

Dated: November 29, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-802]

Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam

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

SUMMARY: On July 16, 2004, the Department of Commerce published its preliminary determination of sales at less than fair value ("LTFV"), negative preliminary determination of critical circumstances, and postponement of the final determination in the antidumping investigation of certain frozen and canned warmwater shrimp from the Socialist Republic of Vietnam

("Vietnam"). On September 1, 2004, the Department of Commerce published an amended preliminary determination of sales at LTFV. The period of investigation ("POI") is April 1, 2003, through September 30, 2003.

The investigation covers four shrimp processors which are Mandatory Respondents¹ and 34 Section A Respondents.² We invited interested parties to comment on our preliminary determination and amended preliminary determination of sales at LTFV. Based on our analysis of the comments we received, we have made changes to our calculations for the four Mandatory Respondents.

DATES: Effective Date: December 8, 2004.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva, 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) 482-3208.

Final Determination

We determine that certain frozen and canned warmwater shrimp from Vietnam is being, or is likely to be, sold in the United States at LTFV as provided in section 735 of Tariff Act of 1930, as Amended ("the Act"). The estimated margins of sales at LTFV are

¹ Camau Frozen Seafood Processing Import Export Corporation ("Camimex"); Kim Anh Co., Ltd. ("Kim Anh"); Minh Phu Seafood Corporation ("Minh Phu"); Minh Hai Joint-Stock Seafoods Processing Company ("Seaprodex Minh Hai").

² Can Tho Animal Fisheries Product Processing Export Enterprise ("Cafatex"); Cai Doi Vam Seafood Import Export Company ("Cadovimex"); Sao Ta Foods Joint Stock Company ("Fimex VN"); Viet Hai Seafood Company ("Vietnam Fish-One"); Kiengiang Seafood Import Export Company ("Kisimex"); Soc Trang Aquatic Products and General Import Export Company ("Stapimex"); Coastal Fisheries Development Corporation ("Cofidec"); Phuong Nam Co., Ltd. ("Phuong Nam"); Cuu Long Seaproducts Company ("Cuulong Seapro"); Minh Hai Export Frozen Seafood Processing Joint-Stock Company ("Jostoco"); Can Tho Agriculture and Animal Products Import Export Company ("Cataco"); Nha Trang Fisheries Co. ("Nha Trang"); Nhatrang Seaproduct Company ("Nhatrang Seafoods"); Minh Hai Seaproducts Import and Export Corporation ("Seaprimex"); Thuan Phuoc Seafoods and Trading Corporation; Nha Trang Fisheries Joint Stock Company ("Nhatrang Fisco"); Danang Seaproducts Import Export Company ("Seaprodex Danang"); C.P. Vietnam Livestock; UTXI Aquatic Products Processing Company ("UTXI"); Viet Nhan Company; Investment Commerce Fisheries Corporation ("Incomfish"); Vinhloi Import Export Company ("VIMEXCO"); Bac Lieu Fisheries; Viet Foods Co., Ltd. ("Viet Foods"); Truc An Company ("Truc An"); Cam Ranh Seafoods Processing Enterprise Company ("Camranh Seafoods"); Hai Thuan Company ("Hai Thuan"); Phu Cuong Seafood Processing ("Phu Cuong"); Ngoc Sinh Company ("Ngoc Sinh"); Aquatic Product Trading Company ("APT"); Song Huong ASC Import-Export Company Ltd. ("ASC"); Hanoi Seaproducts Import Export Corp. ("Seaprodex Hanoi"); Pataya Food Industries (Vietnam) Ltd. ("Pataya VN"); and Amanda Foods (Vietnam) Ltd. ("Amanda").

shown in the "Final Determination Margins" section of this notice.

Case History

The Department of Commerce (the "Department") published its preliminary determination of sales at LTFV on July 16, 2004. See *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 42672 (July 16, 2004) ("Preliminary Determination"). On September 1, 2004, the Department published an amended preliminary determination. See *Notice of Amended Preliminary Antidumping Duty Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 53411 (September 1, 2004) ("Amended Preliminary Determination").

The Department conducted verification of the Mandatory Respondents and certain Section A Respondents' data in Vietnam. See the "Verification" section below for additional information.

