

review, or the original less than fair value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous review conducted by the Department, the cash deposit rate will be 36.00 percent, the "All Others" rate established in the underlying investigation.<sup>13</sup> These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

#### Notification to Importers

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 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.

These preliminary results of this administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: August 31, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6-15008 Filed 9-8-06; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

A-552-801

#### Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: 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 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") sold subject merchandise at less than normal value ("NV") during the period of review ("POR"), August 1, 2004, through July 31, 2005. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries.

**EFFECTIVE DATE:** September 11, 2006.

**FOR FURTHER INFORMATION CONTACT:** Julia Hancock, 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) 482-1394.

#### SUPPLEMENTARY INFORMATION:

#### Case History

##### General

On August 1, 2005, the Department published a notice of opportunity to request an administrative review on the antidumping duty order on certain frozen fish fillets from Vietnam. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 70 FR 44085 (August 1, 2005). On August 26, 2005, we received a request for review from Phan Quan Trading Co., Ltd. ("Phan Quan"). On August 31, 2005, we received requests for review from An Giang Agriculture and Foods Import-Export Company ("Afiex"); Vinh Hoan Company, Ltd. ("Vinh Hoan"); Can Tho Agricultural and Animal Products Export Company ("Cataco"); QVD; and Nam Viet Company, Ltd. ("Navico"). Also on August 31, 2005, we received a request from Catfish Farmers of America and individual U.S. catfish processors ("Petitioners") to conduct an administrative review of twenty-nine Vietnamese exporters and/or producers.<sup>1</sup> Petitioners' August 31,

2005, administrative review request included Phan Quan, Afiex, Vinh Hoan, Cataco, QVD and Navico. On September 28, 2005, the Department initiated this administrative review, covering the aforementioned twenty-nine companies. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part* ("Initiation Notice"), 70 FR 56631 (September 28, 2005).

#### Quantity and Value ("Q&V") Questionnaires

On September 14, 2005, the Department issued questionnaires requesting the total quantity and value of subject merchandise exported to the United States during the POR to all 29 companies subject to the administrative review. On September 28, 2005, a memorandum to the file was placed on the record by the Department noting that Federal Express ("Fed Ex") tracking confirmed that the Q&V questionnaires were delivered to all 29 companies. See *Memorandum to the File, through Cindy Robinson, Acting Program Manager, from Julia Hancock, Case Analyst, Subject: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam ("Vietnam"): Initial Questionnaires Timeline*, (September 28, 2005).

On September 20, 2005, Vietnam Fish-One submitted a letter to the Department stating that it made no shipments of subject merchandise to the United States during the POR. On September 30, 2005, QVD, Vinh Hoan, Cafatex, and Navico submitted Q&V responses. On October 1, 2005, Danang, Mekonimex, Thanh Viet, Phu Thanh, and Afiex submitted Q&V responses. Also, on October 3, 2005, Agifish and Cataco submitted Q&V responses.

On October 5 and 6, 2005, the Department sent a letter to five companies (*i.e.*, Danang, Mekonimex, Thanh Viet, Phu Thanh, and Afiex), requesting that each company resubmit their Q&V response because: (1) Danang failed to answer all questions from the

Factory ("Duyen Hai"); (11) Gepimex 404 Company ("Gepimex"); (12) Hai Vuong Co., Ltd. ("Hai Vuong"); (13) Kien Giang Ltd. ("Kien Giang"); (14) Mekong Fish Company ("Mekonimex"); (15) Navico, which also requested a review; (16) Phan Quan, which also requested a review; (17) Phu Thanh Frozen Factory ("Phu Thanh"); (18) Phuoc My Seafoods Processing Factory ("Phuoc My"); (19) QVD, which also requested a review; (20) Seaprodex Saigon; (21) Tan Thanh Loi Frozen Food Co., Ltd. ("Tan Thanh Loi"); (22) Thangloi Frozen Food Enterprise ("Thangloi Frozen Food"); (23) Thanh Viet Co., Ltd. ("Thanh Viet"); (24) Thuan Hung Co., Ltd. ("Thuan Hung"); (25) Tin Thinh Co., Ltd. ("Tin Thinh"); (26) Viet Hai Seafood Company Limited ("Vietnam Fish-One"); (27) Vifaco; (28) Vinh Hoan, which also requested a review; and (29) Vinh Long Import-Export Company ("Vinh Long").

<sup>13</sup> *Antidumping Duty Orders and Amendments to Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-To-Length Carbon Steel Plate From Germany*, 58 FR 44170 (August 19, 1993).

<sup>1</sup> Petitioners requested a review on the following companies: (1) Afiex, which also requested a review; (2) An Giang Agriculture Technology Service Company ("ANDESCO"); (3) An Giang Fisheries Import and Export Joint Stock Company ("Agifish"); (4) Anhaco; (5) Bamboo Food Co., Ltd. ("Bamboo Food"); (6) Binh Dinh Import Export Company ("Binh Dinh"); (7) Cataco, which also requested a review; (8) Can Tho Animal Fishery Products Processing Export Enterprise ("Cafatex"); (9) Da Nang Seaproducts Import-Export Corporation ("Danang"); (10) Duyen Hai Foodstuffs Processing

questionnaire and failed to follow the Department's filing procedures pursuant to its regulations; (2) Mekonimex failed to submit a public version of its questionnaire response; (3) Thanh Viet failed to answer all questions from the questionnaire and failed to follow the Department's filing procedures pursuant to its regulations; (4) Phu Thanh failed to answer all questions from the questionnaire and failed to follow the Department's filing procedures pursuant to its regulations; and (5) Afiex's Q&V response was not properly labeled as a proprietary document and was rejected for overbracketing of proprietary information. Also, on October 6, 2005, the Department issued a letter requesting the sixteen companies who had not responded to the Department's original Q&V questionnaire to submit such response.<sup>2</sup>

On October 19, 2005, Vifaco submitted a letter to the Department stating that it made no shipments of subject merchandise to the United States during the POR. On October 20, 2005, Phan Quan submitted a Q&V response to the Department.

On November 2, 2005, the Department sent a second letter to six companies, (*i.e.*, Danang, Thanh Viet, Tin Thinh, Mekonimex, Thuan Hung, and Afiex), requesting that each company resubmit their respective Q&V response because: (1) Danang failed to bracket the proprietary information in the appropriate format and provide a public version of the proprietary questionnaire response; (2) Thanh Viet failed to answer all the questions from the questionnaire and identify whether its submission was a public or proprietary document; (3) Tin Thinh failed to bracket the proprietary information and provide a public version; (4) Mekonimex failed to provide a public summary of the proprietary information; (5) Thuan Hung failed to answer all of the questions from the questionnaire and identify whether its submission was a public or proprietary document; and (6) Afiex failed to provide a public summary of the proprietary information. Also, on November 2, 2005, the Department placed on the record memoranda to the file stating that the Department had removed Afiex, Thuan Hung, Mekonimex, and Thanh Viet's Q&V responses from the record of this review and returned the responses to

the respective company because the Department was unable to consider each company's resubmitted Q&V response for the above reasons.

On November 3, 2005, the Department issued a letter to Tin Thinh regarding the deadline for Tin Thinh's second resubmitted Q&V response.

On November 8, 2005, Thuan Hung resubmitted its Q&V response. On November 9, 2005, Thanh Viet, Mekonimex, and Afiex resubmitted their Q&V responses. On November 9, 2005, the Department issued a letter to Tin Thinh stating that, because the Department's November 3, 2005, letter to Tin Thinh was returned by Fed Ex, Tin Thinh's second resubmitted Q&V response was due on November 16, 2005.

On November 9, 2005, a memorandum to the file was placed by the Department noting that Fed Ex tracking confirmed that the second Q&V letter was delivered to the 16 companies<sup>3</sup> that did not respond to the Department's September 14, 2005, Q&V questionnaire. Additionally, Fed Ex tracking confirmed that the Department's October 5, 2005, and October 6, 2005, letters to Afiex, Danang, Mekonimex, Thanh Viet, and Phu Thanh were delivered to the respective companies.

On November 16, 2005, Afiex submitted a letter clarifying its November 9, 2005, Q&V response. On November 17, 2005, a memorandum to the file was placed on the record by the Department noting that Fed Ex tracking confirmed that the Department's November 2, 2005, letters to Afiex, Danang, Mekonimex, Thanh Viet, Thuan Hung, and Tin Thinh were delivered to the respective companies.

On November 21, 2005, Petitioners submitted comments on respondent selection. On November 21, 2005, the Department sent a letter to Danang rejecting Danang's Q&V response for filing deficiencies. Also, on November 28, 2005, the Department sent a letter to Tin Thinh rejecting Tin Thinh's Q&V response for filing deficiencies.

On November 29, 2005, Petitioners resubmitted their November 21, 2005, comments on respondent selection. On November 30, 2005, the Department issued letters to Mekonimex and Cataco requesting clarification of their reported Q&V data.

