

relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

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

Dated: February 28, 2007.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-552-802]

#### **Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results of the First Administrative Review and New Shipper Review**

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

**SUMMARY:** The Department of Commerce ("the Department") is conducting an administrative review and a new shipper review of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam ("Vietnam"), both covering the period of review ("POR") of July 16, 2004, through January 1, 2006. As discussed below, we preliminarily determine that certain respondents in these reviews (covering one new shipper review and sixteen companies subject to the administrative review)<sup>1</sup> have not made sales in the United States at prices below normal value. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the POR for which the importer-specific assessment rates are above *de minimis*.

**DATES:** *Effective Date:* March 9, 2007.

**FOR FURTHER INFORMATION CONTACT:** Nicole Bankhead (respondent Grobest), and Matthew Renkey (respondent Fish One), 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) 482-9068 and (202) 482-2312, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **General Background**

On February 1, 2005, the Department published in the **Federal Register** the antidumping duty order on frozen warmwater shrimp from Vietnam. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam*, 70 FR 5152 (February 1, 2005) ("VN Shrimp Order"). On January 31, 2006, we received a request for a new shipper review from Grobest & I-Mei Industrial (Vietnam) Co., Ltd. ("Grobest"). On February 1, 2006, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on frozen warmwater shrimp from Vietnam for the period July 16, 2004, through January 31, 2006. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 71 FR 5239 (February 1, 2006).

On February 28, 2006, we received requests to conduct administrative reviews of 83 companies from the Petitioner<sup>2</sup> in addition to requests by certain Vietnamese companies. *See Notice of Initiation of Administrative Reviews of the Antidumping Duty Orders on Frozen Warmwater Shrimp from the Socialist Republic of Vietnam and the People's Republic of China*, 71 FR 17813 (April 7, 2006) ("Administrative Review Initiation"). On March 17, 2006, the Department also initiated a new shipper review with respect to Grobest.<sup>3</sup> On March 31, 2006, the Department initiated an administrative review of eighty-four<sup>4</sup>

<sup>2</sup> The Ad Hoc Shrimp Trade Action Committee is the Petitioner.

<sup>3</sup> *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Initiation of New Shipper Review*, 71 FR 14834 (March 24, 2006) ("New Shipper Initiation").

<sup>4</sup> AAAS Logistics, Agrimex, Amanda Foods (Vietnam) Ltd.\*, American Container Line, Angiang Agricultural Technology Service Company, An Giang Fisheries Import and Export Joint Stock Company (Agifish), Aquatic Products Trading Company\*, Bac Lieu Fisheries Company Limited\*, Bentre Frozen Aquaproduct Exports, Bentre Aquaproduct Imports & Exports, Cai Doi Vam Seafood Import-Export Company (Cadovimex)\*, Camau Frozen Seafood Processing Import Export Corporation (Camimex)\*, Cam Ranh Seafoods Processing Enterprise Company (Camranh Seafoods)\*, Cantho Animal Fisheries Product Processing Export Enterprise (Cafatex)\*, Can Tho Agricultural Products, Can Tho Agricultural and Animal Products Import Export Company (Cataco)\*, Can Tho Seafood Exports, Cautre Enterprises,

producers/exporters of subject merchandise from Vietnam. *See Administrative Review Initiation*. On May 31, 2006, the Department aligned Grobest's new shipper review with that of Fish One based on a request from Grobest.<sup>5</sup>

On July 27, 2006, in accordance with section 351.213(d)(1) of the Department's regulations, we rescinded the administrative review with respect to sixty-eight companies. *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Partial Rescission of the First Administrative Review*, 71 FR 42628 (July 27, 2006) ("Rescission Notice"). Therefore, these

Coastal Fishery Development, Coastal Fisheries Development Corporation (Cofidec)\*, C P Vietnam Livestock Co. Ltd.\*, C P Livestock, Cuu Long Seaproducts Limited (Cuulong Seapro)\*, Danang Seaproducts Import Export Corporation (Seaprodex Danang)\*, Dong Phuc Huynh Frozen Seafoods Pty, General Imports & Exports, Grobest & I Mei Industry Vietnam, Hacota Hai Viet, Hai Thuan Export Seaproducts Processing Co. Ltd., Hanoi Sea Products Import Export Corporation\*, Hoa Nam Marine Agricultural, Hatrang Frozen Seaproduct Pty, Investment Commerce Fisheries Corporation (Incomfish)\*, Kien Giang Sea Products Import—Export Company (Kisimex)\*, Kim Anh Co. Ltd., Khanh Loi Trading, Lamson Import-Export Foodstuffs Corporation, Minh Hai Export Frozen Seafood Processing Joint Stock Company, Minh Hai Export Frozen Seafoods Processing Joint Stock Company (Minh Hai Jostoco)\*, Minh Hai Joint Stock Seafoods Processing Company (Seaprodex Minh Hai)\*, Minh Hai Sea Products Import Export Company (Seaprimex Co)\*, Minh Phat Seafood\*, Minh Phu Seafood Corporation\*, Minh Qui Seafood\*, Ngoc Sinh Seafoods\*, Nha Trang Company Limited, Nha Trang Fisheries Joint Stock Company (Nhtrang Fisco)\*, Nha Trang Fisheries Co. Ltd., Nha Trang Seaproduct Company (Nhatrang Seafoods)\*, Pataya Food Industry (Vietnam) Ltd.\*, Phu Cuong Seafood Processing and Import Export Company Ltd.\*, Phuong Nam Co. Ltd.\*, Phuong Nam Seafood Co. Ltd., Saigon Orchide, Sao Ta Foods Joint Stock Compay (Fimex VN)\*, Seafood Processing Imports Exports Vietnam, Seaprodex, Sea Product, Sea Products Imports & Exports, Song Huong ASC Import-Export Company Ltd.\*, Song Huong ASC Joint Stock Company, Soc Trang Aquatic Products and General Import Export Company (Stampimex)\*, Soc Trang Aquatic Products and General Import Export Company (Stampimex)\*, Sonacos, Special Aquatic Products Joing Stock Company (Seaspimex), Tacvan Frozen Seafoods Processing Export Company, Thami Shipping & Airfreight, Thanh Long, Thanh Long, Thien Ma Seafood, Tho Quang Seafood Processing & Export Company, Thuan Phuoc Seafoods and Trading Corporation\*, Tourism Material and Equipment Company (Matourimex Hochiminh City Branch), Truc An Company, UTXI Aquatic Products Processing Company\*, Viet Foods Co. Ltd.\*, Viet Hai Seafoods Company Ltd. (Vietnam Fish One)\*, Vietnam Northern Viking Technologie Co. Ltd., Viet Nhan Company\*, Vilfood Co, Vinh Loi Import Export Company (Vimexco)\*, Vita, V N Seafoods. (\* these companies received a separate rate in the prior segment (the less-than-fair value investigation) of this proceeding.

