Fish One. The Act affords the Department broad discretion to limit the number of respondents selected for individual review when the large number of review requests makes the individual calculation of dumping margins for all companies under review impracticable. Specifically, section 777A(c)(2) of the Act provides that if it is not practicable for the Department to make individual dumping margin determinations because of the large number of exporters or producers involved, the Department may determine margins for a reasonable number of exporters or producers. Although the Department's regulations set out rules and requirements for possible revocation of a dumping order, in whole or in part, based on an absence of dumping, it is silent on the applicability of this regulation when the Department has limited its examination under section 777A(c)(2) of the Act. The Department does not interpret the regulation as requiring it to conduct an individual examination of Fish One, or a verification of Fish One's data, where, as here, the Department determined to limit its examination to a reasonable number of exporters in accordance with section 777A(c)(2)(B), and Fish One was not one of the companies selected under this provision. To interpret the regulation as Fish One has proposed, *i.e.*, requiring the Department to analyze

<sup>6</sup> The no-shipments-inquiry to CBP is at <http://adcvd.cbp.gov/index.asp?docID=9035204&qu=&vw=detail>.

<sup>7</sup> On February 18, 2009, and February 19, 2009, the Department released under administrative protective order ("APO") the proprietary CBP data to counsel for Kim Anh and CP Vietnam, respectively. See Memoranda to the File from Irene Gorelik, Senior International Trade Compliance Analyst; re: Kim Anh Response Deadline and CP Vietnam No Shipments Inquiry, dated February 18, 2009, and February 19, 2009, respectively.

and verify Fish One's reported data, would undermine the authority Congress provided the Department to limit its examination in cases, such as shrimp from Vietnam, where there are many respondents under review (over 100 in this case). Under Fish One's interpretation, the Department would be required to conduct individual reviews and verifications for any company requesting revocation, no matter how many such requests are received. The Department does not believe that such an interpretation is correct, nor warranted, under the Act. Nothing in the regulation requires the Department to conduct an individual examination and verification when the Department has limited its review, under section 777A(c)(2). As explained above, Fish One was not selected for individual review because, pursuant to 777A(c)(2)(B) of the Act, the Department selected the three largest exporters, by volume. See *Respondent Selection Memo*. Thus, because we have not selected Fish One for individual examination, we preliminarily determine not to revoke the *Order* with respect to Fish One.

However, Fish One filed a timely separate-rate certification, as evidence of its continued eligibility for a separate rate. Thus, the Department considers Fish One a cooperative respondent eligible for a separate rate. Moreover, as the Department has calculated positive margins for all three selected respondents in these preliminary results, we are assigning a separate rate to all SR respondents equal to the weighted average of the three calculated margins. See "Rate for Non-Selected Companies" section below.

#### Verification

Pursuant to 19 CFR 351.307(b)(iv), between January 12 and January 16, 2009, we conducted a verification of Phuong Nam's sales and factors of production ("FOP"). See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Verification of Sales and Factors of Production for Phuong Nam Co., Ltd.* ("Phuong Nam"), dated March 2, 2009.

#### Surrogate Country and Surrogate Values

On September 11, 2008, the Department sent interested parties a letter requesting comments on surrogate country selection and information pertaining to valuing factors of production. Camimex and MPG submitted surrogate country comments on January 5, 2009. Petitioner filed rebuttal surrogate country comments on January 8, 2009, opposing Camimex and

MPG's request for the Department to select Bangladesh as the surrogate country.

On January 30, 2009, Phuong Nam, MPG, Camimex and Petitioner submitted surrogate value data. On February 3, 2009, MPG and Camimex commented on Petitioner's surrogate value data submission dated January 30, 2009. On February 4, 2009, Petitioner filed additional surrogate value data. On February 10, 2009, Petitioner filed pre-preliminary results comments with respect to the calculation methodology used to convert the shrimp surrogate values to the same basis as the respondents' reported data. On February 11, 2009, Phuong Nam filed comments rebutting Petitioner's surrogate value data dated February 10, 2009.

For a detailed account of the Department's surrogate country selection, please see the "Surrogate Country" section below.

#### 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, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Preliminary Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 72 FR 53527 (September 19, 2007) (unchanged in final results). None of the parties to this proceeding have contested such treatment. Accordingly, we calculated the NV in accordance with section 773(c) of the Act, which applies to NME countries.

#### Separate Rates Determination

A designation as an NME remains in effect until it is revoked by the Department. See section 771(18)(C) of 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*").