We invited parties to comment on the *Preliminary Determination* and *Amended Preliminary Determination*. We received comments from the Ad Hoc Shrimp Trade Action Committee, Versaggi Shrimp Corporation and Indian Ridge Shrimp Company, hereinafter referred to collectively as "Petitioners," the Respondents and other interested parties to this investigation.

On October 20, 2004, parties submitted case briefs. On October 29, 2004, parties submitted rebuttal briefs.

Since the *Preliminary Determination*, the following events have occurred:

Company Specific Comments

On July 16, 2004, the Department received the sales reconciliation from Camimex, Kim Anh, Seaprodex Minh Hai and Minh Phu.

On July 21, 2004, the Department received comments from the Respondents on the Department's Customs instructions.

On July 26, 2004, the Department sent supplemental questionnaires to Seaprodex Minh Hai and Camimex. On July 27, 2004 the Department sent supplemental questionnaires to Kim Anh and Minh Phu. On July 30, 2004 the Department received a request for an extension to respond to the supplemental questionnaires from Camimex, Kim Anh and Seaprodex Minh Hai and served the verification schedule on all interested parties. On

⁸ Shantou Jinyuan District Mingfeng Quick-Frozen Factory.

⁹ Shantou Long Feng Foodstuffs Co., Ltd.

¹⁰ Meizhou Aquatic Shantou Ocean Freezing.

¹¹ Sodium Tripolyphosphate.

August 2, 2004 the Department also granted an extension to Camimex, Kim Anh and Seaprodex Minh Hai for responding to the Department's July 26, 2004 supplemental questionnaires. On August 3, 2004 the Department received Minh Phu's supplemental questionnaire response.

On August 3, 2004, the Department received the Petitioners' rebuttal to the Respondents' July 21, 2004 comments regarding errors in the Department's Customs instructions.

On August 5, 2004, the Department granted an extension to Cafatex for submitting reconciliation information. On August 11, 2004, the Department received Cafatex's sales reconciliation information.

On August 10, 2004 the Department sent Seaprodex Minh Hai supplemental questionnaire.

On August 12, 2004, the Department received Seaprodex Minh Hai's supplemental questionnaire response, Kim Anh's 4th supplemental questionnaire response, and Camimex's supplemental questionnaire response.

On August 18, 2004, the Department sent a verification outline to Camimex and Seaprodex Minh Hai. On August 18, 2004 Camimex submitted pre-verification corrections and the Department sent verification agendas to Kim Anh, Minh Phu and Cafatex. The Department received Kim Anh's pre-verification corrections. On August 23, 2004 the Department received a request for an extension for serving verification exhibits Kim Anh, Cafatex and Seaprodex Minh Hai. On August 23, 2004 the Department amended the verification outline for Kim Anh.

On August 24, 2004, an analyst submitted an analysis of ministerial errors for both the Section A respondents and the mandatory respondents.

On August 31, 2004, the Department received Cafatex's pre-verification corrections. On September 7, 2004 the Department received Seaprodex Minh Hai's pre-verification corrections.

On September 8, 2004, the Department received additional surrogate value data from the Respondents.

On September 14, 2004, the Department received both Camimex and Minh Phu's pre-verification corrections.

On September 17, 2004 the Department set a deadline for rebuttal brief comments of September 20, 2004. On September 20, 2004 the Department received a request for an extension of the briefing schedule from the Petitioners as well as their submission of factual information.

On September 22, 2004 the Department received a letter from VSC opposing the Petitioner's request for an expanded briefing schedule. On September 23, 2004 the Department received Red Chamber's comments regarding alleged clerical errors in the *Preliminary Determination* regarding two Section A Respondents.

On September 27, 2004, an analyst wrote a memo to the file regarding the termination of Kim Anh's verification.

On October 4, 2004, the Department received a letter from Red Chamber removing their submission from the record.

On October 6, 2004, verification reports for Seaprodex Minh Hai and Cafatex were completed. On October 12, 2004 the verification report for Minh Phu was completed.

On October 13, 2004, the deadline for case briefs and rebuttal briefs was set as October 20, 2004 for case briefs and October 25, 2004 for rebuttal briefs. On October 15, 2004 the Department received a request for an extension for submitting rebuttal briefs from the Petitioners.

