

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT  
ASSISTANCE—Continued  
[7/29/2010 through 9/8/2010]

Firm name	Address	Date accepted for investigation	Products
Buffelen Woodworking Company.	1901 Taylor Way, Tacoma, WA 98421.	9/7/2010	The firm manufactures wooden doors.
C-Thru Ruler Company .....	6 Britton Drive, Bloomfield, CT 06002.	9/7/2010	The firm manufactures various stencils, vinyl lettering and oil board lettering. The firm also manufactures rulers, drafting supplies, plastic rulers and various templates.
Custom Machine, LLC .....	30 Nashua Street, Woburn, MA 01801.	8/27/2010	The firm manufactures precision commercial, medical and alternative energy components and assemblies.
ES Products, LLC .....	280 Franklin Street, Bristol, RI 02809.	8/31/2010	The firm manufactures roofing fasteners for the attachment of an initial layer of a multi-layer membrane system to low slope, low density roof decks.
Exotic Rubber & Plastics Corporation, dba Exotic Automation & Supply.	34700 Grand River Avenue, Farmington Hills, MI 48335.	9/7/2010	The firm manufactures rubber and plastic molded parts and gaskets. The firm also distributes power units, cylinders, valves, servo controls, and fittings.
Fiber-Line, Inc .....	3050 Campus Drive #200, Hatfield, PA 19440.	9/7/2010	The firm manufactures coated fibers and FRP rods.
Heli Modified, Inc .....	P.O. Box 63820 Industrial Way, Cornish, ME 04020.	9/7/2010	The firm manufactures ergonomically correct replacement motorcycle handlebar and risers.
NBC Solid Surfaces, Inc .....	200 Clinton Street, Springfield, VT 05156.	9/8/2010	The firm manufactures counter tops made with granite, corian, quartz, marble and wood.
OptiPro Systems, LLC .....	6368 Dean Parkway, Ontario, NY 14519.	9/3/2010	The firm manufactures optical grinding, polishing and measuring machines and performs government research. The firm also distributes machine tools, CAS/CAM software, and measuring systems.
Pacific Trail Manufacturing, Inc	6532 SE. Crosswhite Way, Portland, OR 97206.	9/3/2010	The firm fabricates specialized chain saws that cut full units of various wood products and paper rolls to shorter lengths than the originals.
Parlec, Inc .....	101 Perinton Parkway, Fairport, NY 14450.	7/29/2010	The firm manufactures machine tool accessories including tool holders, boring systems, tapping systems, and tool presetters.
Porta-Nails, Inc .....	4235 Hwy 421 N, Currie, NC 28435.	9/1/2010	The firm produces manual and pneumatic nail and staple guns.
Roylco, Inc .....	P.O. Box 13409, 3251 Abbeville Highway, Anderson, SC 29624.	9/7/2010	The firm produces educational and hobby/craft kits.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 7106, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: September 9, 2010.

**Miriam J. Kearse,**

*Program Team Lead.*

[FR Doc. 2010-22956 Filed 9-14-10; 8:45 am]

**BILLING CODE 3510-24-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-552-801]

#### **Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Preliminary Results and Partial Rescission of the Sixth Antidumping Duty Administrative Review and Sixth New Shipper Review**

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

**SUMMARY:** The Department of Commerce ("Department") is conducting an administrative review and new shipper review of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam ("Vietnam"). See *Notice of Antidumping Duty Order: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 68 FR 47909 (August 12, 2003) ("Order"). The Department has preliminarily determined that Vinh

Hoan Corporation ("Vinh Hoan"),<sup>1</sup> Vinh Quang Fisheries Corporation ("Vinh Quang") and CUU Long Fish Joint Stock Company ("CL-Fish") sold subject merchandise at less than normal value ("NV") during the period of review ("POR"), August 1, 2008, through July 31, 2009.