<sup>5</sup> *See Letter from Grobest Re: Certain Frozen Warmwater Shrimp from Vietnam: Grobest's Request for Alignment of New Shipper and Administrative Reviews*, dated May 15, 2006.

<sup>1</sup> Further, we preliminarily determine to use total adverse facts available to determine the rate for eleven of the sixteen administrative review companies and the Vietnam-wide entity.

reviews cover 17<sup>6</sup> producers/exporters of the subject merchandise and the Vietnam-wide entity.

On August 21, 2006, the Department extended the preliminary results for the instant reviews until February 28, 2007. See *Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India, the Socialist Republic of Vietnam, the People's Republic of China, and Thailand: Notice of Extension of Time Limits for the Preliminary Results of the First Administrative Reviews and New Shipper Reviews*, 71 FR 50387 (August 25, 2006).

On January 23, 2007, we published a correction to the scope of the order in which we clarified that the scope does not cover warmwater shrimp in non-frozen form. See *Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam; Amended Orders*, 72 FR 2857 (Jan. 23, 2007).

#### Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,<sup>7</sup> deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

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

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue

shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

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

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

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

#### Respondent Selection

On April 3, 2006, the Department sent letters to the Vietnam Association of Seafood Exporters and Producers ("VASEP") and the Ministry of Fisheries

in Vietnam requesting assistance with distributing the Department's questionnaire. On April 25, 2006, the Department sent a letter to all interested parties clarifying an aspect of the separate rates application. Between April 27 and May 19, 2006, the Department received Quantity and Value questionnaire ("Q&V") responses and separate rate certifications from COFIDEC, Seaprodex Hanoi, CATACO, FAQUIMEX, HAVICO, Kim Anh, Fish One, Phuong Nam Co., Ltd. and subsidiary Western Seafood Processing and Exporting Factory, Fimex, Grobest, CAM RANH, Bac Lieu, Thuan Phuoc Seafoods and Trading Corporation, Ngoc Sinh, STAPIMEX, UTXI, Amanda, Minh Phu, Nha Trang Fisco, Viet Foods, VIMEXCO, Seaprimexco, Kisimex, Cafatex, Seaprodex Minh Hai, CP Vietnam, Incomfish, Minh Hai Jostco, Phu Cuong, Camimex, Cuu Long Sea Pro, Nha Trang Seafoods, Seaprodex Danang, and CADOVIMEX.

On May 22, 2006, the Department resent its Q&V questionnaire and separate rate application via e-mail and overnight express delivery to all companies that did not respond to the Department's original Q&V questionnaire and separate rate application. See *Memorandum to the file, through Alex Villanueva, Program Manager, Office 9, from Matthew Renkey, Senior Analyst, Office 9, re: Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Issuance of the Second Round of Quantity and Value Questionnaires and Separate Rate Applications/Certifications*. On May 25, 2006, the Department corrected a mistake to its May 22, 2006, Q&V follow-up letters addressed to VASEP and the Ministry of Fisheries. See *Memorandum to the file, through Alex Villanueva, Program Manager, Office 9, from Matthew Renkey, Senior Analyst, Office 9, re: Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Quantity and Value Response for The Quang Seafood Processing & Export Company*. On May 26, 2006, the Department reissued its Q&V questionnaire and separate rate application to two additional companies.

Between June 2 and July 11, 2006, the Petitioner withdrew its request for antidumping administrative reviews for certain companies and certain companies also withdrew their requests for an administrative review. See *Rescission Notice*. On June 6, 2006, the Petitioner filed a letter requesting that the Department select mandatory respondents through a sampling methodology. On June 7, 2006, Pataya

<sup>6</sup> This includes sixteen companies subject to the administrative review and one new shipper; the administrative review for Grobest was rescinded.

<sup>7</sup> "Tails" in this context means the tail fan, which includes the telson and the uropods.