On December 7, 2005, Vietnam Fish-One submitted a response to Petitioners' respondent selection comments.

On December 19, 2005, Danang resubmitted a Q&V questionnaire response, explaining that, as a *pro se* company, it attempted to cooperate and misunderstood the Department's filing requirements. In addition, on December 19, 2005, the Department placed a memorandum to the file on the record noting that Cataco's quantity and value clarification response received via email communication was placed on the record.

On December 27, 2005, Cataco submitted a Q&V clarification response.

On December 29, 2005, Petitioners submitted comments on Danang's December 19, 2005, Q&V response and on Cataco's December 27, 2005, Q&V clarification response.

On January 4, 2006, Danang submitted rebuttal comments in response to Petitioners' December 29, 2005, submission.

On January 13, 2006, the Department selected the four largest exporters/producers of subject merchandise during the POR as mandatory respondents: QVD; Cafatex; Mekonimex; and Cataco. *See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, from James C. Doyle, Office Director, Office 9, AD/CVD Operations, Import Administration, Subject: Antidumping Duty Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Selection of Respondents* (January 13, 2006) ("*Respondent Selection Memo*").

#### Partial Rescission

On November 21, 2005, Petitioners withdrew their request on the following fourteen exporters that did not individually request a review: Bamboo Food; Caseafex; Gepimex; Hai Vuong; Kien Giang; Phu Thanh; Phuoc My; Seaprodex Saigon; Tan Thanh Loi; Thangloi Frozen Food; Thanh Viet; Thuan Hung; Tin Thinh; and Vifaco. Additionally, Petitioners withdrew their request on the following three companies who had individually requested a review: Afiex; Phan Quan; and Vinh Hoan.

On December 23, 2005, Vinh Hoan withdrew its request for an administrative review. Additionally, on December 23, 2005, H&N Foods International ("*H&N*"), a U.S. importer of the subject merchandise, requested that the Department extend the deadline for withdrawing requests review in this proceeding by thirty days. On December 27, 2005, Vinh Hoan submitted a letter to the Department requesting that its

<sup>2</sup> The sixteen companies that did not respond to the Department's September 14, 2005, Q&V questionnaire are: (1) Duyen Hai; (2) Gepimex; (3) Hai Vuong; (4) Kien Giang; (5) Thangloi Frozen; (6) Tan Thanh Loi; (7) Thuan Hung; (8) ANTESCO; (9) Seaprodex Saigon; (10) Anhaco; (11) Vinh Long; (12) Vifaco; (13) Tin Thinh; (14) Binh Dinh; (15) Bamboo Food; and (16) Phan Quan.

<sup>3</sup> The sixteen companies are: (1) Duyen Hai; (2) Gepimex; (3) Hai Vuong; (4) Kien Giang; (5) Thangloi Frozen; (6) Tan Thanh Loi; (7) Thuan Hung; (8) ANTESCO; (9) Seaprodex Saigon; (10) Anhaco; (11) Vinh Long; (12) Vifaco; (13) Tin Thinh; (14) Binh Dinh; (15) Bamboo Food; and (16) Phan Quan.

withdrawal letter dated December 23, 2005, be disregarded. Additionally, on December 27, 2005, the Department extended the deadline for withdrawing requests for review in this proceeding by ten days from December 27, 2005, to January 6, 2006.

On January 5, 2006, H&N requested that the Department extend the deadline, which was January 6, 2006, for withdrawing requests in this administrative review until two days after the Department's issuance of its decision regarding respondent selection in this administrative review. On January 9, 2006, Vinh Hoan again withdrew its request for a review in this administrative review. Additionally, on January 11, 2006, Petitioners withdrew their request of two additional companies, Danang and Agifish, both of which did not individually request a review. Moreover, Petitioners also did not object to Vinh Hoan's January 9, 2006, request to withdraw its request for a review.

Subsequently, on February 7, 2006, due to the withdrawal of Petitioners' and Vinh Hoan's review requests, the Department rescinded the review with respect to Agifish; Bamboo Food; Coseafex; Danang; Gepimex; Hai Vuong; Kien Giang; Phu Thanh; Phuoc My; Seaprodex Saigon; Tan Thanh Loi; Thangloi Frozen Food; Thanh Viet; Thuan Hung; Tin Thinh; Vifaco; and Vinh Hoan. Additionally, the Department rescinded the review with respect to Vietnam Fish-One, which reported that it made no shipments of subject merchandise during the POR. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Rescission, in Part, and Extension of Preliminary Results of the Second Antidumping Duty Administrative Review*, 71 FR 6266 (February 7, 2006) ("Partial Rescission and Extension of Preliminary Results"). On February 7, 2006, the Department extended the deadline for the preliminary results of this review by 120 days, to August 31, 2006. *Id.*

#### **Mandatory Respondents**

On January 17, 2006, the Department sent the non-market economy ("NME") questionnaire to QVD, Cafatex, Mekonimex and Cataco.

#### *Cataco*

On February 3, 2006, the Department placed a memorandum to the file on the record noting that on February 2, 2006, Cataco emailed the Department requesting an extension of time to March 10, 2006, to respond to the Department's NME questionnaire. On February 3, 2006, the Department

granted Cataco a one-week extension to respond to the Department's questionnaire.

On February 13, 2006, Cataco submitted its section A response. On February 27, 2006, Cataco submitted a letter requesting a one-week extension to submit its sections C and D questionnaire response. On February 27, 2006, the Department granted Cataco a one-week extension to submit its sections C and D questionnaire response from March 2, 2006, to March 9, 2006.

On March 2, 2006, the Department issued a supplemental section A questionnaire to Cataco. Additionally, on March 6, 2006, Cataco submitted its sections C and D questionnaire response.

On March 14, 2006, the Department placed a memorandum to the file on the record regarding an email from Cataco, which requested a two-week extension to submit its supplemental section A questionnaire response. Additionally, on March 14, 2006, the Department issued a letter to Cataco granting a one-week extension to submit its supplemental section A questionnaire response from March 20, 2006, to March 27, 2006.

On March 20, 2006, the Department placed a memorandum to the file on the record regarding placing information with respect to Cataco from the first administrative review on the record of this review. Additionally, on March 20, 2006, the Department issued a supplemental sections C and D questionnaire to Cataco.

On March 23, 2006, Cataco submitted its supplemental section A questionnaire response. On April 4, 2006, Cataco requested a two-week extension to submit its supplemental section C questionnaire response. On April 7, 2006, the Department granted Cataco a ten-day extension to submit its supplemental section C questionnaire response from April 10, 2006, to April 20, 2006. On April 17, 2006, Cataco submitted its supplemental sections C and D questionnaire response.

On June 1, 2006, the Department placed a memorandum to the file on the record regarding placing Cataco's entry packages from CBP on the record of this review. Additionally, on June 1, 2006, the Department placed a memorandum to the file on the record regarding DC Lawyers' May 12, 2006, withdrawal as counsel for Cataco. Additionally, on June 14, 2006, the Department issued a second supplemental sections A, C and D questionnaire to Cataco.

On June 28, 2006, Valley Fresh Seafood, Inc. ("Valley Fresh") submitted a letter to the Department addressing a business proprietary section of Cataco's

supplemental questionnaire. On July 3, 2006, Cataco submitted a letter to the Department that it was partially withdrawing from this administrative review and was not responding to the June 14, 2006, supplemental questionnaire.

On July 7, 2006, the Department issued a letter to Valley Fresh that it was rejecting its June 28, 2006, letter, because it contained new factual information. The deadline for submitting factual information was June 1, 2006. Additionally, on July 7, 2006, the Department placed a memorandum to the file on the record removing Valley Fresh's June 28, 2006, letter from the record.

On July 17, 2006, Petitioners submitted a letter requesting that the Department not accept Cataco's July 3, 2006, letter of partial withdrawal. On July 19, 2006, the Department issued a letter rejecting Cataco's partial withdrawal from this review and requested that Cataco submit a full response to the June 14, 2006, supplemental questionnaire.

On July 26, 2006, Valley Fresh submitted a letter to the Department with respect to a business proprietary section of the Department's June 14, 2006, supplemental questionnaire to Cataco. On July 26, 2006, Cataco submitted a letter to the Department stating that, except for a certain business proprietary section, it was not responding to the June 14, 2006, supplemental questionnaire.

On August 1, 2006, the Department issued a letter to Valley Fresh rejecting its July 26, 2006, letter because it contained new factual information. On August 1, 2006, the Department also issued a letter to Cataco rejecting its July 26, 2006 letter and requesting that Cataco resubmit its letter without the attached June 28, 2006, letter from Valley Fresh. Additionally, on August 1, 2006, the Department placed memoranda to the file on the record noting that the July 26, 2006, submissions from Valley Fresh and Cataco had been removed from the record.