**DATES:** *Effective Date:* September 15, 2010.

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

Emeka Chukwudebe or Javier Barrientos, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and

<sup>1</sup> The Department is treating Vinh Hoan, Van Duc Food Export Joint Company ("Van Duc") and Van Duc Tien Giang ("VD TG") as a single entity. Section 351.401(f) of the Department's regulations define single entities as those affiliated producers who have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production. For further analysis, see *Affiliations and Collapsing* section below.

Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0219 or (202) 482-2243, respectively.

**SUPPLEMENTARY INFORMATION:**

**Case History**

On July 31, 2009, pursuant to section 19 CFR 351.214(c), the Department received a new shipper review request from CL-Fish. On August 3, 2009, the Department published a notice of an opportunity to request an administrative review of the *Order*. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 74 FR 38397 (August 3, 2009). By August 31, 2009, the Department received review requests for 22 companies from Petitioners<sup>2</sup> and certain individual companies.

On September 22, 2009, the Department initiated an antidumping duty administrative review on frozen fish fillets from Vietnam covering the period, August 1, 2008, through July 31, 2009. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 48224 (September 22, 2009) (“*Initiation Notice*”). The Department initiated this review with respect to 22 companies.<sup>3</sup>

On September 25, 2009, the Department initiated the sixth antidumping duty new shipper review covering the same period as the administrative review. For this POR, the company to be reviewed is CL-Fish. See *Certain Frozen Fish Fillets from the*

*Socialist Republic of Vietnam: Initiation of New Shipper Review*, 74 FR 48908, (September 25, 2009).

On November 10, 2009, the Department issued a letter to all interested parties informing them of its decision to select as mandatory respondents QVD and Vinh Hoan, the two largest exporters of subject merchandise during the POR, based on U.S. Customs and Borders Protection (“CBP”) import data. See Memorandum to the File from Javier Barrientos, Senior Analyst, through Alex Villanueva, Program Manager, Antidumping Duty Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam (“Vietnam”): Selection of Respondents for Individual Review (“First Respondent Selection Memo”), dated November 10, 2009. On January 7, 2010, QVD withdrew its request for an administrative review. On January 8, 2010, Anvifish JSC withdrew its request for an administrative review. On January 8, 2010, Petitioners partially withdrew their August 31, 2009, request for an administrative review for 13 companies including QVD.<sup>4</sup> On January 29, 2010, the Department determined to individually examine the voluntary respondent, Vinh Quang. See Memorandum to the File from Emeka Chukwudebe, Case Analyst, through Alex Villanueva, Program Manager, Antidumping Duty Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam (“Vietnam”): Replacement of Mandatory Respondent (“Second Respondent Selection Memo”), dated January 29, 2010.

Between October 13, 2009, and August 12, 2010, new shipper, CL-Fish, submitted responses to the original sections A, C, and D questionnaire and supplemental sections A, C, and D questionnaire. Between November 24, 2009, and August 12, 2010, Vinh Quang submitted responses to the original sections A, C, and D questionnaires and supplemental sections A, C, and D questionnaires. Between December 4, 2009, and August 12, 2010, Vinh Hoan submitted responses to the original sections A, C, and D questionnaires and supplemental sections A, C, and D questionnaires.

On January 29, 2010, the Department extended the deadline for parties to file

surrogate country comments and surrogate value data. See Memorandum to the File, from Emeka Chukwudebe, Case Analyst, through Alex Villanueva, Program Manager, Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension Request for Surrogate Country Selection Comments and Surrogate Value Submissions, dated January 29, 2010. On February 12, 2010, the Department tolled all administrative deadlines, including these reviews, by one calendar week. See Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm, dated February 12, 2010, (“Tolling Memo”). On March 9, 2010, the Department aligned the sixth new shipper review with the sixth administrative review. See Memorandum to the File, from Javier Barrientos, Senior Case Analyst, through Alex Villanueva, Program Manager, Alignment of 6th New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam with the 6th Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, dated March 9, 2010. Between April 2, 2010, and July 9, 2010, the Department received surrogate country and value comments and rebuttal comments from interested parties. On April 22, 2010, the Department partially extended the deadline for the preliminary results in these reviews. See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Time Limit for Preliminary Results of the 6th Antidumping Duty Administrative and 6th New Shipper Reviews*, 75 FR 20983 (April 22, 2010).