For this administrative review, the Department received a total of 28 separate-rate certifications.<sup>9</sup> Of those 28 separate-rate certifications, three were submitted by the mandatory respondents, whose eligibility for a separate rate was analyzed within their respective questionnaire responses. Therefore, the Department analyzed 25 separate-rate certifications for companies upon which the administrative review was initiated, but not selected for individual review. Of those 25 separate-rate certifications, the Department noted that separate-rate certifications filed by seven exporters<sup>10</sup> showed that these seven companies claimed to have undergone changes in name, legal and/or corporate structure during the POR. A separate-rate certification is not the proper vehicle by which a company that has undergone name or other corporate changes should request a separate rate. Accordingly, for purposes of these preliminary results, the Department has examined the separate-rate eligibility of the respondents prior to any name or other corporate change. On December 9, 2008, the Department notified these seven respondents that any claims of successor-in-interest by these companies must be requested within the context of a changed circumstance review request. See Department's letter dated December 9, 2009. The Department intends to take into account the final results of any changed circumstances review that has been requested, initiated, and completed before the final results of this review.

Lastly, one separate rate company, Amanda Foods (Vietnam) Limited, reported that it is wholly owned by

<sup>9</sup>For firms previously awarded separate rate status, the Department allows those firms to file a separate-rate certification, provided that the company did not undergo changes in status since the previous granting period. Additionally, firms that did not hold a separate rate in a previous granting period may not use a separate-rate certification, but, instead must submit a separate-rate application for separate rate status. See separate-rate certificate issued by the Department on April 8, 2008; available at: <http://ia.ita.doc.gov/download/nme-sep-rates/vietnam-shrimp/AR0708/vietnam-shrimp-sr-cert-040708.pdf>.

<sup>10</sup>These exporters are: Cadovimex, CATACO, Stapimex, UTXI, Bac Lieu, Minh Hai Export Frozen Seafood Processing Joint Stock Company, and Thuan Phuoc.

individuals or companies located in a market economy in its separate-rate application. Therefore, because it is wholly foreign-owned, and we have no evidence indicating that its export activities are under the control of the Vietnamese government, a further separate rates analysis is not necessary to determine whether this company is independent from government control.<sup>11</sup> Accordingly, we have preliminarily granted a separate rate to Amanda Foods (Vietnam) Limited.

#### 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 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, MPG, Camimex, and Phuong Nam submitted complete responses to the separate rates section of the Department's NME questionnaire. 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 supports a finding of a *de jure* absence of government control over their export activities. Additionally, 25 participating separate

rate companies/groups<sup>12</sup> submitted timely separate rate certifications. The seven respondents noted in footnote 10 are included in this group of 25. However, as stated above, the Department will examine the separate-rate eligibility of those respondents prior to any name or other corporate change until a successor-in-interest determination is made with respect to the new entities.

We have no information in this proceeding that would cause us to reconsider this determination. Thus, we believe that the evidence on the record supports a preliminary finding of an absence of *de jure* government control based on: (1) an absence of restrictive stipulations associated with the exporter's business license; and (2) the legal authority on the record decentralizing control over the respondents.<sup>13</sup>

#### 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

<sup>12</sup> The non-selected respondents of this administrative review seeking a separate rate are: Amanda Foods (Vietnam) Ltd., Bac Lieu Fisheries Company Limited ("Bac Lieu"), Ca Mau Seafood Joint Stock Company ("SEAPRIMEXCO"), Cadovimex Seafood Import-Export and Processing Joint Stock Company ("CADOVIMEX"), Cantho Animal Fisheries Product Processing Export Enterprise (Cafatex), Cam Ranh Seafoods Processing Enterprise Company ("Camranh Seafoods"), Can Tho Agricultural and Animal Product Import Export Company ("CATACO"), Coastal Fisheries Development Corporation ("COFIDEC"), Cuulong Seaproducts Company ("Cuulong Seapro"), Danang Seaproducts Import Export Corporation ("Seaprodex Danang") and affiliate Tho Quang Seafood Processing & Export Company, Grobest & I-Mei Industrial (Vietnam) Co., Ltd., Investment Commerce Fisheries Corporation ("Incomfish"), Minh Hai Export Frozen Seafood Processing Joint-Stock Company ("Minh Hai Jostoco"), Minh Hai Joint-Stock Seafoods Processing Company ("Seaprodex Minh Hai"), Ngoc Sinh Private Enterprise, Nha Trang Fisheries Joint Stock Company ("Nha Trang Fisco"), Nha Trang Seaproduct Company ("Nha Trang Seafoods"), Phu Cuong Seafood Processing & Import-Export Co., Ltd., Sao Ta Foods Joint Stock Company ("FIMEX"), Soc Trang Aquatic Products and General Import Export Company ("Stapimex"), Thuan Phuoc Seafoods and Trading Corporation (and its affiliates), UTXI Aquatic Products Processing Company, Viet Foods Co., Ltd., Viet Hai Seafood Co., Ltd. a/k/a Vietnam Fish One Co., Ltd. (Fish One), Vinh Loi Import Export Company ("VIMEX").

<sup>13</sup> This preliminary finding applies to the three mandatory respondents of this administrative review: MPG, Camimex, and Phuong Nam, and the non-selected respondents eligible for a separate rate listed in the preceding footnote.