On October 20, 2004, the Department received case briefs from VSC, Xian-Ning, Eastern Fish/LJS, Red Chamber, and the Petitioners.

On October 25, 2004, the Department received a rebuttal brief from Eastern Fish Company. On October 26, 2004 the Department received a rebuttal brief from Xian-Ning. On October 29, 2004 the Department received rebuttal briefs from the Petitioners and VSC.

On November 8, 2004, the Department sent a letter to Seaprodex Minh Hai, Minh Phu and Camimex requesting that they resubmit their sales and FOP databases. On November 8, 2004 the Department sent a clarification letter to Camimex concerning the Department's November 8, 2004 letter requesting the resubmission of their sales and FOP databases.

Hearing

On August 3, 2004, the Department received a request for a hearing from the Respondents on the issues addressed in their case briefs.

On August 13, 2004, the Department received a request for a scope hearing from the American Breaded Shrimp Processors Association ("ABSPA"). On August 16, 2004 the Department received a notice of intent to participate in hearings from the Petitioners.

On October 20, 2004, the Department received a notice of intent to participate in the hearing from Eastern Fish Company. The Department sent a letter to all interested parties concerning a request for a hearing.

On November 2, 2004, the Department received a letter from ABSPA concerning the hearing on scope issues. Also on November 2, 2004 the Department sent a letter to all interested parties concerning the public hearing. On November 4, 2004 the Department sent a letter to all interested parties regarding presenters at the public hearing. On November 4, 2004 the Department also sent a letter to ABSPA notifying them that because they did not submit any case or rebuttal briefs on the scope issues and that they could not make any presentations in the scope hearing.

On November 5, 2004, the Department held a public hearing on issues concerning financial ratios, surrogate values, and the Mandatory Respondents.

On November 8, 2004, the Department postponed the public scope hearing. On November 23, 2004, the Department held its scope hearing.

Separate Rates

On August 18, 2004, the Department received additional information regarding separate rate status from: Phuong Nam, Bac Lieu Fisheries, Cam Ranh Seafoods, VIMEXCO, Ngoc Sinh, Nha Trang, UTXI, Truc An, Kisimex, Vietnam Fish-One, Hai Thuan, and Incomfish. On August 20, 2004 the Department received additional information regarding ASC, Viet Foods, APT, Cofidec, and Phu Cuong's requests for separate rate status.

Scope Comments by Interested Parties

On July 16, 2004, the Department received a scope exclusion request on behalf of Xian-Ning Seafood Co. Ltd., asking the Department to determine whether shrimp scampi is outside the scope of the antidumping investigation. On August 2, 2004 the Department received scope comments regarding dusted shrimp from Eastern Fish Company. On August 2, 2004 the Department received scope comments regarding dusted shrimp and battered shrimp from the Petitioners. On August 12, 2004 the Department received Eastern Fish Company's reply to the Petitioner's August 2, 2004 scope comments. On November 8, 2004 the Department placed Lee Kum Kee's request to determine whether shrimp sauce is outside the scope of this investigation on the record of this investigation.

Analysis of Comments Received

The issue of separate rates raised in the case and rebuttal briefs by parties in this investigation are addressed in the *Memorandum from Nicole Bankhead, Case Analyst through Alex Villanueva,*

Program Manager, to James Doyle, Office Director, 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 ("Section A Memo"), dated November 29, 2004. The various scope issues are discussed in the "Scope Comments" section of this notice. All other issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the Issues and Decision Memorandum, dated November 29, 2004, which is hereby adopted by this notice ("Decision Memorandum"). A list of the issues which parties raised and to which we respond in the *Decision Memorandum* is attached to this notice as an Appendix. The *Decision Memorandum* is a public document and is on file in the Central Records Unit ("CRU"), Main Commerce Building, Room B-099, and is accessible on the Web at <http://ia.ita.doc.gov>. The paper copy and electronic version of the memorandum are identical in content.