Food Industries (Vietnam) Limited filed a letter stating that it had no shipments during the POR. On June 14, 2006, the Department placed on the record a Q&V response from Vilfood Co. Ltd. and Khanh Loi Production & Trading Co., Ltd. See Memorandum to the file, through Alex Villanueva, Program Manager, Office 9, from Matthew Renkey, Senior Analyst, Office 9, re: *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: No Shipment Responses from Vilfood Co. Ltd. and Khanh Loi Production & Trading Co., Ltd.* On June 15, 2006, the Department met with the Petitioner to discuss the shrimp administrative reviews. See Memorandum to the file, from Chris Riker, Program Manager, Office 9, re: *Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam: Ex Parte Meeting.*

On June 16, 2006, the Department issued its respondent selection memorandum stating that we selected Amanda, Fimex, and Phuong Nam as the three mandatory respondents since they were the three largest exporters, by volume, of the remaining companies. See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, from James C. Doyle, Office Director, Office 9, re: *Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Selection of Respondents ("Respondent Selection Memo")*. On July 11, 2006, the Department selected three new mandatory respondents: Fish One, Seaprodex Hanoi, and Kisimex (the three largest remaining exporters, by volume) based on the withdrawals of requests for review from the three previously selected mandatory respondents. See Memorandum to James C. Doyle, Director, Office 9, through Alex Villanueva, Program Manager, Office 9, from Cindy Lai Robinson, Senior Analyst re: *Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Selection of Additional Mandatory Respondents ("Second Respondent Selection Memo")*.

#### Questionnaires

The following sixteen companies remain in the administrative review: Aquatic Products Trading Company, Bac Lieu Fisheries, Camranh Seafoods, Seaprodex Hanoi, Incomfish, Kisimex, Nha Trang Company Limited, Nhatrang Fisco, Nha Trang Fisheries Co. Ltd., Seaprodex, Sea Products Imports & Exports, Song Huong ASC Import-

Export Company Ltd., Song Huong ASC Joint Stock Company, Vietnam Fish One, Viet Nhan Company, and V N Seafoods.

On March 20, 2006, the Department issued Grobest the non-market economy questionnaire. On July 12, 2006, the Department issued its non-market economy questionnaire to the three new mandatory respondents Fish One, Seaprodex Hanoi, and Kisimex.<sup>8</sup>

Grobest responded to the Department's non-market economy questionnaire and subsequent supplemental questionnaires between April 2006 and November 2006. Fish One responded to the Department's non-market economy questionnaire and subsequent supplemental questionnaires between August 2006 and November 2006. Between August and November 2006, the Petitioner submitted comments regarding Fish One's questionnaire responses.

#### Surrogate Country and Surrogate Values

On June 20, 2006, the Department sent interested parties a letter requesting comments on surrogate country and information pertaining to valuing factors of production. Grobest, Fish One, and the Petitioner submitted surrogate country comments and surrogate value data between November 16, 2006, and February 12, 2007.

#### Use of Facts Available

Section 776(a)(2) of the Tariff Act of 1930, as amended ("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.

Section 782(c)(1) of the Act provides that if an interested party "promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative form in which such party is able to submit the

information," the Department may modify the requirements to avoid imposing an unreasonable burden on that party.

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

Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Furthermore, section 776(b) of the Act states 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 from the administering authority or the Commission, the administering authority or the Commission \* \* \*, 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, Vol. 1 at 870 (1994).

#### 1. Fish One Unreported Factors of Production ("FOPs")

For these preliminary results, in accordance with sections 776(a)(2)(A) of the Act, we have determined that the use of facts available is appropriate for Fish One's unreported consumption of salt<sup>2</sup> and marinade.

Fish One did not report salt<sup>2</sup> or marinade consumption in its three

<sup>8</sup> Prior to the withdrawal of their requests for review, on June 20, 2006, the Department issued its non-market economy questionnaire to the three mandatory respondents: Amanda, Fimex, and Phuong Nam, in the instant administrative review.

<sup>9</sup> Fish One reported using salt in its production of shrimp, however, it also uses salt in its production of ice, which we are referring to as "salt2."

submissions of FOP data dated August 25, 2006, October 26, 2006, and November 21, 2006. At verification, we discovered that Fish One used salt2 and marinade during the production of subject merchandise. See *Fish One Verification Report*, at 10; see also *Memorandum to the File, through Alex Villanueva, Program Manager, Office 9, from Matthew Renkey, Senior Analyst, Office 9; Company Analysis Memorandum in the Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Viet Hai Seafoods Company Ltd. (Vietnam Fish One)*, dated February 28, 2007 at 3. Because Fish One withheld this data and failed to report its actual salt2 and marinade consumption to the Department, despite multiple opportunities to provide complete FOP data,<sup>10</sup> we are applying facts available for Fish One's salt2 and marinade consumption pursuant to section 776(a)(2)(A) of the Act.

Section 776(b) of the Act states 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 from the administering authority or the Commission, the administering authority or the Commission \* \* \*, 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 SAA accompanying the URAA at 870. 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.

In this instance, Fish One failed to act to the best of its ability to comply with the Department's repeated requests for information regarding all of its FOP used during the POR, *i.e.* salt2 and marinade. Only at verification did it become clear that these two previously unreported factors of production existed. As noted above, Fish One had several opportunities to provide the information regarding these two FOPs and was the sole entity with both possession and control of this information; however, Fish One failed to report the data for these two FOPs. Throughout the proceeding, Fish One did not indicate that it was unable to submit complete FOP information in the requested form and manner, nor did

Fish One provide a full explanation or suggest an alternative form in which to submit the information, in accordance with section 782(c)(1) of the Act. Therefore, we find that Fish One failed to cooperate to the best of its ability with respect to these FOPs and we are applying AFA for these two factors used by Fish One in these preliminary results, pursuant to section 776(b) of the Act. As partial AFA for Fish One's salt2 and marinade FOPs, we are using the highest single monthly usage rate for these inputs and applying this monthly usage ratio to all months during the POR.