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 their questionnaire responses, MPG, Camimex, and Phuong Nam submitted evidence indicating an absence of *de facto* government control over their export activities. Specifically, this evidence indicates that: (1) each company sets its own export prices independent of the government and without the approval of a government authority; (2) each company retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) each company has a general manager, branch manager or division manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the board of directors or company employees, and the general manager appoints the deputy managers and the manager of each department; and (5) there is no restriction on any of the companies use of export revenues. Therefore, the Department preliminarily finds that MPG, Camimex, and Phuong Nam, and the separate rate companies have established *prima facie* that they qualify for separate rates under the criteria established by *Silicon Carbide* and *Sparklers*.

#### Rate for Non-Selected Companies

Based on timely requests from individual exporters and Petitioner, the Department originally initiated this review with respect to 110 companies/groups. In accordance with section 777A(c)(2)(B) of the Act, the Department employed a limited examination methodology, as it did not have the resources to examine all companies for which a review request was made. As stated previously, the Department selected three exporters, MPG, Camimex, and Phuong Nam as mandatory respondents in this review. Twenty-five additional companies submitted timely information as requested by the Department and remain subject to review as cooperative separate rate respondents.

We note that the statute and the Department's regulations do not directly 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. The

<sup>11</sup> *See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104-05 (December 20, 1999) (where the respondent was wholly foreign-owned and, thus, qualified for a separate rate). *See also Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results, Preliminary Partial Rescission and Final Partial Rescission of the Second Administrative Review* 73 FR 12127 (March 6, 2008), unchanged in *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 52273 (September 9, 2008) ("Vietnam Shrimp AR2").

Department's practice in this regard, in cases involving limited selection based on exporters accounting for the largest volumes of trade, has been to look to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance. Consequently, the Department generally weight-averages the rates calculated for the mandatory respondents, excluding zero and *de minimis* rates and rates based entirely on adverse facts available ("AFA"), and applies that resulting weighted-average margin to non-selected cooperative separate-rate respondents. *See, e.g., Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper and Partial Rescission of Administrative Review*, 73 FR 8273 (February 13, 2008) (unchanged in final results). Consequently, consistent with our practice, we have preliminarily established a weighted-average margin for the separate-rate respondents based on the rates we calculated for the three mandatory respondents, excluding any rates that are zero, *de minimis*, or based entirely on AFA. *See Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results Simple-Averaged Margin for Separate Rate Respondents*, dated March 2, 2009. For the Vietnam-wide entity, we have assigned the entity's current rate and only rate ever determined for the entity in this proceeding.

#### 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 *Memorandum to the File through Catherine Bertrand, Program Manager, Office 9 from Irene Gorelik, Senior Analyst, Office 9; Third Antidumping Duty Administrative Reviews of Certain Frozen Warmwater*

*Shrimp from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results*, dated March 2, 2009 ("*Factor Valuation Memo*").

Pursuant to its practice, the Department received a list of potential surrogate countries from the Office of Policy ("OP").<sup>14</sup> The OP determined that Bangladesh, Pakistan, India, Sri Lanka, and Indonesia were at a comparable level of economic development to Vietnam. *See Surrogate Country List*. The Department considers the five countries identified by the OP in its Surrogate Country List as "equally comparable in terms of economic development." *Id.* Thus, we find that Bangladesh, Pakistan, India, Sri Lanka, and Indonesia are all at an economic level of development equally comparable to that of Vietnam.

Also, based on publicly available data published by the Food and Agricultural Organization ("FAO") of the United Nations' FishStat Database ("FishStat"), we obtained world production data of frozen warmwater shrimp. Specifically, the Department has reviewed the data from FishStat which shows that Bangladesh, Indonesia, India, Pakistan, and Sri Lanka all produce the identical merchandise. *See Memorandum to the File from Irene Gorelik, Senior Analyst, Re: Third Administrative Review of Certain Warmwater Shrimp from Vietnam: Fishstat Data*, dated March 2, 2009. Therefore, all countries are being considered as an appropriate surrogate country for Vietnam because each country produces the identical merchandise. Moreover, according to FishStat, in 2005, the most recent year for which FishStat export statistics are available, Bangladesh, Indonesia, and India, are all significant producers of comparable merchandise. *See id.* Though both Pakistan and Sri Lanka export frozen shrimp, the quantities they export do not qualify them as significant producers of the subject merchandise. As Bangladesh, Indonesia, and India are all significant producers of comparable merchandise, the Department must look to data considerations when choosing the most appropriate surrogate country from among these countries.

With regard to India and Indonesia, the record contains publicly available surrogate factor value information for some factors. MPG and Camimex provided data for both Indonesia and

Bangladesh from a study conducted by the Network of Aquaculture Centres in Asia-Pacific ("NACA"), an intergovernmental organization affiliated with the UN's Food and Agriculture Organization ("FAO"). However, unlike the Bangladeshi data within the NACA study, the Indonesian shrimp data is limited and does not satisfy as many factors of the Department's data selection criteria (*e.g.*, broad-market average). Thus, Indonesia is not the most appropriate surrogate country for purposes of this review. With respect to India, the only shrimp value on the record is ranged data obtained from one Indian respondent's data in the current administrative review of warmwater shrimp from India, which also does not satisfy as many factors of the Department's data selection criteria (*e.g.*, public availability, broad-market average).