Non-Market Economy Country Status

On November 8, 2002, the Department determined under section 771(18)(A) of the Act, after analyzing comments from interested parties, that based on the preponderance of evidence on the record related to economic reforms in Vietnam to date, analyzed as required under section 771(18)(B) of the Act, that Vietnam should be treated as a non-market economy country under the U.S. antidumping law, effective July 1, 2001. See *Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 68 FR 4986, 4990 (January 31, 2003).

A designation as a non-market economy remains in effect until it is revoked by the Department (see section 771(18)(C) of the Act).

Scope Comments

In the *Preliminary Determination*, the Department solicited comments from interested parties which would enumerate and describe a clear, administrable definition of dusted shrimp for the final determination. As noted above, we received comments on dusted and battered shrimp for the final determination. On November 29, 2004, the Department made a scope determination with respect to dusted shrimp and battered shrimp. See *Memorandum from Edward C. Yang,*

Vietnam/NME Unit Coordinator, Import Administration to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, Antidumping Investigation on Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the Socialist Republic of Vietnam and the Socialist Republic of Vietnam: Scope Clarification on Dusted Shrimp and Battered Shrimp ("Dusted/Battered Scope Memo2"), dated November 29, 2004. Based on the information presented by interested parties, the Department determines that (1) certain dusted shrimp, produced from fresh (or thawed-from-frozen) and peeled shrimp; to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; so that the entire surface of the shrimp flesh is thoroughly and evenly coated with the flour; and the non-shrimp content of the end product constitutes between 4 to 10 percent of the product's total weight after being dusted, but prior to being frozen; and is subjected to individually quick frozen freezing immediately after application of the dusting layer; and (2) battered shrimp, when dusted in accordance with the definition of dusting, coated with a wet viscous layer containing egg and/or milk, and par-fried are excluded from the scope of this investigation. See *Dusted/Battered Scope Memo* at 28.

On November 29, 2004, the Department made scope determinations with respect to Lee Kum Kee's shrimp sauce. See *Memorandum from Edward C. Yang, Vietnam/NME Unit Coordinator, Import Administration to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration Antidumping Investigation on Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the Socialist Republic of Vietnam and the Socialist Republic of Vietnam: Scope Clarification on Lee Kum Kee's Shrimp Sauce ("Shrimp Sauce Scope Memo")*, dated November 29, 2004. Based on the information presented by interested parties, the Department determines that Lee Kum Kee's shrimp sauce is excluded from the scope of this investigation. See *Shrimp Sauce Scope Memo* at 8.

Additionally, on November 29, 2004, the Department made scope determinations with respect to shrimp scampi. See *Memorandum from Edward C. Yang, Vietnam/NME Unit Coordinator, Import Administration to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration Antidumping Investigation on Certain Frozen and*

Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the Socialist Republic of Vietnam and the Socialist Republic of Vietnam: Scope Clarification on Shrimp Scampi ("Shrimp Scampi Scope Memo"), dated November 29, 2004. Based on the information presented by interested parties, the Department determines that shrimp scampi is included in the scope of this investigation. See *Shrimp Scampi Scope Memo* at 8.

Scope of Investigation

The scope of this investigation includes certain warmwater shrimp and prawns, whether frozen or canned, wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,³ deveined or not deveined, cooked or raw, or otherwise processed in frozen or canned form.

The frozen or canned warmwater shrimp and prawn products included in the scope of the investigations, regardless of definitions in the Harmonized Tariff Schedule of the United States ("HTSUS"), are products which are processed from warmwater shrimp and prawns through either freezing or canning 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 investigation. 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 investigation.

³ "Tails" in this context means the tail fan, which includes the telson and the uropods.

Excluded from the scope are (1) breaded shrimp and prawns (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 (0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (1605.20.05.10); and (5) dried shrimp and prawns.

The products covered by this investigation are currently classified under the following HTSUS subheading: 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, 1605.20.10.30, and 1605.20.10.40. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written descriptions of the scope of this investigation is dispositive.