On August 3, 2006, Cataco submitted a letter, which contained Valley Fresh's June 28, 2006, letter to the Department requesting that it reconsider its decision to reject Cataco's July 26, 2006, letter. On August 8, 2006, the Department issued a letter to Cataco rejecting its August 3, 2006, letter and requesting that Cataco resubmit the letter without the attached June 28, 2006, letter from Valley Fresh. On August 9, 2006, the Department placed a memorandum to the file on the record removing Cataco's

August 3, 2006, submission from the record.

The Department did not receive a response from Cataco on August 14, 2006, which was the deadline to resubmit. On August 17, 2006, the Department placed a memorandum to the file on the record noting, via telephone communication with Cataco's counsel, that Cataco would not be resubmitting its August 3, 2006, letter.

#### *Cafatex*

On January 27, 2006, Cafatex requested a week extension to submit its section A response, which was due on February 7, 2006. On January 31, 2006, the Department granted Cafatex a one-week extension to submit its section A response from February 7, 2006, to February 14, 2006.

On February 14, 2006, DLA Piper Rudnick Gray Cary LLP submitted a letter withdrawing as counsel for Cafatex. On February 16, 2006, the Department issued a letter to Cafatex noting that it had not received Cafatex's section A questionnaire response, which was due on February 14, 2006, and had not received a request for extension. In the letter, the Department requested that, if Cafatex intended to remain in the review, it should submit its section A questionnaire response.

On February 27, 2006, the Department placed a memorandum to the file on the record noting that in a facsimile dated February 21, 2006, Cafatex confirmed its decision not to participate in the instant administrative review.

#### *Mekonimex*

On February 8, 2006, the Department issued a letter to Mekonimex noting that because the Department did not receive Mekonimex's section A response, which was due on February 7, 2006, the deadline to submit its section A response was extended to February 13, 2006. On February 15, 2006, Mekonimex submitted two letters stating that it would no longer participate and that it was withdrawing from this review.

#### *QVD*

On January 30, 2006, QVD requested a two-week extension to submit its section A response, which was due on February 7, 2006. On January 31, 2006, the Department granted QVD a week extension to submit its section A response from February 7, 2006, to February 14, 2006.

On February 13, 2006, QVD requested a three-week extension to submit its section C and D response.

On February 14, 2006, QVD submitted its section A response. Also, on

February 14, 2006, the Department granted QVD a week extension to submit its sections C and D response from February 22, 2006, to March 1, 2006.

On February 21, 2006, QVD requested a two-week extension to submit its sections C and D response. On February 23, 2006, Department granted QVD a week extension to submit its sections C and D response from March 1, 2006, to March 8, 2006.

On March 8, 2006, QVD submitted its sections C and D questionnaire response. Additionally, on March 9, 2006, the Department issued a supplemental section A questionnaire to QVD.

On March 20, 2006, QVD requested a two-week extension to submit its supplemental section A questionnaire response. On March 20, 2006, the Department granted QVD a ten-day extension to submit its supplemental section A questionnaire response from March 30, 2006, to April 10, 2006.

On March 21, 2006, the Department issued a supplemental sections C and D questionnaire to QVD. Additionally, on March 30, 2006, a memorandum to the file was placed by the Department regarding QVD's supplemental section C questionnaire.

On April 4, 2006, QVD requested a three-week extension to submit its supplemental section C questionnaire response. On April 5, 2006, the Department granted QVD a ten-day extension to submit its supplemental section C questionnaire response from April 10, 2006, to April 20, 2006.

On April 10, 2006, QVD submitted its supplemental section A questionnaire response. On April 11, 2006, QVD requested a three-week extension to submit its supplemental section D questionnaire response. On April 12, 2006, the Department granted QVD a ten-day extension to submit its supplemental section D questionnaire response from April 18, 2006, to April 28, 2006.

On April 19, 2006, QVD requested a one-week extension to submit its supplemental section C questionnaire response. Additionally, on April 19, 2006, the Department granted QVD a one-week extension to submit its supplemental section C questionnaire response from April 20, 2006, to April 28, 2006.

On April 24, 2006, QVD requested a one-week extension to submit its supplemental section D questionnaire response. On April 25, 2006, the Department granted QVD a one-week extension to submit its supplemental section D questionnaire response from April 28, 2006, to May 5, 2006.

On April 28, 2006, QVD submitted its supplemental section C questionnaire response. On May 5, 2006, QVD submitted its supplemental section D questionnaire response. Additionally, on May 31, 2006, the Department issued a second supplemental section D questionnaire to QVD.

On June 9, 2006, QVD requested a three-week extension to submit its second supplemental section D questionnaire response. On June 13, 2006, the Department granted QVD a ten-day extension to submit its second supplemental section D questionnaire response from June 14, 2006, to June 26, 2006.

On June 16, 2006, the Department placed QVD's entry packages from CBP on the record of this review. On June 19, 2006, Petitioners submitted deficiency comments on QVD's sections A and C questionnaire responses.

On June 23, 2006, the Department issued a second supplemental section A and C questionnaire to QVD. On June 27, 2006, QVD submitted its second supplemental section D questionnaire response.

On July 12, 2006, the Department issued a third supplemental section D questionnaire to QVD. On July 18, 2006, QVD requested a ten-day extension to submit its third supplemental section D questionnaire response.

On July 19, 2006, the Department granted QVD a six-day extension to submit its third supplemental section D questionnaire response from July 26, 2006, to August 1, 2006.

On July 21, 2006, the Department issued a fourth supplemental section D questionnaire to QVD. Additionally, on July 21, 2006, QVD submitted its second supplemental sections A and C questionnaire response.

On July 26, 2006, the Department issued a third supplemental section A and C questionnaire to QVD. On August 1, 2006, QVD submitted its third and fourth supplemental section D questionnaire responses.

On August 1, 2006, QVD requested a five-day extension to submit its third supplemental section A and C questionnaire response. On August 2, 2006, the Department granted QVD a four-day extension to submit its section A and C questionnaire response from August 4, 2006, to August 8, 2006.

On August 2, 2006, QVD submitted a letter to the Department with respect to an attachment that was missing from its August 1, 2006, third and fourth supplemental section D questionnaire responses. On August 2, 2006, the Department issued a fifth supplemental section D questionnaire to QVD.

On August 8, 2006, QVD submitted its fifth supplemental section D questionnaire response. On August 9, 2006, QVD submitted its third supplemental sections A and C questionnaire responses.

On August 14, 2006, the Department issued a letter to QVD regarding its section C database requesting the downstream sales to Customer A. On August 21, QVD submitted its section C database response. Additionally, on August 22, 2006, QVD submitted rebuttal pre-preliminary comments.

### Separate Rate Respondents

As noted above, on January 13, 2006, the Department selected four mandatory respondents. On January 18, 2006, the Department sent section A of the Department's NME questionnaire to the three remaining separate rate respondents: Afiox, Navico and Phan Quan.

#### *Afiox*

On February 3, 2006, Afiox requested a one-week extension to submit its section A response, which was due on February 7, 2006. On February 6, 2006, the Department granted Afiox a one-week extension to submit its section A response from February 7, 2006, to February 14, 2006.

On February 13, 2006, Afiox requested a second extension of three days to submit its section A response. On February 14, 2006, the Department granted Afiox a three-day extension to submit its section A response from February 14, 2006, to February 17, 2006. On February 17, 2006, Afiox submitted a section A response.

On March 2, 2006, the Department issued a supplemental section A questionnaire to Afiox. On March 14, 2006, Afiox requested a one-week extension to submit its supplemental section A questionnaire response. Additionally, on March 16, 2006, the Department granted Afiox a one-week extension to submit its supplemental section A questionnaire response from March 23, 2006, to March 30, 2006.

On March 29, 2006, Afiox requested a second one-week extension to submit its supplemental section A questionnaire response. On March 30, 2006, the Department granted Afiox a four-day extension to submit its supplemental section A questionnaire response from March 30, 2006, to April 3, 2006.

On April 4, 2006, Afiox submitted its supplemental section A questionnaire response. On April 5, 2006, Afiox requested an extension to submit documents that were not available when it submitted the supplemental section A questionnaire response from April 4,

2006, to April 10, 2006. On April 6, 2006, the Department issued a letter to Afiox extending the deadline until April 10, 2006. Additionally, in the letter to Afiox, the Department issued a second supplemental section A questionnaire.

On April 10, 2006, Afiox requested an extension of two days to submit its second supplemental section A questionnaire response. On April 11, 2006, the Department granted Afiox a one-day extension to submit its supplemental Section A questionnaire response from April 10, 2006, to April 11, 2006. Additionally, on April 11, 2006, Afiox submitted its second supplemental section A questionnaire response.

On July 7, 2006, the Department issued a third supplemental section A questionnaire to Afiox. On July 28, 2006, Afiox submitted a letter to the Department that it was both not responding to third supplemental section A questionnaire and withdrawing from this review.

#### *Navico*

On January 27, 2006, Navico requested a one-week extension to submit its section A response, which was due on February 7, 2006. On January 31, 2006, the Department granted Navico a one-week extension to submit its section A response from February 7, 2006, to February 14, 2006.