The Department's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, surrogate values which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR and exclusive of taxes and duties.<sup>15</sup> As a general matter, the Department prefers to use publicly available data representing a broad market average to value surrogate values. *See id.* The Department notes that the value of the main input, head-on, shell-on ("HOSO") shrimp, is a critical factor of production in the dumping calculation as it accounts for a significant percentage of normal value. Moreover, the ability to value shrimp on a count size basis is a significant consideration with respect to the data available on the record.

The Department notes that the mandatory respondents and Petitioner submitted count-size specific shrimp data and equally comparable surrogate company financial statements from shrimp processors. Therefore, availability of count-size specific data or surrogate financial ratios on this record is not the determining factor in selecting a surrogate country for this review.

However, the Bangladeshi shrimp values within the NACA study are compiled by the UN's FAO from actual pricing records kept by Bangladeshi

<sup>14</sup> *See Memorandum from Carole Showers, Acting Director, Office of Policy, to Catherine Bertrand, Program Manager, AD/CVD Enforcement, Office 9: Administrative Review of Certain Warmwater Shrimp from Vietnam: Request for a List of Surrogate Countries*, dated July 29, 2008 ("*Surrogate Country List*") from the OP.

<sup>15</sup> *See Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the Eleventh Administrative Review and New Shipper Reviews*, 72 FR 34438 (June 22, 2007) and accompanying Issues and Decision Memorandum at Comment 2A.

farmers, traders, depots, agents, and processors. See *Factor Valuation Memo*. The Bangladeshi shrimp values within the NACA study represent a broad-market average and are publicly available, unlike those of the single Indian processor. Therefore, with respect to the data considerations, because the record contains shrimp values for Bangladesh that better meet our selection criteria than the India source, we are selecting Bangladesh as the surrogate country.

In this regard, given the above-cited facts, we find that the information on the record shows that Bangladesh is an appropriate surrogate country 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 reliable, publicly available data representing a broad-market average for surrogate valuation purposes.

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.<sup>16</sup>

## U.S. Price

### A. Export Price

In accordance with section 772(a) of the Act, we calculated the export price ("EP") for sales to the United States for Camimex and Phuong Nam because the first sale to an unaffiliated party was made before the date of importation and the use of constructed export price ("CEP") was not otherwise warranted. Additionally, we calculated the EP for a portion of MPG's sales to the United States. We calculated EP based on the price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, as appropriate, we deducted from the starting price to unaffiliated purchasers foreign inland freight and brokerage and handling. Each of these services was either

provided by an NME vendor or paid for using an NME currency. Thus, we based the deduction of these movement charges on surrogate values.

Additionally, for international freight provided by a market economy provider and paid in U.S. dollars, we used the actual cost per kilogram of the freight. See *Factor Valuation Memo* for details regarding the surrogate values for movement expenses.

### B. Constructed Export Price

For the majority of MPG's sales, we based U.S. price on CEP in accordance with section 772(b) of the Act, because sales were made on behalf of the Vietnam-based company by its U.S. affiliate to unaffiliated purchasers in the United States. For these sales, we based CEP on prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, U.S. movement expenses, and appropriate selling adjustments, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States. We deducted, where appropriate, commissions, inventory carrying costs, credit expenses, and indirect selling expenses. Where foreign movement expenses, international movement expenses, or U.S. movement expenses were provided by Vietnam service providers or paid for in Vietnamese Dong, we valued these services using surrogate values (see "Factors of Production" section below for further discussion). For those expenses that were provided by a market-economy provider and paid for in market-economy currency, we used the reported expense. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for all three mandatory respondents, see *Memorandum to the File, through Catherine Bertrand, Program Manager, Office 9, from Irene Gorelik, Senior Analyst, Office 9; Company Analysis Memorandum in the Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam; Minh Phu Group*, dated March 2, 2009 ("*MPG Analysis Memo*"); *Memorandum to the File, through Catherine Bertrand, Program Manager, Office 9, from Blaine Wiltse, Analyst, Office 9; Company Analysis Memorandum in the Antidumping Duty Administrative Review of Certain Frozen*

*Warmwater Shrimp from the Socialist Republic of Vietnam; Phuong Nam Co., Ltd.*, dated March 2, 2009 ("*Phuong Nam Analysis Memo*"); and *Memorandum to the File, through Catherine Bertrand, Program Manager, Office 9, from Robert Palmer, Analyst, Office 9; Company Analysis Memorandum in the Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam; Camimex*, dated March 2, 2009 ("*Camimex Analysis Memo*").