The Department has issued nine decisions regarding the scope of the merchandise covered by this investigation: (1) On May 21, 2004, the Department declined to expand the scope of this investigation to include fresh (never frozen) shrimp; (2) on July 2, 2004, pursuant to a request from Ocean Duke, the Department found that its "Seafood Mix" is excluded from the scope of this investigation; (3) on July 2, 2004, the Department found that salad shrimp, sold in counts of 250 pieces or higher, are included within the scope of the this investigation; (4) on July 2, 2004, the Department found *Macrobrachium Rosenbergii* and organic shrimp included within the scope of this investigation; (5) on July 2, 2004, the Department found that peeled shrimp are included within the scope of this investigation; (6) on November 29, 2004, the Department found that shrimp sauce is excluded from the scope of this investigation; (7) on November 29, 2004, the Department found Xian-Ning Seafood Co., Ltd.'s scampi shrimp included within the scope of these investigation; (8) on November 29, 2004, the Department found certain dusted shrimp⁴ are outside the scope of this

⁴ Dusted shrimp is a shrimp-based product that (1) 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) So that the entire surface of the shrimp flesh is thoroughly and evenly coated with the flour; and (4) The non-shrimp content of the end product constitutes between 4 to 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) Is subjected to IQF freezing immediately after application of the dusting layer. See *Memorandum from Edward C.*

investigation; and (9) on November 29, 2004, the Department found certain battered shrimp⁵ are outside the scope of this investigation.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the Mandatory Respondents and certain Section A Respondents for use in our final determination. See the Department's verification reports on the record of this investigation in the CRU with respect to Cafatex, Camimex, Kim Anh, Minh Phu and Seaprodex Minh. For all verified companies, we used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the Respondents.

Additionally, during verification, Kim Anh informed the Department that it had decided not to participate further in its verification. See *Memorandum to the File from Nazak Nikaktahr, Verification of the Response of Kim Anh Co., Ltd. ("Kim Anh") with Regard to the Sales of Certain Frozen and Canned Warmwater Shrimp*, dated September 24, 2004.

Adverse Facts Available

Section 776(a)(2) of the Act provides that the Department shall apply "facts otherwise available" if, *inter alia*, an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act provides further that the Department may use an adverse inference when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

The Vietnam-Wide Rate

Because we begin with the presumption that all companies within a non-market economy ("NME")

Yang, NME Unit Coordinator, Import Administration to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration Antidumping Investigation on Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the Socialist Republic of Vietnam and the Socialist Republic of Vietnam: Scope Clarification on Dusted Shrimp and Battered Shrimp ("Dusted/Battered Scope Memo2"), dated November 29, 2004.

⁵ 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.

country are subject to government control and because only the companies listed under the "Final Determination Margins" section below have overcome that presumption, we are applying a single antidumping rate—the Vietnam-wide rate—to all other exporters of subject merchandise from Vietnam. Such companies did not demonstrate entitlement to a separate rate. See, e.g., *Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China*, 65 FR 25706 (May 3, 2000). The Vietnam-wide rate applies to all entries of subject merchandise except for entries from the Respondents which are listed in the "Final Determination Margins" section below (except as noted). The information used to calculate this Vietnam-wide rate was corroborated independently with some small changes in accordance with section 776(c) of the Act. See *Memorandum to the File from Joe Welton, Case Analyst through James C. Doyle, Program Manager and Edward C. Yang, Director, NME Unit, Preliminary Determination in the Investigation of Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam ("Vietnam")*: *Corroboration of the Vietnam-Wide Adverse Facts-Available Rate ("Corroboration Memo")*, dated July 2, 2004.

For the reasons set forth in the *Preliminary Determination* and reaffirmed in the *Decision Memorandum* at Comment 10, we continue to find that the use of adverse facts available for the Vietnam-wide rate is appropriate. As adverse facts available, the Vietnam-wide rate is not intended to be a reflection of the dumping margins applied as separate rates to the Respondent companies. Consistent with our *Preliminary Determination* and with previous cases in which the respondent is considered uncooperative, as adverse facts available, we have applied a rate of 25.76 percent, a rate calculated in the initiation stage of the investigation from information provided in the petition (as adjusted by the Department).