On February 16, 2006, the Department issued a letter to Navico noting that it had not received Navico's section A questionnaire response, which was due on February 14, 2006, and had not received a request for extension. In the letter, the Department requested that, if Navico intended to remain in the review, it should submit its section A questionnaire response.

On February 27, 2006, the Department issued a second letter to Navico requesting that, if Navico intended to remain as a separate rates respondent, Navico should submit a section A response by March 3, 2006. Additionally, in the letter, the Department requested that if Navico was not going to submit a response, Navico should submit a letter confirming its decision to not participate in this review.

On March 7, 2006, the Department placed a memorandum to the file on the record by the Department noting that via an e-mail received on March 6, 2006, Navico confirmed its decision not to participate in this administrative review.

#### *Phan Quan*

On February 3, 2006, Phan Quan requested a one-week extension to

submit its section A response. On February 6, 2006, the Department granted Phan Quan a one-week extension to submit its section A response from February 7, 2006, to February 14, 2006.

On February 13, 2006, Phan Quan requested a second extension of three days to submit its section A response. On February 14, 2006, the Department granted Phan Quan a three-day extension to submit its section A response from February 14, 2006, to February 17, 2006.

On February 17, 2006, Phan Quan submitted its section A response. Also on February 21, 2006, Phan Quan submitted a letter that included attachments supplementing its section A response.

On March 28, 2006, the Department issued a supplemental section A questionnaire to Phan Quan.

On April 19, 2006, the Department issued a letter to Phan Quan noting that it had not received a response from Phan Quan for its supplemental section A questionnaire response, which was due on April 18, 2006. In the letter, the Department granted Phan Quan a second, final opportunity to submit its supplemental section A questionnaire response by April 21, 2006. On April 26, 2006, Phan Quan submitted a letter to the Department that it was not responding to the supplemental section A questionnaire and withdrawing from this review.

### Surrogate Country and Surrogate Values

On January 18, 2006, the Department placed a memorandum to the file on the record extending the deadline for submission of factual information by 50 days from January 18, 2006, to March 9, 2006. On January 23, 2006, the Department issued a letter to the interested parties requesting comments on surrogate country selection.

On February 27, 2006, Petitioners requested an extension of time to submit comments on submission of factual information, comments on surrogate country selection, and publicly available information to value factors of production. On March 1, 2006, the Department issued a memorandum to the file extending these deadlines to May 1, 2006.

On April 26, 2006, Petitioners and QVD requested extensions to place factual information on the record, comments on surrogate country selection, and publicly available information to value factors of production. On April 27, 2006, the Department issued a letter extending these deadlines to June 1, 2006.

On June 1, 2006, Petitioners and QVD submitted factual information. On June 1, 2006, Petitioners and QVD also submitted surrogate value information for the Department to consider for these preliminary results. Also, on June 1, 2006, Petitioners submitted comments on surrogate country selection. No other party submitted surrogate country comments.

On June 12, 2006, Petitioners submitted rebuttal comments on the surrogate value information submitted by QVD.

On August 1, 2006, the Department selected Bangladesh as the surrogate country. On August 15, 2006, Petitioners submitted pre-preliminary comments.

### 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 code 0304.20.60.33 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the Harmonized Tariff Schedule of the United States ("HTSUS").<sup>4</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

<sup>4</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.

description of the scope of the Order is dispositive.

### Affiliations

Section 771(33) of the Act states that the Department considers the following as affiliated: (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, five 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; and (G) any person who controls any other person and such other person. For purposes of affiliation, section 771(33) of the ACT states that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

Based on the evidence on the record in this administrative review, we preliminarily find that QVD is affiliated with Dong Thap Food Co., Ltd. ("Dong Thap") and Company A,<sup>5</sup> pursuant to section 771(33) of the Act. For a detailed discussion of our analysis, please see *Memorandum to James C. Doyle, Office Director, Office 9, through Alex Villanueva, Program Manager, Office 9, from Julia Hancock, Case Analyst, Subject: QVD Affiliations Memorandum: 2<sup>nd</sup> Administrative Review of Certain Frozen Fish Fillets, (August 31, 2006)* ("Affiliation and Collapsing Memo"). In addition, based on the evidence presented in QVD's questionnaire responses, we preliminarily find that QVD, Dong Thap, and Company A should be treated as a single entity for purposes of this administrative review. See 19 CFR 351.401(f)(1); see also, *Affiliation and Collapsing Memo* for a discussion of the proprietary aspects of this relationship. With respect to the criterion of significant potential for manipulation of price of production, we note that the Department normally considers three factors: (i) The level of common ownership; (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (iii)

<sup>5</sup> Because Company A's identity is business proprietary, it cannot be disclosed in this notice. See *Affiliation and Collapsing Memo* for further information.

whether operations are intertwined, such as through the sharing of sales, information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers. See 19 CFR 351.401(f)(2).

### Vietnamese Entities

Based on the information on the record of this proceeding, we preliminarily find that QVD, Dong Thap, and Company A should be collapsed. Accordingly, the Department should include the factors of production for Company A in the Department's calculation of QVD's normal value ("NV"). However, the Department does not currently have this information on the record of the proceeding. Therefore, the Department will request this information from QVD after the issuance of these preliminary results. Additionally, we will be issuing an amended preliminary calculation for comment after we receive Company A's factors of production. Due to the proprietary nature of the information with respect to these affiliates, this information cannot be discussed herein. See *Affiliation and Collapsing Memo* for a further discussion of this issue.

In addition, we preliminarily find that Choi Moi Farming Cooperative ("Choi Moi") is affiliated with QVD pursuant to section 771(33) of the Act. See *Affiliation and Collapsing Memo* for a further discussion of this issue. However, we preliminarily find that although Choi Moi is affiliated with QVD, the collapsing criteria are not satisfied and therefore, Choi Moi has not been collapsed with QVD. *Id.*

We also preliminarily find that Company B<sup>6</sup> and QVD are not affiliated, pursuant to section 771(33) of the Act. *Id.*

### United States Entities

We preliminarily find that QVD and QVD USA LLC ("QVD USA") are affiliated pursuant to section 771(33) of the Act. *Id.*

Although the Department received relevant information from QVD USA regarding its relationship with Customer A<sup>7</sup> on August 21, 2006, ten days prior

<sup>6</sup> Because Company B's identity is business proprietary, it cannot be disclosed in this notice. See *Affiliation and Collapsing Memo* for further information.

<sup>7</sup> Because Customer A's identity is business proprietary, it cannot be disclosed in this notice. See *Memorandum from Julia Hancock, Case Analyst, to Alex Villanueva, Program Manager, Import Administration, Subject: 2<sup>nd</sup> Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results Analysis Memo for QVD Food Company, (August 31, 2006)* ("QVD Analysis Memo") for further information.

to the deadline to issue the preliminary results, the Department was unable to consider this information for these preliminary results of review. For the final results of review, however, the Department will fully consider the information submitted by QVD USA on August 21, 2006, and possibly request additional information on the relationship with QVD USA and Customer A. For these preliminary results, the Department will include QVD USA's sales to Customer A in the margin calculation for QVD. However, in the event the Department finds Customer A and QVD USA affiliated, the Department intends to request the relevant sales to the first unaffiliated U.S. customer after such finding. If parties fail to provide such data, the Department may apply facts available, with an adverse inference, to QVD USA's CEP sales to Customer A for the final results of this review.

On February 14, 2006, QVD stated that it was affiliated with Beaverstreet Fisheries Inc. ("BSF") and provided a CEP sales database which contained the sales from BSF to the first unaffiliated U.S. customer. For these preliminary results, the Department is treating QVD USA and BSF as affiliated entities and will characterize BSF sales' as CEP sales in the margin calculation for QVD for these preliminary results. However, the Department notes that there is insufficient time to evaluate whether the claim of affiliation properly fulfills the statutory criteria of section 771(33) of the Act. Accordingly, the Department intends to request further information regarding QVD USA's affiliation with BSF, which may affect the use of these sales and the margin calculation in the final results of this review. The Department also intends to request information on the sales from QVD USA to BSF.

#### Separate Rates Determination

In the less-than-fair-value ("LTFV") investigation and the first administrative review for this Order, the Department treated Vietnam as a non-market economy ("NME") for antidumping purposes. It is the Department's policy to assign all exporters of the merchandise subject to review that are located in NME countries a single antidumping duty rate unless an exporter can demonstrate an absence of governmental control, both in law (*de jure*) and in fact (*de facto*), with respect to its export activities. To establish whether an exporter is sufficiently independent of governmental control to be entitled to a separate rate, the Department analyzes the exporter using the criteria

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 in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). Under the separate rates criteria established in these cases, the Department assigns separate rates to NME exporters only if they can demonstrate the absence of both *de jure* and *de facto* governmental control over their export activities.