## Normal Value

### 1. Methodology

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

### 2. Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by respondents for the POR, except as noted above. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available Bangladeshi surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Bangladeshi import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory of production or the distance from the nearest seaport to the factory of production where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407-1408 (Fed. Cir. 1997). Where we did not use Bangladeshi Import Statistics, we calculated freight based on the reported distance from the supplier to the factory.

With regard to surrogate values and the market-economy input values, we have disregarded prices that we have

<sup>16</sup> In accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. See *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission*, in Part, 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, Thailand, and India may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004) (“CTVs from the PRC”), and accompanying Issues and Decision Memorandum at Comment 7; see also *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 (March 15, 2005), and accompanying Issues and Decision Memorandum at Comment 4. The legislative history of the Act provides that in making its determination as to whether input values may be subsidized, the Department is not required to conduct a formal investigation, rather, Congress directed the Department to base its decision on information that is available to it at the time it makes its determination. See *Omnibus Trade and Competitiveness Act of 1988, Conference Report to Accompanying, H.R. Rep. 100-576 at 590* (1988).

Therefore, based on the information currently available, we have not used prices from these countries either in calculating the Bangladeshi import-based surrogate values or in calculating market-economy input values. In instances where a market-economy input was obtained solely from suppliers located in these countries, we used Bangladeshi import-based surrogate values to value the input.

With respect to certain purchases made by all three mandatory respondents, the Department noted that the purchase prices for certain inputs used to produce subject merchandise were from a country that we believe or suspect maintains broadly available, non-industry-specific export subsidies. As a result, we have, instead, used a surrogate value for those inputs. For further detail, see *MPG Analysis Memo*, *Phuong Nam Analysis Memo*, and *Camimex Analysis Memo*.

### Raw Shrimp Value

The Department notes that the mandatory respondents and Petitioner submitted Bangladeshi shrimp values

with which to value the main input, raw shrimp. Phuong Nam submitted Bangladeshi shrimp values obtained from a single processor, Apex Foods Limited. Petitioner submitted shrimp values based on a survey of several Bangladeshi shrimp processors. As stated above, MPG and Camimex submitted data contained in the NACA study compiled by the UN's FAO.

As stated above, the Department's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, surrogate values which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR and exclusive of taxes and duties. Phuong Nam's submitted shrimp values from Apex Foods Limited, although publicly available, are from a single Bangladeshi shrimp producer of comparable merchandise, thus does not represent a broad market average of prices. Further, with respect to Petitioner's submitted shrimp values obtained from a survey of several Bangladeshi shrimp producers, we note that the authors of the survey averaged the shrimp prices they collected for business confidentiality reasons, thus the underlying data are not publicly available.<sup>17</sup> The Department prefers using public data, when available, with which to value the FOPs. See e.g., *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews*, 71 FR 26329 (May 4, 2006) and accompanying Issues and Decision Memorandum at Comment 7; see also *Saccharin from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 7515 (February 13, 2006) and accompany Issued and Decision Memorandum at Comment 5. Therefore, to value the main input, head-on, shell-on shrimp, the Department used data contained in the NACA study.<sup>18</sup>

Additionally, Petitioners filed pre-preliminary results comments with respect to the calculation steps required to adjust the HOSO shrimp surrogate values to the “headless, shell-on” (“HLSO”) shrimp consumption reported by the mandatory respondents. Consequently, we reviewed the adjustment methodology and concluded

<sup>17</sup> See Petitioner's Submission dated February 4, 2009, at Attachment I, page 3. See also *Vietnam Shrimp AR2* at Comment 2 (where the Department rejected shrimp surrogate values obtained from price quotes or ranged proprietary data).

<sup>18</sup> For a detailed explanation of the Department's valuation of shrimp, see *Factor Valuation Memo*.

that the Department has overlooked a calculation step within the methodology in adjusting the surrogate value data to the respondents' shrimp consumption data, taking into account different bases of reported data. Specifically, the surrogate value data is on a HOSO, pieces per kilogram basis, while the respondents' data is on a HLSO, pieces per pound basis. The Department has added an additional step in the HLSO to HOSO adjustment, such that the surrogate value data and shrimp consumption data upon which accurate margin calculations rely are on the same bases with respect to units of measure and HOSO. See *Factor Valuation Memo* for a detailed description of each step within the conversion methodology.

The Department used United Nations ComTrade Statistics, provided by the United Nations Department of Economic and Social Affairs' Statistics Division, as its primary source of Bangladeshi surrogate value data.<sup>19</sup> The data represents cumulative values for the calendar year 2006, for inputs classified by the Harmonized Commodity Description and Coding System number. For each input value, we used the average value per unit for that input imported into Bangladesh from all countries that the Department has not previously determined to be NME countries. Import statistics from countries that the Department has determined to be countries which subsidized exports (i.e., Indonesia, Korea, Thailand, and India) and imports from unspecified countries also were excluded in the calculation of the average value. See *CTVs from the PRC*, 69 FR 20594 (April 16, 2004).