Kim Anh

Pursuant to section 776(a)(2)(D) of the Act, we are applying facts otherwise available to Kim Anh because it refused to allow the Department to verify the information it had submitted during the course of this investigation. Furthermore, based on the record evidence and pursuant to section 776(b) of the Act, the Department has determined that Kim Anh did not cooperate to the best of its ability to comply with the Department's requests

for information. Therefore, in accordance with section 776(b) of the Act, we find that Kim Anh does not qualify for a separate rate and that the use of adverse facts available to determine the margin for Kim Anh is warranted for the final determination in this investigation. Accordingly, Kim Anh will be subject to the Vietnam-wide rate (*see above*). This rate was corroborated in the final determination. *See Corroboration Memo; see also Comment 6 in the Decision Memorandum* for a further discussion of this issue.

Surrogate Country

In the *Preliminary Determination*, we stated that we had selected Bangladesh as the appropriate surrogate country to use in this investigation for the following reasons: (1) Bangladesh is at a level of economic development comparable to Vietnam; (2) Bangladeshi manufacturers produce comparable merchandise and are significant producers of frozen and canned warmwater shrimp; (3) Bangladesh provides the best opportunity to use appropriate, publicly available data to value the factors of production. *See Preliminary Determination*, 69 FR at 42678. We received no comments from interested parties concerning our selection of Bangladesh as the surrogate country during the briefing stage of this investigation. For the final determination, we have determined to continue to use Bangladesh as the surrogate country and, accordingly, have calculated normal value using Bangladeshi prices to value the Respondents' factors of production, when available and appropriate. We have obtained and relied upon publicly available information wherever possible. For a detailed description of the surrogate values that have changed as a result of comments the Department has received, *see the Final Surrogate Value Memorandum* dated November 29, 2004.

Separate Rates

In the *Preliminary Determination* and the *Amended Preliminary Determination*, the Department found that several companies which provided responses to Section A of the antidumping questionnaire were eligible for a rate separate from the Vietnam-wide rate. For the final determination, we have determined that additional companies have qualified for separate-rate status. *See Section A Memo*. For a complete listing of all the companies that received a separate rate, *see the "Final Determination Margins" section below*.

The margin we calculated in the *Preliminary Determination* for these companies was 16.01 percent. Because the rates of the selected Mandatory Respondents have changed since the *Preliminary Determination* and the *Amended Preliminary Determination*, we have recalculated the rate for Section A Respondents that are eligible for a separate rate. The rate is 4.38 percent. *See Memorandum to the File from Paul Walker, Calculation of Section A Rate*, dated November 29, 2004.

Final Determination Margins

We determine that the following percentage weighted-average margins exist for the POI:

CERTAIN FROZEN AND CANNED WARMWATER SHRIMP FROM VIETNAM MANDATORY RESPONDENTS

Manufacturer/exporter	Weighted-average margin (percent)
Camau Frozen Seafood Processing Import Export Corporation ⁶	4.99
Kim Anh Company Limited ⁷	25.76
Minh Phu Seafood Corporation ⁸	4.21
Minh Hai Joint Stock Seafoods Processing Company ⁹	4.13
Vietnam-Wide Margin	25.76

CERTAIN FROZEN AND CANNED WARMWATER SHRIMP FROM VIETNAM SECTION A RESPONDENTS

Manufacturer/exporter	Weighted-average margin (percent)
Amanda Foods (Vietnam) Ltd. ¹⁰	4.38
Aquatic Products Trading Company ¹¹	4.38
Bac Lieu Fisheries Company Limited ¹²	4.38
Coastal Fisheries Development Corporation ¹³	4.38
Cai Doi Vam Seafood Import-Export Company ¹⁴	4.38
Cam Ranh Seafoods Processing Enterprise Company ¹⁵	4.38
Can Tho Agriculture and Animal Products Import Export Company ¹⁶	4.38
Cantho Animal Fisheries Product Processing Export Enterprise ¹⁷	4.38
C.P. Vietnam Livestock Co. Ltd.	4.38
Cuu Long Seaproducts Company ¹⁸	4.38
Danang Seaproducts Import Export Corporation ¹⁹	4.38
Hanoi Seaproducts Import Export Corporation ²⁰	4.38
Investment Commerce Fisheries Corporation ²¹	4.38