#### Absence of De Jure Control

Evidence supporting, though not requiring, a finding of the absence of *de jure* governmental control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. See *Sparklers*, 56 FR at 20589.

In the LTFV investigation for this case, the Department granted separate rates to the four mandatory respondents, Cataco, Cafatex, Mekonimex, and QVD, and two of the separate rate respondents, Aflix and Navico. See *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003) and accompanying Issues and Decision Memorandum at Comments 5 and 6 ("*LTFV FFF Final Determination*"). Additionally, in the first administrative review of this case, the Department did not grant a separate rate to the other separate rate respondent, Phan Quan, because it stopped participating in that review. See *Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 70 FR 54007 (September 13, 2005) ("*1st Review Prelim*"). However, 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 12441 (March 13, 1998).

In this review only QVD submitted complete responses to the separate rates

section of the Department's NME questionnaire. The evidence submitted by QVD includes government laws and regulations on corporate ownership, business licenses, and narrative information regarding its company's operations and selection of management. The evidence provided by QVD supports a finding of a *de jure* absence of governmental control over its export activities because: (1) There are no controls on exports of subject merchandise, such as quotas applied to, or licenses required for, exports of the subject merchandise to the United States; and (2) the subject merchandise does not appear on any government list regarding export provisions or export licensing.

#### Absence of De Facto Control

The absence of *de facto* governmental 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 its questionnaire responses, QVD submitted evidence indicating an absence of *de facto* governmental control over its export activities. Specifically, this evidence indicates that: (1) The company sets its own export prices independent of the government and without the approval of a government authority; (2) the company retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) the 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) foreign currency does not need to be sold to the government. Therefore, the Department has preliminarily found that QVD has established *prima facie* that it qualifies for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers*.

As discussed below, the Department is not granting the other three mandatory respondents, Cataco, Cafatex, and Mekonimex, and the three separate rate respondents, Afifex, Phan Quan, and Navico, a separate rate because these respondents withdrew from participating in this review. As a result, we cannot verify the separate rate information that Afifex, Cataco, and Phan Quan submitted in their respective questionnaire responses. Moreover, Afifex, Cataco, and Phan Quan, each failed to respond to the supplemental questionnaire issued by the Department that requested clarification on their respective submitted separate rate information. With respect to Cafatex, Mekonimex, and Navico, we did not receive separate rate information for consideration in these preliminary results.

#### Adverse Facts Available

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

Furthermore, section 776(b) of the Act states that "if the administering authority finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission (as the case may be), in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available." See also Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act ("URAA"), H.R. Rep. No. 103-316 at 870 (1994).

In the instant review, three of the mandatory respondents, (*i.e.*, Cataco, Cafatex, and Mekonimex), the three separate rate respondents, (*i.e.*, Navico, Afifex and Phan Quan), and four other companies under review, (*i.e.*, Antesco, Anhaco, Binh Dinh, and Vinh Long), significantly impeded our ability to complete this administrative review pursuant to section 751 of the Act, and one mandatory respondent, Cataco,

significantly impeded our ability to impose the correct antidumping duties, as mandated by section 731 of the Act. As discussed below, we preliminarily find that each company's failure to cooperate with the Department to the best of their ability in responding to the Department's request for information warrant the use of adverse facts available ("AFA") in determining dumping margins for their sales of merchandise subject to this Order.

#### Mekonimex and Cafatex

As discussed in the "Case History" above, on January 17, 2006, the Department issued questionnaires to Mekonimex and Cafatex. The deadlines for Mekonimex and Cafatex to file a response to Section A of the questionnaire were February 7, 2006, and February 14, 2006, respectively. The Department did not receive a questionnaire response from either company. Instead, Mekonimex submitted two letters on February 15, 2006, stating that it was not going to participate and was withdrawing from the review. Cafatex faxed a letter, in response to the Department's February 16, 2006, letter of Cafatex's non-response, on February 21, 2006, stating that it was not going to participate in the administrative review. Therefore, we find that facts available are warranted for both Mekonimex and Cafatex in accordance with sections 776(a)(2)(A), (B) and (C) of the Act.

By each company stating that they would no longer participate, both Mekonimex and Cafatex explicitly impeded this proceeding. Because both Mekonimex and Cafatex withdrew from the current administrative review with critical data potentially relevant to separate rates still outstanding, the Department was prevented from conducting a thorough separate rates analysis or from verifying either Mekonimex's or Cafatex's information. Because both Cafatex and Mekonimex did not respond to the Department's NME questionnaire, the Department has no information on the record with which to calculate an antidumping margin or determine if either is eligible for a separate rate in this proceeding. Therefore, we find that both Mekonimex and Cafatex have not demonstrated that each is entitled to a separate rate and thus, each is deemed to be included in the Vietnam-wide entity. By withdrawing from this administrative review over a month after the Department's established deadline, which was January 6, 2006, rather than submitting a response to the Department's NME questionnaires, both Mekonimex and Cafatex have failed to

cooperate to the best of their ability in this proceeding. Accordingly, since both Mekonimex and Cafatex significantly impeded the proceeding and failed to cooperate to the best of their ability, the application of AFA is appropriate, pursuant to section 776(b) of the Act.

#### Cataco

During the first administrative review, the Department found Cataco had entered into an reimbursement agreement with Customer B.<sup>8</sup> See Memorandum from Julia Hancock, Case Analyst, to Alex Villanueva, Program Manager, Import Administration, Subject: 2<sup>nd</sup> Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results Analysis Memo for Can Tho Agricultural and Animal Products Import Export Company ("Cataco"), (August 31, 2006) ("Cataco Analysis Memo"); 1<sup>st</sup> Supplemental Section C Questionnaire to Cataco, (March 20, 2006) at Attachment 2 (Memorandum to the File, from Alex Villanueva, Program Manager, NME Office 9, RE: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Verification Report Change, (March 13, 2006)). Specifically, the Department noted that these reimbursement "agreements stated that Cataco would reimburse any antidumping duties [on basa and tra] exceeding X,"<sup>9</sup> and that these reimbursement "agreements did not specify an expiration date." See 1<sup>st</sup> Supplemental Section C Questionnaire to Cataco, at Attachment 2. A day after the Department made this discovery, Cataco withdrew from verification. Accordingly, Cataco received AFA in the final results of the first administrative review because of its termination of verification and as part of the adverse inference, the Department determined that "the reimbursement verification findings should be applied to Cataco for cash deposit and assessment purposes." See Notice of Final Results of the First Administrative Review: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 71 FR 14170 (March 21, 2006) and accompanying Issues and Decisions Memorandum at Comments 1 and 2 ("1<sup>st</sup> AR FFF Final").

In this administrative review, Cataco admitted from the onset that it sold subject merchandise under other commercial names, including "frozen grouper" and "frozen seafood." See Cataco's Quantity and Value

<sup>8</sup> Because this information is business proprietary, please see Cataco Analysis Memo for further information on Customer B.

<sup>9</sup> Because this information is business proprietary, please see Cataco Analysis Memo.



*Questionnaire Response*, (September 30, 2005) at 1–2; *Cataco's Section A Questionnaire Response*, (February 10, 2006) at Exhibit A–1. However, on June 1, 2006, the Department placed on the record entry packages from U.S. Customs Border and Protection (CBP) of all entries, classified as HTS 304206033, 304206043, 304206057, 304206070, 304206096, that were manufactured by Cataco and entered into the United States during the POR. A review of the entry packages showed a discrepancy between Cataco's reported quantity and value ("Q&V") of sales of subject merchandise under other commercial names, "frozen grouper" and "frozen seafood," and the Q&V of its CBP entries of "frozen grouper" to Customer B. See *Cataco's Section A Questionnaire Response* at Exhibit A–1; *Cataco's 2<sup>nd</sup> Supplemental Section A and C Questionnaire*, (June 14, 2006) at 12–13 ("*Cataco's 2<sup>nd</sup> Questionnaire*"). Moreover, the Department noted that CBP issued a Notice of Request for Information and a Notice of Action to Cataco's Customer B that certain entries needed to be reclassified as subject merchandise. See *Cataco's 2<sup>nd</sup> Questionnaire*, at 13; *Memorandum to the File, from Julia Hancock, Case Analyst, Subject: 2<sup>nd</sup> Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam ("Vietnam"): Customs Data for Can Tho Agricultural and Animal Products Import Export Company*, (June 1, 2006). Based on the apparent discrepancies with Cataco's reported Q&V of sales of subject merchandise under other commercial names, and other issues, including Cataco's affiliate and reimbursement of antidumping duties, the Department issued a supplemental questionnaire to Cataco on June 14, 2006, which was due on July 5, 2006.