It is the Department's practice to calculate price index adjusters to inflate or deflate, as appropriate, surrogate values that are not contemporaneous with the POR using the wholesale price index (“WPI”) for the subject country. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Hand Trucks and Certain Parts Thereof from the People's Republic of China*, 69 FR 29509 (May 24, 2004). However, in this case, a WPI was not available for Bangladesh. Therefore, where publicly available information contemporaneous with the POR with which to value factors could not be obtained, surrogate values were adjusted using the Consumer Price Index rate for Bangladesh, or the WPI for India or Indonesia (for certain surrogate values where Bangladeshi data could not be obtained), as published in the

<sup>19</sup> This can be accessed online at: <http://www.unstats.un.org/unsd/comtrade/>

International Financial Statistics of the International Monetary Fund.

Certain surrogate values were calculated using data from the 2005 Statistical Yearbook of Bangladesh, published by the Bangladesh Bureau of Statistics, Planning Division, Ministry of Planning. The information represents cumulative values for the period of 2005. Certain other Bangladeshi sources were used as well. *See Factor Valuation Memo*. The unit values were initially

calculated in takas/unit. Bangladeshi and other surrogate values denominated in foreign currencies were converted to USD using the applicable average exchange rate based on exchange rate data from the Department's website. To value packing materials, we used UN ComTrade data as the primary source of Bangladeshi surrogate value data. To value factory overhead, Selling, General, & Administrative expenses, and profit, we used the simple average of the 2007–

2008 financial statement of Apex Foods Limited and the 2006–2007 financial statement of Gemini Seafood Limited, both of which are Bangladeshi shrimp processors. *See Factor Valuation Memo*, at Exhibit 12.

#### Preliminary Results of the Review

The Department has determined that the following preliminary dumping margins exist for the period February 1, 2007, through January 31, 2008:

#### CERTAIN FROZEN WARMWATER SHRIMP FROM VIETNAM

Manufacturer/Exporter	Weighted-Average Margin (Percent)
MPG:Minh Phat Seafood Co., Ltd., akaMinh Phat Seafood akaMinh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.) akaMinh Phu Seafood Corp. akaMinh Phu Seafood Corporation akaMinh Qui Seafood akaMinh Qui Seafood Co., Ltd. ....	1.66 %
Camau Frozen Seafood Processing Import Export Corporation ("CAMIMEX"), akaCamimex, akaCamau Seafood Factory No. 4, akaCamau Seafood Factory No. 5 .....	9.84 %
Phuong Nam Co. Ltd., akaPhuong Nam Seafood Co. Ltd. akaWestern Seafood .....	5.46 %
Amanda Foods (Vietnam) Ltd. ....	4.26 %
Bac Lieu Fisheries Company Limited, akaBac Lieu Fisheries Company Limited ("Bac Lieu") <sup>20</sup> .....	4.26 %
Cadovimex Seafood Import-Export and Processing Joint Stock Company ("CADOVIMEX") akaCai Doi Vam Seafood Import-Export Company (Cadovimex) <sup>21</sup> .....	4.26 %
Cafatex Fishery Joint Stock Corporation ("Cafatex Corp.") akaCantho Animal Fisheries Product Processing Export Enterprise (Cafatex), akaCafatex, akaCafatex Vietnam, akaXi Nghiep Che Bien Thuy Suc San Xuat Khau Can Tho, akaCas, akaCas Branch, akaCafatex Saigon, akaCafatex Fishery Joint Stock Corporation, akaCafatex Corporation, akaTaydo Seafood Enterprise .....	4.26 %
Cam Ranh Seafoods Processing Enterprise Company ("Camranh Seafoods") akaCamranh Seafoods .....	4.26 %
Can Tho Agricultural and Animal Product Import Export Company ("CATACO") akaCan Tho Agricultural Products akaCATACO <sup>22</sup> .....	4.26 %
Coastal Fishery Development akaCoastal Fisheries Development Corporation (Cofidec) akaCoastal Fisheries Development Corporation (Cofidec) .....	4.26 %
Cuulong Seaproducts Company ("Cuu Long Seapro") akaCuu Long Seaproducts Limited (Cuulong Seapro) akaCuulong Seapro, akaCuulong Seaproducts Company ("Cuulong Seapro") ("Cuu Long Seapro") .....	4.26 %
Danang Seaproducts Import Export Corporation ("Seaprodex Danang") akaTho Quang Seafood Processing & Export Company, akaSeaprodex Danang, akaTho Quang Seafood Processing And Export Company, akaTho Quang, akaTho Quang Co. ....	4.26 %
Frozen Seafoods Factory No. 32, akaFrozen Seafoods Fty, akaThuan Phuoc, akaThuan Phuoc Seafoods and Trading Corporation, akaFrozen Seafoods Factory 32, akaSeafoods and Foodstuff Factory <sup>23</sup> .....	4.26 %
Grobtest & I-Mei Industry Vietnam, akaGrobtest, akaGrobtest & I-Mei Industry (Vietnam) Co., Ltd. ....	4.26 %
Investment Commerce Fisheries Corporation ("Incomfish") .....	4.26 %
Minh Hai Export Frozen Seafood Processing Joint Stock Company, akaMinh Hai Jostoco, akaMinh Hai Export Frozen Seafood Processing Joint-Stock Company ("Minh Hai Jostoco"), akaMinh Hai Export Frozen Seafood Processing Joint-Stock Company, akaMinh Hai Export Frozen Seafood Processing Joint-Stock Co. <sup>24</sup> .....	4.26 %
Minh Hai Joint-Stock Seafoods Processing Company ("Seaprodex Minh Hai") akaSea Minh Hai, akaMinh Hai Joint-Stock Seafoods Processing Company .....	4.26 %
Minh Hai Sea Products Import Export Company (Seaprimex Co), akaCa Mau Seafood Joint Stock Company ("SEAPRIMEXCO") akaSeaprimexco Vietnam, akaSeaprimexcoCa Mau Seafood Joint Stock Company (Seaprimexco) .....	4.26 %
Ngoc Sinh Private Enterprise, akaNgoc Sinh Seafoods, akaNgoc Sinh Seafoods Processing and Trading Enterprise .....	4.26 %
Nha Trang Fisheries Joint Stock Company ("Nha Trang Fisco") .....	4.26 %
Nha Trang Seaproduct Company (Nha Trang Seafoods) .....	4.26 %
Phu Cuong Seafood Processing and Import-Export Co., Ltd. ....	4.26 %
Sao Ta Foods Joint Stock Company ("Fimex VN") .....	4.26 %
Soc Trang Aquatic Products and General Import Export Company ("Stapimex") <sup>25</sup> .....	4.26 %
UTXI Aquatic Products Processing Company, akaUT XI Aquatic Products Processing Company, akaUT-XI Aquatic Products Processing Company, akaUTXI, akaUTXI Co. Ltd., akaKhanh Loi Seafood Factory, akaHoang Phuong Seafood Factory <sup>26</sup> .....	4.26 %
Viet Foods Co., Ltd. ("Viet Foods") .....	4.26 %
Viet Hai Seafood Co., Ltd. akaVietnam Fish One Co., Ltd. (Fish One) .....	4.26 %
Vinh Loi Import Export Company ("Vimexco"), akaVinh Loi Import Export Company ("VIMEX"), akaVIMEXCO, akaVIMEX .....	4.26 %
Vietnam-Wide Rate <sup>27</sup> .....	25.76 %