## 2. Vietnam-Wide Entity and Non-Responsive Companies

As mentioned in the "General Background" section above, based on withdrawals and subsequent rescissions, the administrative review covers sixteen companies. Of those sixteen companies, only one mandatory respondent (Fish One) and four separate rate companies (Bac Lieu Fisheries, Camranh Seafoods, Incomfish, and Nhatrang Fisco) chose to participate. The remaining eleven companies did not provide responses to the Department's requests for information. On July 12, 2006, the Department issued the non-market economy questionnaire to mandatory respondents, Kisimex and Seaprodex Hanoi. Neither respondent provided a response to Section A of the Department's antidumping questionnaire by the deadline of August 2, 2006. The Department sent letters to both companies on August 4, 2006, stating that the final opportunity to submit a response to the Department's questionnaire would be August 11, 2006, but neither company responded. Additionally, the nine remaining companies<sup>11</sup> did not respond at any point to the Department's Q&V and separate rate questionnaires, despite the fact that these companies, as outlined above, were given two opportunities to do so. Furthermore, at no point in the administrative review did any of these companies submit comments regarding their status in this proceeding. As such, we find it appropriate to apply facts available to these eleven companies in accordance with sections 776(a)(2)(A) and (B) of the Act. Moreover, we find that because these eleven companies did not respond to the Department's questionnaires, they did not cooperate to the best of their ability and therefore,

adverse facts available is appropriate. As these eleven companies did not provide the information necessary to conduct a separate rate analysis, we also consider these companies as part of the Vietnam-wide entity. Therefore, we are applying an adverse inference to the Vietnam-wide entity (including the eleven non-responsive companies) in accordance with section 776(b) of the Act.<sup>12</sup>

As AFA, we are applying the highest rate from any segment of this proceeding which in this case is the rate assigned to the Vietnam-wide entity in the LTFV investigation. Section 776(c) of the Act requires that the Department corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." See SAA at 870 and 19 CFR 351.308(d).

The SAA further provides that the term "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. See SAA at 870. Thus, to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. The AFA rate we are applying for the current review of frozen shrimp was corroborated in the investigation. See *VN Shrimp Order*, 70 FR 5152 (February 1, 2005). No information has been presented in the current review that calls into question the reliability of the information used for this AFA rate. Thus, the Department finds that the information is reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping*

<sup>12</sup> See, e.g., *Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews*, 71 FR 54269 (September 14, 2006) ("*HFHT's Final 2006*") and *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).

<sup>10</sup> August 25, 2006, October 25, 2006, and November 21, 2006 responses to the Department's original and supplemental Section C and D questionnaires.

<sup>11</sup> Aquatic Products Trading Company, Nha Trang Company Limited, Nha Trang Fisheries Co. Ltd., Seaprodex, Sea Products Imports & Exports, Song Huong ASC Import-Export Company Ltd., Song Huong ASC Joint Stock Company, Viet Nhan Company, and V N Seafoods.

*Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. See *D&L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). None of these unusual circumstances are present with respect to the rate being used here. Moreover, the rate selected (*i.e.*, 25.76 percent) is the rate currently applicable to the Vietnam-wide entity. The Department assumes that if an uncooperative respondent could have demonstrated a lower rate, it would have cooperated. See *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185 (Fed. Cir. 1990); *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 24 CIT 841 (2000) (respondents should not benefit from failure to cooperate). As there is no information on the record of this review that demonstrates that this rate is not appropriate to use as AFA in the current review, we determine that this rate has relevance.

As this rate is both reliable and relevant, we determine that it has probative value, and is thus in accordance with section 776(c)'s requirement that secondary information be corroborated to the extent practicable (*i.e.*, that it has probative value).

#### Verification

Pursuant to 19 CFR 351.307(b)(iv), we conducted verifications of the sales and factors of production ("FOP") for Grobest<sup>13</sup> and Fish One.<sup>14</sup> The Petitioner submitted pre-verification

<sup>13</sup> The verification of Grobest's sales and FOPs and that of its affiliated United States importer Ocean Duke took place from November 29, 2006, through December 8, 2006. See Memorandum to the file through Alex Villanueva, Program Manager, Office 9, Import Administration, from Nicole Bankhead, Analyst, Office 9: Verification of the Sales and Factors Response of Grobest & I-Mei Industrial (Vietnam) Co., Ltd. ("Grobest") and its affiliate Ocean Duke in the Antidumping New Shipper Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam.

<sup>14</sup> The verification of Fish One's sales and FOPs took place from December 11, 2006, through December 15, 2006. See Memorandum to the file through Alex Villanueva, Program Manager, Office 9, Import Administration, from Matthew Renkey, Senior Case Analyst, Office 9: Verification of the Sales and Factors Response of Vietnam Fish One Co., Ltd. ("Fish One") in the Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam.

comments for Fish One on November 20, 2006.