On July 3, 2006, Cataco submitted a letter to the Department that it would not be submitting a response to *Cataco's 2<sup>nd</sup> Questionnaire*. In the letter, Cataco also stated that it was "withdrawing from the current administrative review for all issues except that of reimbursement of antidumping duties." See *Cataco's Letter to the Department, RE: June 14, 2006, Supplemental Questionnaire*, (July 3, 2006) at 1–2. However, on July 19, 2006, the Department issued a letter to Cataco stating that Cataco could not partially withdraw from this administrative review. By granting Cataco's partial withdrawal, the Department would have allowed Cataco to "control the results of the administrative review by {only} granting partial information" on reimbursement. See *Krupp Stahl A.G.*,

*et. al vs. United States*, 822 F. Supp 789, 792 (CIT 1993). Accordingly, the Department granted Cataco a final opportunity to submit a full response to *Cataco's 2<sup>nd</sup> Questionnaire* by July 26, 2006.

On July 26, 2006, Cataco submitted a letter to the Department stating that it had never entered into a "reimbursement agreement" with its U.S. customer, Valley Fresh, and that it would not be submitting a response to the entirety of *Cataco's 2<sup>nd</sup> Questionnaire*. Additionally, Cataco submitted a June 28, 2006, letter from its customer, Valley Fresh. However, the Department rejected Cataco's July 26, 2006, letter as containing untimely, new information, pursuant to section 351.301(b)(2) of the Department's regulations, because Valley Fresh's letter had previously been rejected as new information. See *Letter from the Department to Matthew McConkey*, (August 1, 2006) at 1–2. Specifically, the deadline for submitting factual information was June 1, 2006, and as such, Valley Fresh's letter was received twenty–seven days after the deadline.

Instead of resubmitting its letter without the letter from Valley Fresh, Cataco submitted a letter on August 3, 2006, that contained this submission. In its August 3, 2006, letter, Cataco stated that it was including the letter from Valley Fresh because it was "directly relevant to the {reimbursement} questions raised" in the Department's June 14, 2006, supplemental questionnaire. See *Letter from Alex Villanueva, Program Manager, Import Administration, to Matthew McConkey*, (August 8, 2006) at 2. After review of Cataco's letter, the Department issued a letter to Cataco requesting that it resubmit its August 3, 2006, letter without the attached submission from Valley Fresh. Specifically, the Department noted the reimbursement questions from *Cataco's 2<sup>nd</sup> Questionnaire*, requested that Cataco provide information on its commercial relationships with specific importers, not Valley Fresh. Accordingly, the Department continued to find that the letter from Valley Fresh was new information and requested that Cataco resubmit its August 3, 2006, letter without the letter from Valley Fresh by August 11, 2006. The Department did not receive a response from Cataco on August 11, 2006.

Based upon Cataco's refusal to submit a full response to *Cataco's 2<sup>nd</sup> Questionnaire*, the Department finds that Cataco failed to provide the information in a timely manner and in the form requested and significantly impeded this proceeding, pursuant to

sections 776(a)(2)(B) and 776(a)(2)(C) of the Act. Specifically, the Department twice granted Cataco the opportunity to submit a full response to Cataco's 2<sup>nd</sup> Questionnaire. Cataco decided not to: (1) submit a response to *Cataco's 2<sup>nd</sup> Questionnaire*, but rather attempt to partially withdraw from this review except with respect to reimbursement; and (2) respond to the entirety of *Cataco's 2<sup>nd</sup> Questionnaire* except regarding those questions on reimbursement. Additionally, the Department notes that statements submitted by Cataco on reimbursement were incomplete because Cataco did not submit information requested on the specific importers, including Cataco's Customer B. See *Cataco's 2<sup>nd</sup> Questionnaire*, at 22–23. Accordingly, the Department finds that Cataco failed to provide a full response to *Cataco's 2<sup>nd</sup> Questionnaire* in a timely manner. Moreover, the Department finds that Cataco has significantly impeded this proceeding by picking and choosing the questions that it would respond to from *Cataco's 2<sup>nd</sup> Questionnaire*. Specifically, antidumping law "does not permit a party to pick and choose information it wishes to present" to the Department. See *Brother Industries, Ltd. vs. United States*, 771 F. Supp. 374, 383 (CIT 1991). Furthermore, the questions that Cataco refused to answer, specifically questions regarding reimbursement from Customer B and the discrepancies in Cataco's reported sales of "frozen grouper" and "frozen seafood," needed to be answered in order for the Department to calculate a margin for Cataco for these preliminary results. Because Cataco refused to submit a full response to *Cataco's 2<sup>nd</sup> Questionnaire*, the application of facts available is warranted, pursuant to sections 776(a)(2)(B) and 776(a)(2)(C) of the Act.

Further, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See Statement of Administrative Action ("*SAA*") accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any

previous review, or any other information placed on the record. See section 776(b) of the Act.

For these preliminary results, the Department finds that Cataco has failed to cooperate to the best of its ability. Specifically, the Department finds that Cataco did not respond to the Department's request for clarification on certain issues, including its reported sales of "frozen grouper" and "frozen seafood" and whether it reimbursed certain importers, as requested in *Cataco's 2<sup>nd</sup> Supplemental Questionnaire*. See *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1377 (Fed. Cir. 2003) ("*Nippon Steel*"). Because Cataco refused to answer the entirety of *Cataco's 2<sup>nd</sup> Supplemental Questionnaire*, the Department finds that Cataco has failed to cooperate to the best of its ability, pursuant to section 776(b) of the Act.

As an adverse inference, the Department is assigning to Cataco's sales of subject merchandise an individual rate of 80.88 percent, which is the highest established rate on the record of this proceeding, and, we note, the rate applied to Cataco in the first administrative review. See *1<sup>st</sup> AR FFF Final*, 71 FR 14170 at Comments 1 and 2. During the course of this administrative review, Cataco was unable to provide information regarding the reimbursement agreements, found at the verification of the first administrative review, which had no expiration date, and were not still in effect during this administrative review. Therefore, inclusive in our adverse inference is a presumption that Cataco continued to reimburse antidumping duties during this POR.

While it would be consistent with the Department's normal practice for Cataco to be subject to the same rate as all other exporters that are part of the Vietnam-Wide Entity, because Cataco failed to cooperate to the best of its ability and significantly impeded this proceeding, and because as AFA, the Department presumes Cataco's agreement to reimburse its importer(s) continued throughout this POR, Cataco is receiving the individual rate of 80.88 percent. The Department finds that, for cash deposit purposes, it must take into account the reimbursement provision and assign Cataco an individual rate for future entries. Reimbursement, however, is necessarily exporter-importer specific, and is treated as a unique adjustment. Moreover, the reimbursement adjustment is exogenous to the normal calculation of the dumping margin. Therefore, in order to properly account for reimbursement, the Department has adjusted Cataco's cash deposit and

assessment rates, but not applied the adjustment to the rest of the Vietnam-Wide Entity. Consequently, the cash deposit rate assigned to Cataco for these preliminary results is 80.88 percent. See *Cataco Analysis Memo*.

#### *ANTESCO, Anhaco, Binh Dinh, and Vinh Long*

We note, as mentioned in the "Case History" section above, the Department initiated this administrative review with respect to 29 companies, including ANTESCO, Anhaco, Binh Dinh, and Vinh Long. On September 14, 2005, we issued a Q&V questionnaire to all of the companies identified in the notice of initiation. See *Initiation Notice*. On February 7, 2006, the Department rescinded, in part, the review on 18 of the 29 companies, but noted that 11 companies, including ANTESCO, Anhaco, Binh Dinh, and Vinh Long, were still subject to review. See *Partial Rescission and Extension of Preliminary Results*. Further, each of these companies identified in our notice of rescission did not respond to our September 14, 2005, Q&V questionnaire nor did these companies respond to the Department's second Q&V questionnaire issued to these companies on October 6, 2006. The Department placed information on the record confirming the delivery of the first and second Q&V questionnaire to each company. See *Memorandum to the File, through Cindy Robinson, Acting Program Manager, from Julia Hancock, Case Analyst, Subject: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam ("Vietnam"): Initial Questionnaires Timeline*, (September 28, 2005); *Memorandum to the File, through Alex Villanueva, Program Manager, from Julia Hancock, Case Analyst, Subject: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam ("Vietnam"): 2<sup>nd</sup> Q&V Questionnaire Timeline*, (November 9, 2005).

Because these four companies were non-responsive to the Department's two requests for Q&V information, the Department finds that they are not entitled to a separate rate. Additionally, by neither responding to the Department's first nor second Q&V questionnaire, each company failed to provide critical information to be used for the Department's respondent selection process. Therefore, pursuant to sections 776(a)(2)(A)(B) and (C), the Department finds that facts available is appropriate. In addition, pursuant to section 776(b) of the Act, the Department may apply adverse facts available if it finds a respondent has failed to cooperate by not acting to the best of its ability to comply with a

request for information from the Department. By failing to respond to the Department's first and second Q&V questionnaire, ANTESCO, Anhaco, Binh Dinh, and Vinh Long have failed to act to the best of their ability in this segment of the proceeding. Moreover, because ANTESCO, Anhaco, Binh Dinh, and Vinh Long did not participate in the respondent selection exercise, the Department did not send them a questionnaire and was unable to determine whether or not they qualified for a separate rate. Therefore, ANTESCO, Anhaco, Binh Dinh, and Vinh Long are not eligible to receive a separate rate and will be part of the Vietnam-wide entity, subject to the Vietnam-wide rate.