<sup>20</sup> As indicated above in the "Separate Rates Determination" section, we have not extended Bac Lieu's separate-rate status to Bac Lieu Fisheries Joint Stock Company in these preliminary results.

<sup>21</sup> As indicated above in the "Separate Rates Determination" section, we have not extended Cadovimex's separate-rate status to "Cadovimex-Vietnam" in these preliminary results.

<sup>22</sup> For the same reasons discussed in *Vietnam Shrimp AR2 Final*, we have not extended Cataco's separate rate status to Cantho Import-Export Seafood Joint Stock Company, also known as Caseamex. See *Vietnam Shrimp AR2* at Comment 7.

<sup>23</sup> As indicated above in the "Separate Rates Determination" section, we have not extended Thuan Phuoc's separate-rate, pertaining to its status prior to any name or corporate changes, to the new entity in these preliminary results.

<sup>24</sup> For the same reasons discussed in *Vietnam Shrimp AR2 Final*, we have not extended Minh Hai Jostoco's separate-rate status to: Kien Cuong Seafood Processing Import Export Joint-Stock Company ("Kien Cuong") and Viet Cuong Seafood Processing Import Export Joint-Stock Company ("Viet Cuong"). See *Vietnam Shrimp AR2* at Comment 7. We further note that, to date, Minh Hai Jostoco has not filed a changed circumstance review with respect to Kien Cuong and Viet Cuong.

<sup>25</sup> As indicated above in the "Separate Rates Determination" section, we have not extended Stapimex's separate-rate status to Soc Trang Seafood Joint Stock Company in these preliminary results.

<sup>26</sup> As indicated above in the "Separate Rates Determination" section, we have not extended UTXI's separate-rate status to UTXI Aquatic Products Processing Corporation in these preliminary results.

<sup>27</sup> The Vietnam-wide entity rate preliminarily includes Kim Anh and CP Vietnam.

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. See 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication of these preliminary results of review. See 19 CFR 351.309(d).