On May 27, 2010, the Department partially rescinded the administrative review with respect to 13 companies.<sup>5</sup> See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Partial Rescission of the Sixth Antidumping Duty Administrative Review*, 75 FR 29726 (May 27, 2010) (“*Partial Rescission Notice*”). Therefore, nine companies remain in this administrative review: (1) Agifish; (2) Acomfish; (3) Anvifish JSC;<sup>6</sup> (4) Binh An; (5) East Sea Seafoods Limited Liability Company (formerly known as East Sea Seafoods Joint Venture Co.,

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

<sup>3</sup> These companies include: (1) An Giang Fisheries Import and Export Joint Stock Company (aka Agifish or; AnGiang Fisheries Import and Export); (2) Anvifish Co., Ltd.; (3) Anvifish Joint Stock Company (“Anvifish JSC”); (4) Asia Commerce Fisheries Joint Stock Company (aka Acomfish JSC) (“Acomfish”); (5) Binh An Seafood Joint Stock Co. (“Binh An”); (6) Cadovimex II Seafood Import-Export and Processing Joint Stock Company; (aka Cadovimex II) (“Cadovimex II”); (7) CL-Fish; (8) East Sea Seafoods Limited Liability Company (formerly known as East Sea Seafoods Joint Venture Co., Ltd.) (“ESS LLC”); (9) East Sea Seafoods Joint Venture Co., Ltd. (“ESS JVC”); (10) Hiep Thanh Seafood Joint Stock Co. (“Hiep Thanh”); (11) Nam Viet Company Limited (aka NAVICO) (“NAVICO”); (12) NTSF Seafoods Joint Stock Company (aka NTSF) (“NTSF”); (13) Panga Mekong Co., Ltd. (“Panga Mekong”); (14) QVD Food Company, Ltd. (“QVD”); (15) QVD Dong Thap Food Co., Ltd. (“QVD DT”); (16) Saigon-Mekong Fishery Co., Ltd. (aka SAMEFICO) (“SAMEFICO”); (17) Southern Fishery Industries Company, Ltd. (aka South Vina); (18) Thien Ma Seafood Co., Ltd. (“Thien Ma”); (19) Thuan Hung Co., Ltd. (aka THUFICO) (“Thuan Hung”); (20) Vinh Hoan Corporation; (21) Vinh Hoan Company, Ltd.; and (22) Vinh Quang.

<sup>4</sup> These companies include: (1) Cadovimex II; (2) CL-Fish; (3) Hiep Thanh; (4) NAVICO; (5) NTSF; (6) Panga Mekong; (7) QVD; (8) SAMEFICO; (9) Thien Ma; (10) Thuan Hung; (11) Vinh Quang; (12) QVD DT, and; (13) Anvifish Co., Ltd. However, the Department continued the administrative review with respect to Vinh Quang as this company was chosen as a voluntary respondent. See Second Respondent Selection Memo.

<sup>5</sup> These companies include: (1) Cadovimex II; (2) CL-Fish; (3) Hiep Thanh; (4) NAVICO; (5) NTSF; (6) Panga Mekong; (7) QVD; (8) SAMEFICO; (9) Thien Ma; (10) Thuan Hung; (11) Vinh Quang; (12) QVD DT; and (13) Anvifish Co., Ltd.

<sup>6</sup> Although the Department noted on January 8, 2010, Anvifish JSC withdrew its request for an administrative review, in the *Partial Rescission Notice*, the Department stated there was no information on the record indicating Anvifish JSC was assigned a separate rate.

Ltd.); (6) Hiep Thanh; (7) South Vina; (8) Vinh Hoan; and (9) Vinh Quang.