#### New Shipper Reviews Bona Fide Analysis

Consistent with the Department's practice, we investigated the *bona fide* nature of the sale made by Grobest for the new shipper review. We preliminarily find that the new shipper sale made by Grobest is a *bona fide* transaction. Based on our investigation into the *bona fide* nature of the sale, the questionnaire responses submitted by Grobest, and our verification thereof, as well as the company's eligibility for a separate rate (see Separate Rates section below) and the Department's preliminary determination that Grobest was not affiliated with any exporter or producer that had previously shipped subject merchandise to the United States, we preliminarily determine that Grobest has met the requirements to qualify as a new shipper during the POR. Therefore, for purposes of these preliminary results of review, we are treating Grobest's respective sale of subject merchandise to the United States as an appropriate transaction for this new shipper review.<sup>15</sup>

#### Non-Market Economy Country Status

In every case conducted by the Department involving Vietnam, Vietnam has been treated as a non-market economy ("NME") country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. See *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review*, 71 FR 66304 (November 14, 2006). None of the parties to this proceeding have contested such treatment. Accordingly, we calculated normal value ("NV") in accordance with section 773(c) of the Act, which applies to NME countries.

#### Separate Rates Determination

A designation as an NME remains in effect until it is revoked by the Department. See section 771(18)(C) of the Act. Accordingly, there is a rebuttable presumption that all

<sup>15</sup> See Memorandum from Nicole Bankhead, Senior Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9, to James C. Doyle, Director, Office 9: Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Certain Frozen Warmwater Shrimp: Grobest, dated February 28, 2007 ("Grobest Prelim Bona Fide Memo").

companies within Vietnam are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("Silicon Carbide").

#### A. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments decentralizing control of companies.

In the LTFV investigation for this case, the Department granted separate rates to Fish One, the only mandatory respondent in the instant review, and to the four participating separate rate respondents, Nha Trang Fisco, Bac Lieu Fisheries, Cam Ranh Seafoods, and Incomfish. See *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004) and accompanying Memorandum to James C. Doyle, Office Director, AD/CVD Enforcement, NME Unit, Office IX, THROUGH: Alex Villanueva, Program Manager, AD/CVD Enforcement, NME Unit, Office IX, FROM: Nicole Bankhead, Case Analyst, re: Antidumping Duty Investigation of Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam: Final Determination Separate Rates Memorandum for Section A Respondents; see also VN Shrimp Order, 70 FR 5152 (February 1, 2005) and accompanying MEMORANDUM TO: James C. Doyle, Office Director, AD/CVD Enforcement, Office 9, THROUGH: Alex Villanueva, Program Manager, AD/CVD Enforcement, Office 9, FROM: Nicole Bankhead, Case Analyst, and Paul Walker, Case Analyst, RE:

*Antidumping Duty Investigation of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Analysis of Ministerial Error Allegations* at Comments 7,8,9,10, and 11. 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 12440 (March 13, 1998).

In this review, only Fish One, Grobest, and the four participating separate rate companies submitted complete responses to the separate rates section of the Department's NME questionnaire. The evidence submitted by these companies includes government laws and regulations on corporate ownership, business licenses, and narrative information regarding the companies' operations and selection of management. The evidence provided by these companies supports a finding of a *de jure* absence of governmental control over their export activities. We have no information in this proceeding that would cause us to reconsider this determination. Thus, we believe that the evidence on the record supports a preliminary finding of an absence of *de jure* government control based on: (1) An absence of restrictive stipulations associated with the exporter's business license; and (2) the legal authority on the record decentralizing control over the respondents.<sup>16</sup>

#### B. 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).

<sup>16</sup> The preliminary finding applies to (1) the one mandatory participating respondent of this administrative review: Fish One; (2) the new shipper company under review: Grobest; and (3) the non-selected respondents of this administrative review seeking a separate rate: Nha Trang Fisco, Bac Lieu Fisheries, Cam Ranh Seafoods, and Incomfish.

In their questionnaire responses, Fish One and the separate rate companies submitted evidence indicating an absence of *de facto* governmental control over their export activities. Specifically, this evidence indicates that: (1) Each company sets its own export prices independent of the government and without the approval of a government authority; (2) each company retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) each company has a general manager, branch manager or division manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the board of directors or company employees, and the general manager appoints the deputy managers and the manager of each department; and (5) there is no restriction on any of the companies use of export revenues. Therefore, the Department preliminarily finds that Fish One and the separate rate companies have established *prima facie* that they qualify for separate rates under the criteria established by *Silicon Carbide* and *Sparklers*. Additionally, Grobest reported that it is wholly owned by foreign entities. Therefore, an additional separate-rates analysis is not necessary to determine whether Grobest's export activities are independent from government control. See *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104, 71105 (December 20, 1999) (where the respondent was wholly foreign-owned, thus, qualified for a separate rate).

#### Separate Rate Calculation

Based on timely requests from individual exporters and petitioners, the Department originally initiated this review with respect to 84 companies. During the course of the review, numerous requests for review were withdrawn; however, the Department employed a limited examination methodology, as it did not have the resources to examine all companies for which a review request was made. As stated previously, the Department selected three exporters, Fish One, Seaprodex Hanoi, and Kisimex as mandatory respondents in this review. Four additional companies (Nha Trang Fisco, Bac Lieu Fisheries, Cam Ranh Seafoods and Incomfish) submitted timely information as requested by the Department and remain subject to review as cooperative separate rate respondents.

Fish One participated fully in this review and is receiving a preliminary

antidumping duty rate of zero. As noted above, however, the remaining two mandatory respondents, Seaprodex Hanoi and Kisimex, did not respond to our questionnaires. As a result, these two entities are not entitled to a separate rate in this review and thus are considered to be part of the Vietnam-wide entity. As part of the Vietnam-wide entity, these two companies are receiving a preliminary antidumping duty rate of 25.76 percent.