#### *Afiex*

Between February and April 2006, the Department issued two supplemental questionnaires to Afiex regarding their response to section A of the Department's NME questionnaire. On July 7, 2006, the Department issued a third supplemental section A questionnaire to Afiex. However, on July 28, 2006, Afiex submitted a letter stating that it was not submitting a response and was withdrawing from this administrative review. Therefore, pursuant to sections 776(a)(2)(A)(B) and (C) of the Act, the Department finds that facts available is appropriate.

Because Afiex failed to submit a questionnaire response critical data potentially relevant to separate rates remain. Therefore, the Department was prevented from conducting a thorough separate rates analysis of Afiex's information. Therefore, we find that Afiex has not demonstrated that it is entitled to a separate rate and is thus deemed to be included in the Vietnam-wide entity. Moreover, Afiex has failed to cooperate to the best of its ability. Accordingly, since Afiex both significantly impeded the proceeding and failed to cooperate to the best of its ability, the application of AFA is appropriate, pursuant to sections 776(a)(2)(A) and (b) of the Act.

#### *Navico*

As discussed in the "Case History" section above, on January 18, 2006, the Department sent section A of the Department's NME questionnaire to Navico. The deadline for Navico to file a response to section A of the NME questionnaire was February 14, 2006, but the Department did not receive a response. Between February 16 and 27, 2006, the Department issued two letters to Navico that it had not received a section A response and requested that Navico either submit a response or a

letter stating that it was not going to participate. On March 6, 2006, Navico notified the Department via email that it was not going to participate and was withdrawing from the administrative review. Therefore, we find that facts available are warranted for Navico in accordance with section 776(a)(2)(A)(B) and (C).

Because Navico failed to submit a questionnaire response, critical data relevant to separate rates remain. Therefore, the Department was prevented from conducting a thorough separate rates analysis of Navico's information. Accordingly, we find that Navico has not demonstrated that it is entitled to a separate rate and thus, is deemed to be included in the Vietnam-wide entity. Moreover, Navico has failed to cooperate to best of its ability by withdrawing from this administrative review over two months after the Department's established deadline, which was January 6, 2006. Because Navico has both significantly impeded this proceeding and failed to cooperate to the best of its ability, the Department finds that the application of AFA is appropriate, pursuant to sections 776(a)(2)(a) and (b) of the Act.

#### *Phan Quan*

Between January and March 2006, the Department issued two questionnaires to Phan Quan on Section A of the Department's NME questionnaire. However, on April 26, 2006, Phan Quan submitted a letter stating that it was not submitting a response to the Department's March 28, 2006, supplemental questionnaire and was withdrawing from this administrative review. Therefore, pursuant to sections 776(a)(2)(A)(B) and (C) of the Act, the Department finds that facts available is appropriate.

Because Phan Quan failed to submit a questionnaire response, critical data potentially relevant to separate rates remain. Therefore, the Department was prevented from conducting a thorough separate rates analysis of Phan Quan's information. Therefore, we find that Phan Quan has not demonstrated that it is entitled to a separate rate and is thus deemed to be included in the Vietnam-wide entity. Moreover, Phan Quan has failed to cooperate to the best of its ability. Accordingly, since Phan Quan both significantly impeded the proceeding and failed to cooperate to the best of its ability, the application of AFA is appropriate, pursuant to sections 776(a)(2)(A) and (b) of the Act.

#### *Vietnam-wide Entity*

Because the Vietnam-wide entity (including Cafatex, Mekonimex, Navico,

Phan Quan and Afiex) has failed to cooperate to the best of its ability in providing the requested information, we find it appropriate, in accordance with sections 776(a)(2)(A) and (B), as well as section 776(b), of the Act, to assign total AFA to the Vietnam-wide entity. By doing so, we ensure that the companies that are part of the Vietnam-wide entity will not obtain a more favorable result by failing to cooperate than had they cooperated fully in this review.

Section 776(a)(2) of the Act provides that, if an interested party or any other person (A) withholds information that has been requested by the administering authority, or (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act, the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title. Furthermore, under section 782(c) of the Act, a Respondent has a responsibility not only to notify the Department if it is unable to provide the requested information but also to provide a full explanation as to why it cannot provide the information and suggest alternative forms in which it is able to submit the information. Because these four companies did not establish their entitlement to a separate rate and failed to provide requested information, we find that, in accordance with sections 776(a)(2)(A) and (B) of the Act, it is appropriate to base the Vietnam-wide margin in this review on facts available. See *Final Results of Antidumping Duty Administrative Review for Two Manufacturers/Exporters: Certain Preserved Mushrooms from the People's Republic of China*, 65 FR 50183, 50184 (August 17, 2000).

Section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as the facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See SAA accompanying the URAA, H. Doc. No. 103-316, at 870 (1994). Section 776(b) of the Act authorizes the Department to use, as AFA, information derived from the petition, the final determination in the LTFV investigation, any previous administrative review, or any other information placed on the record.

Section 776(b)(4) of the Act permits the Department to use as AFA information derived in the LTFV investigation or any prior review. Thus, in selecting an AFA rate, the Department's practice has been to assign Respondents, who fail to cooperate with the Department's requests for information, the highest margin determined for any party in the LTFV investigation or in any administrative review. See *Stainless Steel Plate in Coils from Taiwan; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 67 FR 5789 (February 7, 2002). As AFA, we are assigning the Vietnam-wide entity (which includes Cafatex, Mekonimex, Navico, Phan Quan and Afiex) the 66.34 percent which is the rate calculated in this review for QVD as this rate now replaces the Vietnam-wide entity rate as the highest rate available.

#### **Surrogate Country**

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production ("FOP"), valued in a surrogate 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 factors of production, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this investigation are discussed under the "Normal Value" Section below.

As discussed in the "Separate Rates" section, the Department considers Vietnam to be an NME country. The Department has treated Vietnam as an NME country in all previous antidumping proceedings. 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. None of the parties to this proceeding has contested such treatment. Accordingly, we treated Vietnam as an NME country for purposes of this review and calculated NV, pursuant to section 773(c) of the Act, by valuing the FOPs in a surrogate country.

The Department determined that Bangladesh, Pakistan, India, Indonesia, and Sri Lanka are countries comparable to Vietnam in terms of economic development. See *Memorandum from*

Ron Lorentzen, Director, Office of Policy, to Alex Villanueva, Program Manager, China/NME Group, Office 9: Antidumping Administrative Review of Certain Frozen Fish Fillets ("Frozen Fish") from the Socialist Republic of Vietnam: Request for a List of Surrogate Countries, (December 16, 2005) ("Surrogate Country List"). We select an appropriate surrogate country 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) ("Policy Bulletin"). In this case, we have found that Bangladesh is a significant producer of comparable merchandise, is at a similar level of economic development pursuant to 773(c)(4) of the Act, and has publically available and reliable data. See *Memorandum to the File, through James C. Doyle, Office Director, Office 9, Import Administration, and Alex Villanueva, Program Manager, Office 9, from Julia Hancock, Case Analyst, Subject: 2<sup>nd</sup> Antidumping Duty Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Selection of a Surrogate Country*, (August 1, 2006) ("Surrogate Country Memo"). 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 used data from Indian or Indonesian sources.

### Fair Value Comparisons

To determine whether sales of the subject merchandise by QVD to the United States were made at prices below NV, we compared the company's export prices ("EP") or constructed export prices ("CEP") to NV, as described in the "Export Price," "Constructed Export Price," and "Normal Value" sections of this notice, below.

### Export Price

For QVD's EP sale, we used 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 ("FOB") foreign port price to the first unaffiliated purchaser in the United States. For this EP sale, 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.

### Constructed Export Price

In accordance with section 772(b) of the Act, we used CEP methodology when the first sale to an unaffiliated purchaser occurred after importation of the merchandise into the United States. We calculated CEP for certain U.S. sales made QVD through its U.S. affiliates to unaffiliated U.S. customers.

For QVD'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 carry 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 *Memorandum to the File, through Alex Villanueva, Program Manager, Office 9, from Julia Hancock, Case Analyst, Subject: 2<sup>nd</sup> Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam ("Vietnam"): Surrogate Values for the Preliminary Results*, (August 31, 2006) ("Surrogate Value Memo"). Where applicable, we used the actual reported expense for those movement expenses provided by market economy ("ME") suppliers and paid for in a ME currency.