CERTAIN FROZEN AND CANNED WARMWATER SHRIMP FROM VIETNAM SECTION A RESPONDENTS—Continued

Manufacturer/exporter	Weighted-average margin (percent)
Kien Giang Sea-Product Import-Export Company ²²	4.38
Minh Hai Export Frozen Seafood Processing Joint-Stock Company ²³	4.38
Minh Hai Seaproducts Import Export Corporation ²⁴	4.38
Nha Trang Fisheries Joint Stock Company ²⁵	4.38
Nha Trang Seaproduct Company ²⁶	4.38
Pataya Food Industries (Vietnam) Ltd. ²⁷	4.38
Phu Cuong Seafood Processing and Import-Export Company Limited ²⁸	4.38
Sao Ta Foods Joint Stock Company ²⁹	4.38
Soc Trang Aquatic Products and General Import Export Company ³⁰	4.38
Song Huong ASC Import-Export Company Ltd. ³¹	4.38
Thuan Phuoc Seafoods and Trading Corporation ³²	4.38
UTXI Aquatic Products Processing Company ³³	4.38
Viet Foods Co., Ltd. ³⁴	4.38
Viet Nhan Company	4.38
Viet Hai Seafood Company Ltd. ³⁵	4.38
Vinh Loi Import Export Company ³⁶	4.38

Continuation of Suspension of Liquidation

Pursuant to 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border

⁶ Also known as Camimex and Seafood Factory No. 4.

⁷ Not a separate rate.

⁸ Also known as Minh Phu Seafood Export-Import Corporation, Minh Phu, Minh Phu Seafood Pte., Minh Qui Seafood Co. Ltd., Minh Qui, Minh Phat Seafood Co. Ltd. & Minh Phat.

⁹ Also known as Seaprodex Minh Hai.

¹⁰ Also known as Amanda VN & Amanda.

¹¹ Also known as APT and A.P.T. Co.

¹² Also known as Bac Lieu, BACLIEUFIS, Bac Lieu Fis, Bac Lieu Fisheries Co. Ltd., Bac Lieu Fisheries Limited Company & Bac Lieu Fisheries Company Ltd.

¹³ Also known as COFIDEC.

¹⁴ Also known as Cadovimex.

¹⁵ Also known as Cam Ranh.

¹⁶ Also known as Cataco, Duyen Hai Foodstuffs Processing Factory, Caseafod, Coseafex & Cantho Seafood Export.

¹⁷ Also known as Cafatex, Cafatex Vietnam, Xi Nghiep Che Bien Thuy Suc San Xuat Khau Can Tho, CAS, CAS Branch, Cafatex Saigon, Cafatex Fishery Joint Stock Corporation, Cafatex Corporation & Taydo Seafood Enterprise.

¹⁸ Also known as Cuu Long Seapro.

Continued

Protection (“Customs”) to continue to suspend liquidation of all entries of subject merchandise from Vietnam entered, or withdrawn from warehouse, for consumption on or after July 16, 2004, the date of publication of the *Preliminary Determination*. Customs shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown above. These instructions suspending liquidation will remain in effect until further notice.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

¹⁹ Also known as Seaprodex Danang, Tho Quang Seafood Processing and Export Company & Tho Quang.

²⁰ Also known as Seaprodex Hanoi.

²¹ Also known as INCOMFISH, Investment Commerce Fisheries Corp., INCOMFISH Corp. & INCOMFISH Corporation.

²² Also known as KISIMEX, Kien Giang Seaproduct Import & Export Company, Kien Giang Seaproduct Import and Export Company, Kien Giang Seaproduct Import Export Co., Kien Giang Sea Product Import & Export Co., Kien Giang Sea Product Import and Export Company, Kien Giang Sea Product Import & Export Company, Kien Giang Sea Product Import & Export Co., & Kien Giang Sea Product Im. & Ex. Co.

²³ Also known as Minh Hai Jostoco.

²⁴ Also known as Seaprimexco.

²⁵ Also known as Nha Trang Fisco & Nhatrang Fisco.

²⁶ Also known as Nha Trang Seafoods.

²⁷ Also known as Pataya VN.

²⁸ Also known as Phu Cuong Seafoods Processing Import-Export Company Ltd., Phu Cuong Co., Phu Cuong, Phu Cuong Seafood Processing & Import-Export Co. Ltd., Phu Cuong Seafood Processing, Phu Cuong Co. Ltd. & Phu Cuong Seafood Processing Import & Export Company Limited.