The Department must also assign a rate to the remaining four cooperative separate rate respondents not selected for individual examination. We note that the statute and the Department's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777(A)(c)(2) of the Act. The Department's practice in this regard, in cases involving limited selection based on exporters accounting for the largest volumes of trade, has been to weight-average the rates for the selected companies excluding zero and *de minimis* rates and rates based entirely on adverse facts available. In the instant review, however, the rates for the mandatory respondents include only a single zero rate and a rate for the Vietnam-wide entity based on total AFA.

While the statute does not specifically address this particular set of circumstances, section 735(c)(5)(B) of the Act does specify the methodology to be followed when a similar fact pattern arises in the context of the all-others rate established in an investigation. While not entirely analogous to the determination of a rate to be applied to responsive separate rate respondents in the context of a NME review, we find it to be instructive in these circumstances.

Section 735(c)(5)(B) of the Act states that in situations where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis*, or are determined entirely under section 776 (facts available section), "the administering authority may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the weighted-average dumping margins determined for the exporters and producers individually investigated."

The Statement of Administrative Action ("SAA") states that in using any reasonable method to calculate the all-others rate, "the expected method in

such cases will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available, provided that volume data is available." See SAA accompanying the Uruguay Round Agreements Act, H.Doc. 316, Vol 1., 103rd Cong (1994)(SAA) at 203. However, the SAA also provides that: [I]f this method is not feasible, or if it results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers, Commerce may use other reasonable means." *Id.*

In this case, because of the nature of the shrimp industry, the Department preliminarily concludes that it cannot accurately determine a margin based on information provided by the separate rate entities, furthermore, we preliminarily find that we cannot employ such alternative methods as weight-averaging AFA, *de minimis*, and zero rates or partial use of the information on the record. Specifically, while the separate rates entities have given us total volume and value information with respect to subject merchandise, we note that shrimp prices vary dramatically, principally due to count-size. Thus, margins calculated on the basis of average prices without regard to count size and other factors do not reflect a meaningful, accurate comparison. Because the Department does not have comparable information with respect to the count sizes sold by the separate entities, we find we must look to other reasonable means to determine an appropriate margin for the separate rate entities subject to this review.

The Department has preliminarily determined to apply the margin calculated for cooperative separate rate respondents in the immediately preceding segment of this proceeding, *i.e.*, the margin of 4.57 percent assigned to such companies in the LTFV investigation. We believe this methodology constitutes a reasonable method by which to calculate such rate. The rate of 4.57 percent calculated in the LTFV was based on the Department's thorough examination of several cooperative companies accounting for a majority of exports during the period of investigation. We believe, therefore, that this rate is reflective of the range of commercial behavior demonstrated by exporters of the subject merchandise during a very recent period in time. Therefore, we find it a reasonable means by which to determine a rate for non-examined cooperative separate entities and have employed this methodology for purposes of these preliminary results.

### 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 ("FOPs"), valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the 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: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the "Normal Value" section below and in *Memorandum to the File through Alex Villanueva, Program Manager, Office 9 from Matthew Renkey, Senior Analyst, Office 9: Antidumping Duty Administrative and New Shipper Reviews of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results*, February 28, 2007 ("*Factor Valuation Memo*").

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 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, Sri Lanka, and Indonesia are countries comparable to Vietnam in terms of economic development.<sup>17</sup> Moreover, it is the Department's practice to select an appropriate surrogate country based on

<sup>17</sup> *Memorandum from Ron Lorentzen, Director, Office of Policy, to Jim Doyle, Office Director, AD/CVD Enforcement, Office 9: New Shipper Review of Certain Warmwater Shrimp from Vietnam: Request for a List of Surrogate Countries*, dated June 20, 2006, at Attachment I; *Memorandum from Ron Lorentzen, Director, Office of Policy, to Jim Doyle, Office Director, AD/CVD Enforcement, Office 9: Antidumping Duty Administrative Review of Certain Warmwater Shrimp ("Shrimp") from Vietnam: Request for a List of Surrogate Countries* dated June 20, 2006, at Attachment II ("*Surrogate Country Lists*").

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, Indonesia, and India are all significant producers of comparable merchandise. We find Bangladesh to be a reliable source for surrogate values because Bangladesh is at a similar level of economic development pursuant to 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has publicly available and reliable data. See *Memorandum to the File, through James C. Doyle, Office Director, Office 9, Import Administration, from Nicole Bankhead, Senior Case Analyst, Subject: First Antidumping Duty New Shipper Review and Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Selection of a Surrogate Country*, (February 28, 2007) ("*Surrogate Country Memo*"). Furthermore, we note that Bangladesh has been the primary surrogate country in past segments and both the Petitioner and Respondents submitted surrogate values based on Bangladeshi data that are contemporaneous to the POR, which gives further credence to the use of Bangladesh as a surrogate country.

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

### U.S. Price

#### A. Export Price

In accordance with section 772(a) of the Act, we calculated the export price ("EP") for sales to the United States for Fish One because the first sale to an unaffiliated party was made before the date of importation and the use of constructed EP ("CEP") was not otherwise warranted. We calculated EP based on the price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, as appropriate, we deducted from the starting price to unaffiliated purchasers foreign inland freight and brokerage and handling. Each of these services was either provided by an NME vendor or paid for using an NME currency. Thus, we based the deduction of these movement charges on surrogate values. Additionally, for international freight provided by a market economy provider and paid in U.S. dollars, we

used the actual cost per kilogram of the freight. See *Factor Valuation Memo* for details regarding the surrogate values for movement expenses.