### Zero-Priced Transactions

During the course of this review, QVD reported a number of zero-priced transactions to their U.S. customers. See *QVD's Supplemental Section C Response*, at 8 and Exhibit S-9. An analysis of QVD's section C database reveals that QVD made a number of zero-priced transactions with customers that had purchased the same merchandise in commercial quantities. See *QVD's Analysis Memo* at Attachment I. In the *2<sup>nd</sup> Review of Tables and Chairs*, the Department included zero-priced transactions in the margin calculation stating that the record demonstrated that: (1) The respondent provided many pieces of the same product, indicating that these "samples" did not primarily serve for evaluation or testing of the

merchandise; (2) the respondent provided significant numbers of the same product to its U.S. customer while that customer was purchasing that same product; (3) the respondent provided "samples" to the same customers to whom it was selling the same products in commercial quantities; (4) the respondent acknowledged that it gave these products at zero price to its U.S. customers (already purchasing the same items) to sell to their own customers. See *Notice of Final Results of Antidumping Duty Administrative Review: Folding Metal Tables and Chairs from the People's Republic of China*, 71 FR 2905 (January 18, 2006) and accompanying Issues and Decisions Memorandum at Comment 4 ("2<sup>nd</sup> Review of Tables and Chairs").

The Federal Circuit has not required the Department to exclude zero-priced or de minimis priced sales from its analysis, but rather, has defined a sale as requiring "both a transfer of ownership to an unrelated party and consideration." See *NSK Ltd. v. United States*, 115 F.3d 965, 975 (Fed. Cir. 1997). The CIT in *NSK Ltd. v. United States* stated that it saw "little reason in supplying and re-supplying and yet re-supplying the same product to the same customer in order to solicit sales if the supplies are made in reasonably short periods of time," and that "it would be even less logical to supply a sample to a client that has made a recent bulk purchase of the very item being sampled by the client." See *NSK Ltd. v. United States*, 217 F. Supp. 2d 1291, 1311-1312 (CIT 2002). Furthermore, the Courts have consistently ruled that the burden rests with a respondent to demonstrate that it received no consideration in return for its provision of purported samples. See *Zenith Electronics Corp. v. United States*, 988 F. 2d 1573, 1583 (Fed. Cir. 1993) (explaining that the burden of evidentiary production belongs "to the party in possession of the necessary information"). See *Tianjin Machinery Import & Export Corp. v. United States*, 806 F. Supp. 1008, 1015 (CIT 1992) ("The burden of creating an adequate record lies with respondents and not with {the Department}." (citation omitted). Moreover, "[e]ven where the Department does not ask a respondent for specific information that would enable it to make an exclusion determination in the respondent's favor, the respondent has the burden of proof to present the information in the first place with its request for exclusion." See *Notice of Final Results of Antidumping Duty Administrative Reviews: Ball Bearings and Parts Thereof from France, Germany, Italy,*

*Japan, Singapore, and the United Kingdom*, 70 FR 54711 (September 16, 2005), and accompanying Issues and Decisions Memorandum at Comment 8 (citing *NTN Bearing Corp. of America v. United States*, 997 F. 2d 1453, 1458 (Fed. Cir. 1993)).

An analysis of QVD's section C computer sales listings reveals that QVD provided zero-priced merchandise to the same customers to whom it was selling or had sold the same products in commercial quantities, with the exception of a few of QVD's customers, who did not make any purchases of subject merchandise during the POR. See *QVD Preliminary Analysis Memorandum* at Attachment I. Consequently, based on the facts cited above, the guidance of past CIT decisions, and consistent with the Department's prior case precedent, for the preliminary results of this review, we have not excluded zero-priced transactions from the margin calculation of this case for QVD, with the exception of certain sales that QVD made to new customers that did not purchase any subject merchandise during the POR.

#### 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, pursuant to sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

As the basis for NV, QVD provided FOPs used in each of the stages for processing frozen fish fillets. However, QVD also reported that it is an integrated producer, (i.e., it farms and processes the whole fish input), but that its affiliated farming facility, Choi Moi, did not supply the majority of the whole fish used during the production of the subject merchandise. See *QVD's Section D Questionnaire Response*, (March 8, 2006) at 3. In response to a supplemental questionnaire, QVD also provided factors of production information used in each of the production stages, from the fingerling stage to the frozen fish fillet processing stage, separately. Although QVD reported the inputs used to produce the main input to the processing stage

(whole fish), for the purposes of these preliminary results, we are not valuing those inputs when calculating NV. Rather, our NV calculation begins with a valuation of the fish input (whole fish) used to produce the merchandise under investigation.

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. If the NME respondent is an integrated producer, we take into account the factors utilized in each stage of the production process. For example, in a previous aquaculture case, *Shrimp from PRC Final*, one of the respondents, Zhanjiang Guolian, was a fully integrated firm, and the Department valued both the farming and processing FOPs because Zhanjiang Guolian bore all the costs related to growing the shrimp. See *Notice of Final Determination at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China*, 69 FR 70997 (December 8, 2004) and accompanying Issues and Decision Memorandum at Comment 9(e) ("*Shrimp from PRC Final*").

Unlike Zhanjiang Guolian in *Shrimp from the PRC Final*, QVD is not a fully integrated firm. Although QVD is affiliated with Choi Moi, QVD purchased the whole fish input from Choi Moi. Accordingly, QVD did not bear all the costs related to growing the fish input. Therefore, we will apply a surrogate value to the whole fish input that QVD purchased from Choi Moi, rather than valuing the factors of production incurred by Choi Moi in calculating QVD's NV.

To calculate NV, QVD's reported per-unit factor quantities were valued using publicly available Bangladeshi, Indian, and Indonesian surrogate values. 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 United States Court of Appeals for the Federal Circuit ("*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 ("*IMF*")'s *International Financial Statistics*. We excluded from the

surrogate country import data used in our calculations imports from South Korea, Thailand, Indonesia and India 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 (March 15, 2005) and accompanying Issues and Decision Memorandum at Comment 4. Additionally, we disregarded prices from NME countries and imports that were labeled as originating from an "unspecified" country were excluded from the average value. The Department excluded these imports because it could not ascertain whether they were not from either an NME country or a country with general export subsidies. Finally, we also disregarded prices from North Korea, as the Department has in a previous case. See *Notice of Final Results of Antidumping Duty Administrative Review: Chrome-Plated Lug Nuts from the People's Republic of China*, 61 FR 58514 (November 15, 1996). 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 Import Administration's website at <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, 2004, through July 31, 2005:

| Manufacturer/Exporter               | Weighted-Average Margin (Percent) |
|-------------------------------------|-----------------------------------|
| Cataco .....                        | 80.88                             |
| QVD .....                           | 66.34                             |
| Vietnam-wide Rate <sup>10</sup> ... | 66.34                             |

<sup>10</sup>The Vietnam-wide rate includes Mekonimex, Cafatex, Afiex, Navico, Phan Quan, ANTESCO, Anhaco, Binh Dinh and Vinh Long.

#### Public Comment

The Department will disclose to parties to 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 20 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 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 QVD, the only respondent receiving a calculated rate in this review, we will calculate importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total volume of the examined sales for that importer. For Cataco, to ensure proper assessment, the Department has adjusted the total volume of the examined sales for Cataco as outlined in the *Cataco Analysis Memo*. Where the assessment rate is *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer.

#### 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, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis*, no cash deposit will be required); (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 66.34 percent, which was calculated in this review for QVD; 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 publication of the final results of the next administrative review.

#### 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 31, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E6-15003 Filed 9-8-06; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

(A-475-703)

#### Notice of Preliminary Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin From Italy

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

**EFFECTIVE DATE:** September 11, 2006.

**FOR FURTHER INFORMATION CONTACT:** Salim Bhabhrwala or Saliha Loucif, at (202) 482-1784 or (202) 482-1779, respectively; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th

Street & Constitution Avenue, NW, Washington, DC 20230.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on granular polytetrafluoroethylene resin (PTFE) from Italy, covering the period August 1, 2004, through July 31, 2005. We preliminarily determine that sales of subject merchandise by Solvay Solexis, Inc. and Solvay Solexis S.p.A (collectively, Solvay) have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on appropriate entries based on the difference between the export price (EP) and the NV. Interested parties are invited to comment on these preliminary results.

#### SUPPLEMENTARY INFORMATION:

##### Background

On August 30, 1988, the Department published in the **Federal Register** the antidumping duty order on granular PTFE resin from Italy. *See Antidumping Duty Order; Granular Polytetrafluoroethylene Resin from Italy*, 53 FR 33163 (August 30, 1988). On August 1, 2005, the Department issued 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*, 70 FR 44085 (August 1, 2005). In accordance with 19 CFR 351.213(b), Solvay requested an administrative review. On September 28, 2005, the Department published the notice of initiation of this antidumping duty administrative review, covering the period August 1, 2004, through July 31, 2005 (the period of review, or POR). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 56631 (September 28, 2005).

On October 11, 2005, the Department issued its antidumping questionnaire to Solvay, specifying that the responses to Section A and Sections B-E would be due on November 1, 2005, and, November 15, 2005, respectively.<sup>1</sup> The

<sup>1</sup> Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under review 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 cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of