On July 16, 2010, Anvifish JSC placed information on the record identifying its name change in the fourth administrative review from Anvifish Co., Ltd. to Anvifish JSC. On July 30, 2010, the Department published in the **Federal Register** a second notice fully extending the time period for issuing the preliminary results in these reviews. See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Extension of Time Limit for Preliminary Results of the 6th Antidumping Duty Administrative and 6th New Shipper Reviews*, 75 FR 44938 (July 30, 2010). The preliminary results are currently due on September 7, 2010, (inclusive of the seven day extension per the Tolling Memo).

#### Vietnam-Wide Entity

As discussed above, in this administrative review we limited the selection of respondents using CBP import data. See *First Respondent Selection Memo* at Attachment I. In this case, we made available to the companies who were not selected, the separate rates application and certification, which were put on the Department's Web site. See *Initiation Notice*. Those companies which did not apply for separate rates will continue to be part of the Vietnam-wide entity. Because some parties for which a review was requested did not apply for separate rate status, the Vietnam-wide entity is considered to be part of this review.

#### Preliminary Partial Rescission of Administrative Review

##### *Acomfish and Binh An*

Pursuant to 19 CFR 351.213(d)(3), the Department has preliminarily determined that Acomfish and Binh An made no shipments of subject merchandise during the POR of this administrative review. On October 13, 2009, the Department received no-shipment certifications from Acomfish and Binh An. However, according to entry statistics obtained from CBP, and placed on the record, Binh An had an entry of subject merchandise during the POR. In the partial rescission of review notice, the Department stated that it would address this claim and any possible rescission in the preliminary results. See *Partial Rescission Notice*.

On January 13, 2010, the Department issued no-shipment inquiries to CBP requesting any information for merchandise manufactured and shipped by either Acomfish or Binh An during the POR. The Department did not receive any response from CBP, thus

indicating that there were no entries of subject merchandise into the United States exported by these companies. On May 26, 2010, the Department issued a request for the complete entry package document for the shipment made by Binh An during the POR. In addition, on July 9, 2010, the Department issued a supplemental questionnaire to Binh An requesting additional information regarding the subject merchandise entered during the POR. On July 15, 2010, Binh An submitted a response stating that the shipment was for sampling purposes only. Furthermore, our analysis of the CBP entry package was consistent with Binh An's explanation. The Department therefore found no record evidence indicating that Binh An received financial consideration for this transaction. *Id.*

Consequently, as Acomfish did not export subject merchandise during the POR, and Binh An's transaction was not considered a sale because it was a sample transaction for no financial consideration, we are preliminarily rescinding the review, in part, with respect to Acomfish and Binh An.

#### Separate Rates

##### *Agifish, Anvifish Co., Ltd., Vinh Hoan, QVD, South Vina, and CL-Fish*

A designation as a non-market economy ("NME") remains in effect until it is revoked by the Department. See section 771(18)(C) of the Tariff Act of 1930, as amended ("the Act"). Accordingly, there is a rebuttable presumption that all companies within Vietnam are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*").

##### A. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining

whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments decentralizing control of companies.

Although the Department has previously assigned a separate rate to all of the companies eligible for a separate rate in the instant proceeding, it is the Department's policy to evaluate separate rates questionnaire responses each time a respondent makes a separate rates claim, regardless of whether the respondent received a separate rate in the past. See *Manganese Metal from the People's Republic of China, Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 12440 (March 13, 1998).

In this review, Agifish, Anvifish Co., Ltd., Vinh Hoan, QVD, and South Vina submitted complete separate rate certifications and applications. CL-Fish provided separate rate information in its new shipper review questionnaire responses. The evidence submitted by these companies includes government laws and regulations on corporate ownership, business licenses, and narrative information regarding the companies' operations and selection of management. The evidence provided by these companies supports a finding of a *de jure* absence of government control over their export activities, based on: (1) An absence of restrictive stipulations associated with the exporter's business license; and (2) the legal authority on the record decentralizing control over the respondents.