Any interested party may request a hearing within 30 days of publication of these preliminary results. See 19 CFR 351.310(c). Requests should contain the following information: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If we receive a request for a hearing, we plan to hold the hearing seven days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

#### Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by these reviews. We will instruct CBP to liquidate entries containing merchandise from the Vietnam-wide entity at the Vietnam-wide rate we determine in the final results of review. We intend to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. In accordance with 19 CFR

351.212(b)(1), for Camimex, MPG, and Phuung Nam, we calculated an exporter/importer (or customer)-specific assessment rate for the merchandise subject to this review. Where the respondent has reported reliable entered values, we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer). See 19 CFR 351.212(b)(1). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis*, we will apply the assessment rate to the entered value of the importer's/customer's entries during the review period. See 19 CFR 351.212(b)(1).

Where we do not have entered values for all U.S. sales, we calculated a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). See 19 CFR 351.212(b)(1). To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* ratios based on the estimated entered value. Where an importer (or customer)-specific *ad valorem* rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. See 19 CFR 351.106(c)(2).

For the companies receiving a separate rate that were not selected for individual review, we will calculate an assessment rate based on the weighted average of the cash deposit rates calculated for the companies selected for individual review pursuant to section 735(c)(5)(B) of the Act. Where the weighted-average *ad valorem* rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. See 19 CFR 351.106(c)(2).

For Vinh Hoan and Quoc Viet, companies for which this review is preliminarily rescinded, antidumping

duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2).

#### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of the administrative review for all shipments of warmwater shrimp from Vietnam entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) for the exporters listed above, the cash-deposit rate will be that established in the final results of review (except, if the rate is zero or *de minimis*, no cash deposit will be required); (2) for previously reviewed or investigated companies 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 other Vietnamese 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 25.76 percent; and (4) for all non-Vietnamese exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the rate applicable to the Vietnamese exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

#### Notification to Importers

This notice also 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 review period. 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.

This administrative review and this notice are in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

Dated: March 2, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E9-4911 Filed 3-6-09; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-588-846]

#### Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products From Japan: Preliminary Results of Antidumping Duty Administrative Review

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

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain hot-rolled flat-rolled carbon quality steel products (hot-rolled steel) from Japan. The United States Steel Corporation (Petitioner) requested administrative reviews of JFE Steel Corporation (JFE), Nippon Steel Corporation (Nippon), and Kobe Steel, Ltd. (Kobe). This review covers exports of subject merchandise to the United States during the period June 1, 2007 through May 31, 2008.

We preliminarily determine that, in accordance with sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act), adverse facts available (AFA) should be applied to JFE, Nippon, and Kobe for not cooperating with the Department in this administrative review. The antidumping margins assigned to these companies are listed in the *Preliminary Results of Review* section of this notice. Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** March 9, 2009.

**FOR FURTHER INFORMATION CONTACT:** Martha Douthit, 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) 482-5050.

#### Background

On June 29, 1999, the Department published the antidumping duty order on hot-rolled steel from Japan in the *Federal Register*. See *Antidumping Duty Order: Certain Hot-Rolled Flat-Rolled*

*Carbon-Quality Steel Products from Japan*, 64 FR 34778 (June 29, 1999).

On June 9, 2008, the Department published a notice of opportunity to request an administrative review of this order. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 73 FR 32557 (June 9, 2008). The Department received a timely request for a review from Petitioner, covering JFE, Nippon, and Kobe. On July 30, 2008, the Department published its initiation notice for the administrative review of these companies under the antidumping order on hot-rolled steel from Japan. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews, and Request for Revocation in Part, and Deferral of Administrative Review*, 73 FR 44220 (July 30, 2008).

The Department issued Sections A through E of its original questionnaire to JFE, Nippon, and Kobe.<sup>1</sup> The deadlines to submit responses to the Department's questionnaire were September 1, 2008 for Section A, and September 17, 2008 for Sections B through E, for JFE and Nippon, and October 14, 2008 for Section A, and October 30, 2008 for Sections B through E for Kobe.

On August 12, 2008, JFE Corporation submitted a letter stating that, effective April 1, 2003, Kawasaki Steel Corporation had changed its name to JFE as part of a merger with NKK Corporation.<sup>2</sup> On August 19, 2008, Nippon submitted a letter stating that it would not be submitting a response to the Department's questionnaire. Neither JFE, Nippon, nor Kobe submitted any response to the Department's questionnaire.

#### Scope of the Order

The merchandise covered by this order consists of certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor

<sup>1</sup> Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

<sup>2</sup> The Department has not previously determined whether JFE is a successor to Kawasaki Steel Corporation or NKK Corporation nor has it been requested to do so in this review.

coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum. Steel products to be included in the scope of this investigation, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or  
1.50 percent of silicon, or  
1.00 percent of copper, or  
0.50 percent of aluminum, or  
1.25 percent of chromium, or  
0.30 percent of cobalt, or  
0.40 percent of lead, or  
1.25 percent of nickel, or  
0.30 percent of tungsten, or  
0.012 percent of boron, or  
0.10 percent of molybdenum, or  
0.10 percent of niobium, or  
0.41 percent of titanium, or  
0.15 percent of vanadium, or  
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this order:

- Alloy hot-rolled steel products in which at least one of the chemical