#### B. Constructed Export Price

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

In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States. We deducted, where appropriate, commissions, inventory carrying costs, credit expenses, and indirect selling expenses. Where foreign movement expenses, international movement expenses, or U.S. movement expenses were provided by Vietnam service providers or paid for in Vietnamese Dong, we valued these services using surrogate values (see "Factors of Production" section below for further discussion). For those expenses that were provided by a market-economy provider and paid for in market-economy currency, we used the reported expense. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for Grobest, see *Memorandum to the File, through Alex Villanueva, Program Manager, Office 9, from Nicole Bankhead, Senior Analyst, Office 9; Company Analysis Memorandum in the Antidumping Duty New Shipper Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam Grobest & I-Mei Industrial (Vietnam) Co., Ltd. ("Grobest")*, dated February 28, 2007.

#### Normal Value

##### 1. Methodology

Section 773(c)(1)(B) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a)

of the Act. The Department bases NV on the FOP because the presence of government controls on various aspects of non-market economies renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

##### 2. Factor Valuations

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

With regard to surrogate values and the market-economy input values, we have disregarded prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, Thailand, and India may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004) ("CTVs from the PRC") at accompanying issues and decision memorandum at Comment 7; see also *Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651 (March 15, 2005) and accompanying Issues and Decision Memorandum at Comment 4. The

legislative history provides that in making its determination as to whether input values may be subsidized, the Department is not required to conduct a formal investigation, rather, Congress directed the Department to base its decision on information that is available to it at the time it makes its determination. See H.R. Rep. 100–576 at 590 (1988).

Therefore, based on the information currently available, we have not used prices from these countries either in calculating the Bangladeshi import-based surrogate values or in calculating market-economy input values. In instances where a market-economy input was obtained solely from suppliers located in these countries, we used Bangladeshi import-based surrogate values to value the input. Except as discussed below, the Department used United Nations ComTrade Statistics ("UN ComTrade"), provided by the United Nations Department of Economic and Social Affairs' Statistics Division, as its primary source of Bangladeshi surrogate value data.<sup>18</sup> The data represents cumulative values for the calendar year 2004, for inputs classified by the Harmonized Commodity Description and Coding System ("HS") number. For each input value, we used the average value per unit for that input imported into Bangladesh from all countries that the Department has not previously determined to be non-market economy ("NME") countries. Import statistics from countries that the Department has determined to be countries which subsidized exports (*i.e.*, Indonesia, Korea, Thailand, and India) and imports from unspecified countries also were excluded in the calculation of the average value. See *CTVs from the PRC*, 69 FR 20594 (April 16, 2004).

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

<sup>18</sup>This can be accessed online at: <http://unstats.un.org/unsd/comtrade/>.

rate for Bangladesh, or the Wholesale Price Index (“WPI”) for India or Indonesia (for certain surrogate values where Bangladeshi data could not be obtained), as published in the *International Financial Statistics* (“IFS”) of the International Monetary Fund (“IMF”).

Certain surrogate values were calculated using data from the *2004 Statistical Yearbook of Bangladesh* (“Bangladesh Government Statistics”), published by the Bangladesh Bureau of Statistics, Planning Division, Ministry of Planning. The information represents cumulative values for the period of 2004. Certain other Bangladeshi sources were used as well. See *Factor Valuation Memo*. The unit values were initially calculated in takas/unit.

Bangladeshi and other surrogate values denominated in foreign currencies were converted to USD using the applicable average exchange rate based on exchange rate data from the Department’s Web site.

#### Shrimp Value

The value of the main input, head-on, shell-on (“HOSO”) shrimp, is an important factor of production in our dumping calculation as it accounts for a significant percentage of normal value. As a general matter, the Department prefers to use publicly available data to value surrogate values from the surrogate country to determine factor prices that, among other things represent a broad market average and are contemporaneous with the POR. The Respondents and the Petitioner have placed numerous Bangladeshi shrimp values on the record. In this case, the Department has determined that data contained in a study of the Bangladeshi shrimp industry published by the Network of Aquaculture Centres in Asia-Pacific (“NACA”), an intergovernmental organization affiliated with the UN’s Food and Agriculture Organization, is a suitable surrogate value for shrimp from the surrogate country, namely, Bangladesh.

The Department’s practice when selecting the “best available information” for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, surrogate values which are: publicly available, product-specific, representative of a broad market average, tax-exclusive and contemporaneous with the POR. See *Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People’s Republic of China*, 71 FR 16116 (March 30, 2006) and accompanying Issues and Decision Memorandum at Comment 2. The data

contained in the NACA study appear to satisfy these requirements.

To value the by-products, the Department used a surrogate value for shrimp by-products based on a purchase price quote for wet shrimp shells from an Indonesian buyer of crustacean shells. Although we recognize this surrogate value is not from Bangladesh, the primary surrogate, this information represents the best information on the record and is being used for these preliminary results. This information is specific to the by-product in question, shrimp shells, whereas the Bangladeshi data on the record represent a basket category. See *Factor Valuation Memo*, at Exhibit 11.

To value packing materials, we used UN ComTrade data as the primary source of Bangladeshi surrogate value data.

To value factory overhead (“FOH”), Selling, General & Administrative (“SG&A”) expenses, and profit, we used the simple average of the 2004–2005 and 2005–2006 financial statement of Apex Foods Limited (“Apex”), the 2005 financial statement of Bionic Seafood Exports Limited, and the 2004–2005 financial statement of Gemini Seafood Limited, all of which are Bangladeshi shrimp processors. See *Factor Valuation Memo*, at Exhibit 12.