²⁹ Also known as Fimex VN, Saota Seafood Factory and Sao Ta Seafood Factory.

³⁰ Also known as STAPIMEX.

³¹ Also known as Song Huong ASC Joint Stock Company, SOSEAFOOD, ASC, Song Huong Import Export Seafood Joint Stock Company, Song Huong Import-Export Seafood Joint Stock Company, Song Huong Import Export Seafood Company, Song Huong Import-Export Company, Song Huong Seafood Import Export Co., Song Huong Seafood Im-Export Co., SongHuong & Songhuong Joint Stock Company.

³² Also known as Frozen Seafoods Factory No. 32.

³³ Also known as UTXI, UTXI Co. Ltd., UT XI Aquatic Products Processing Company & UT-XI Aquatic Products Processing Company.

³⁴ Also known as Viet Foods, Nam Hai Exports Food Stuff Limited, Nam Hai Export Foodstuff Company Ltd., Vietfoods Co. Ltd., Viet Foods Company Limited & Vietfoods Company Limited.

³⁵ Also known as Vietnam FishOne, Vietnam Fish-One Company Co. Ltd., Vietnam Fish-One, Vietnam Fish-One Co. Ltd., Vietnam Fish One Co. Ltd., Vietnam Fish One Company Limited & Vietnam Fish-One Company Limited.

³⁶ Also known as VIMEXCO, Vinh Loi Import/Export Co., VIMEX, VinhLoi Import Export Company & Vinh Loi Import-Export Company.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation (*i.e.*, July 16, 2004).

Notification Regarding APO

This notice also serves as a reminder to parties subject to administrative protective order (“APO”) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: November 29, 2004.

James J. Jochum,
Assistant Secretary for Import Administration.

Appendix

Comment 1: Raw Shrimp Price
Comment 2: The Department’s Zeroing Methodology

Comment 3: Surrogate Value for Water

- A. Water Rates in Bangladesh
- B. Water Value Conversion Error

Comment 4: Financial Ratios

- A. Surrogate Company Financial Ratios
- B. By-Product Offset for Mandatory Respondents

- C. Inclusion of Factor X and Factor Y in Surrogate Financial Ratios

Comment 5: Company Specific Issues, Camimex

- A. Headless Shell-on (“HLSO”) to Headless Shell-off (“HOSO”) Conversion
- B. International Freight

Comment 6: Total Adverse Facts Available (“AFA”) for Kim Anh Co. Ltd. (“Kim

Anh”)

Comment 7: Company Specific Issues, Minh Phu

- A. HLSO-to-HOSO Conversion
- B. Cold Storage
- C. Partial AFA for Direct Labor

Comment 8: Company Specific Issues, SMH

- A. Market Economy Purchase
- B. Recalculation of a Surrogate Expense for SMH

- C. Calculation of Weighted-Average U.S. Prices and Normal Values on a CONNUM-Specific Basis for SMH

- D. HLSO-to-HOSO Conversion

Comment 9: Weight-Averaging Respondent Margins by Net U.S. Sales Value to Calculate Separate Rates

Comment 10: Calculation of Vietnam-Wide Margin

- A. The Department Should Eliminate the Country-Wide Rate In All Cases
- B. The Department Should Not Apply AFA to the Vietnam-Wide Rate
- C. The Department Chose an Incorrect AFA Rate

Comment 11: Separate Rate Calculation

Comment 12: The Department Should Amend Its Customs Instructions to Include Additional Company Names Discussed in Section A Responses

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–825]

Sebacic Acid from the People’s Republic of China: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results of the 2002–2003 antidumping duty administrative review of the antidumping duty order on sebacic acid from the People’s Republic of China (PRC) by seven days from December 3, 2004, until no later than December 10, 2004. The period of review (POR) is July 1, 2002, through June 30, 2003. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (the Act).

EFFECTIVE DATE: December 8, 2004.

FOR FURTHER INFORMATION CONTACT: Jennifer Moats or Brian Ledgerwood, China/NME Group, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202)