#### Preliminary Results of the Reviews

The Department has determined that the following preliminary dumping margins exist for the period July 16, 2004, through January 31, 2006:

##### CERTAIN FROZEN WARMWATER SHRIMP FROM VIETNAM

| Manufacturer/Exporter             | Weighted-average margin (percent) |
|-----------------------------------|-----------------------------------|
| Produced and Exported by Grobest. | 1.08.                             |
| Fish One .....                    | 0.01 ( <i>de minimis</i> ).       |
| Nha Trang Fisco .....             | 4.57.                             |
| Bac Lieu Fisheries ....           | 4.57.                             |
| Cam Ranh Seafoods                 | 4.57.                             |
| Incomfish .....                   | 4.57.                             |
| Vietnam-Wide Rate <sup>19</sup>   | 25.76.                            |

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

Interested parties may submit case briefs and/or written comments no later

<sup>19</sup> The Vietnam-Wide entity includes Aquatic Products Trading Company, Seaprodex Hanoi, Kisimex, Nha Trang Company Limited, Nha Trang Fisheries Co. Ltd., Seaprodex, Sea Products Imports & Exports, Song Huong ASC Import-Export Company Ltd., Song Huong ASC Joint Stock Company, Viet Nhan Company, and V N Seafoods.

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

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

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

#### Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. If these preliminary results are adopted in our final results of review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer) *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis*.

#### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of these new shipper reviews for all shipments of subject merchandise from Grobest entered, or withdrawn from warehouse, for consumption on or after the

publication date, as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise produced and exported by Grobest, the cash-deposit rate will be that established in these final results of reviews and (2) for subject merchandise exported by Grobest, but manufactured by any other party, the cash deposit rate will be Vietnam-wide rate (*i.e.*, 25.76 percent).

Further, the following cash deposit requirements will be effective upon publication of the final results of the administrative review for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise exported by Fish One, the cash-deposit rate will be that established in these final results of review; (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) for all other Vietnam exporters of subject merchandise, which have not been found to be entitled to a separate rate, the cash-deposit rate will be Vietnam-wide rate of 25.76 percent; (4) for all non-Vietnam exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the Vietnam exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

#### Notification to Importers

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

This administrative review, the new shipper reviews and this notice are in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i) of the Act, and 19 CFR 351.213(g), 351.214(h) and 352.221(b)(4).

Dated: February 28, 2007.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**A-331-802**

#### **Certain Frozen Warmwater Shrimp from Ecuador: Preliminary Results and Partial Rescission 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 warmwater shrimp from Ecuador with respect to 23 companies.<sup>1</sup> The respondents which the Department selected for individual review are OceanInvest, S.A. (OceanInvest) and Promarisco, S.A. (Promarisco). The respondents which were not selected for individual review are listed in the "Preliminary Results of Review" section of this notice. This is the first administrative review of this order. The period of review (POR) covers August 4, 2004, through January 31, 2006.

We preliminarily determine that sales made by OceanInvest and Promarisco have been made below normal value (NV). In addition, based on the preliminary results for the respondents selected for individual review, we have preliminarily determined a weighted-average margin for those companies that were not selected for individual review but were responsive to the Department's requests for information. For those companies which were not responsive to the Department's requests for information, we have preliminarily assigned to them a margin based on adverse facts available (AFA).

If the preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on the preliminary results.

**EFFECTIVE DATE:** March 9, 2007.

#### **FOR FURTHER INFORMATION CONTACT:**

David Goldberger or Gemal Brangman, AD/CVD Operations, Office 2, Import Administration—Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4136 or (202) 482-3773, respectively.

<sup>1</sup>This figure does not include the company for which the Department is rescinding the administrative review. See "Partial Rescission of Review" section for further discussion.

## SUPPLEMENTARY INFORMATION:

### Background

In February 2005, the Department published in the **Federal Register** an antidumping duty order on certain frozen warmwater shrimp from Ecuador. See *Notice of Amended Final Determination and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Ecuador*, 70 FR 5156 (February 1, 2005) (*Shrimp Order*). On February 1, 2006, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order of certain frozen warmwater shrimp from Ecuador for the period August 4, 2004, through January 31, 2006. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 5239 (February 1, 2006). On February 28, 2006, the petitioner<sup>2</sup> submitted a letter timely requesting that the Department conduct an administrative review of the sales of certain frozen warmwater shrimp made by numerous companies during the POR, pursuant to section 751(a) of the Tariff Act of 1930, as amended (the Act), and in accordance with 19 CFR 351.213(b)(1). Also, on February 28, 2006, the Department received timely requests under 19 CFR 351.213(b)(2) to conduct an administrative review of the sales of certain frozen warmwater shrimp from the following producers/exporters of subject merchandise: Empacadora del Pacifico S.A., Empacadora Dufer Cia. Ltda., Exporklore, S.A., Promarisco, and Sociedad Nacional de Galapagos C.A.

On April 7, 2006, the Department published a notice of initiation of administrative review for 71 companies and requested that each provide data on the quantity and value of its exports of subject merchandise to the United States during the POR for mandatory respondent selection purposes. These companies are listed in the Department's notice of initiation. See *Notice of Initiation of Administrative Reviews of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India and Thailand*, 71 FR 17819 (April 7, 2006) (*Notice of Initiation*).

During the period April 27, 2006, through June 13, 2006, we received responses to the Department's quantity and value questionnaire from 59 companies. A number of these companies reported that their names

<sup>2</sup>The petitioner is the Ad Hoc Shrimp Trade Action Committee.