##### B. Absence of *De Facto* Control

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

In this review, Agifish, Anvifish Co., Ltd., Vinh Hoan, QVD, South Vina, and CL-Fish submitted evidence indicating an absence of *de facto* government control over their export activities. Specifically, this evidence indicates

that: (1) Each company sets its own export prices independent of the government and without the approval of a government authority; (2) each company retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) each company has a general manager, branch manager or division manager with the authority to negotiate and bind the company in an agreement; (4) the general managers are selected by the board of directors or company employees, and the general managers appoint the deputy managers and the manager of each department; and (5) there is no restriction on any of the companies' use of export revenues. Therefore, the Department preliminarily finds that Agifish, Anvifish Co., Ltd., Vinh Hoan, QVD, and South Vina have established that they qualify for separate rates under the criteria established by *Silicon Carbide* and *Sparklers*.

#### *ESS LLC and ESS JVC*

ESS LLC requested an administrative review of its entries and on November 24, 2009, submitted a separate rates questionnaire response. A review of CBP data indicated that ESS LLC had no entries during the POR under its own name; instead all of the entries came in under ESS JVC.<sup>7</sup>

In the prior administrative review, ESS LLC claimed it was a successor-in-interest to ESS JVC. In that review, the Department found that ESS LLC was not the successor-in-interest to ESS JVC, and as such, was not entitled to ESS JVC's rate.<sup>8</sup> This determination was upheld by the Court of International Trade.<sup>9</sup> The Department also found that ESS JVC ceased to exist on July 31, 2008.

In response to a supplemental questionnaire issued by the Department, ESS LLC explained that although its name does not appear on the CBP entry documents as the exporter, it is the entity that made those sales to the United States during the POR. Specifically, ESS LLC argues that the sales documents (e.g., invoices, payment, etc.) were issued on behalf of ESS LLC during the POR. See ESS LLC's July 14, 2010 Submissions at 3, Exhibits 6–7. Therefore, record evidence supports a finding that the POR entries

under ESS JVC's name were, in fact, ESS LLC sales and we will treat them accordingly.

Based on the same analysis described above for the other companies and ESS LLC's separate rate response, we preliminarily find that ESS LLC is entitled to a separate rate in this review. Furthermore, we intend to refer the issue of ESS LLC's claim that the ESS JVC entries are in fact ESS LLC's entries during the POR to CBP for further consideration.

#### **Use of Facts Available**

##### *Vinh Quang*

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.

On July 13, 2010, in response to a supplemental questionnaire from the Department, Vinh Quang explained that it could not provide certain sales to the last unaffiliated U.S. customer because the affiliated U.S. customer stated that it did not have the records available to report the data for these U.S. sales. Although Vinh Quang attempted to collect the information on these sales, it notes that the volume of these sales was less than one percent of total U.S. sales during the POR through that affiliate.

For these preliminary results, in accordance with sections 776(a)(2)(B) of the Act, we have determined that the use of neutral facts available ("FA") is warranted for Vinh Quang because, even though it did not report these very limited downstream sales from its affiliate, the affiliate provided an explanation of why it wasn't able to link these very limited sales to purchases by the unaffiliated U.S. customers (i.e., walk-in grocery store customers). See Vinh Quang's July 13, 2010, submission at 11–12. As partial neutral FA, we will use the weighted-average margin from the rest of the sales used to calculate the dumping margin as the margin for the sales observations in question. See Analysis of the Preliminary Results of the Antidumping Duty Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam Vinh Quang Fisheries Corporation

("Vinh Quang") dated September 7, 2010.

#### **Rate for Non-Selected Companies**

In this review there are three companies that are not presently selected for individual examination, ESS LLC, South Vina, and Agifish. The statute and the Department's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, we have looked to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents we did not examine in an administrative review. For the exporters subject to this review that were determined to be eligible for separate rate status, but were not selected as mandatory respondents, the Department generally weight-averages the rates calculated for the mandatory respondents, excluding any rates that are zero, *de minimis*, or based entirely on FA.<sup>10</sup>

For this administrative review, the Department has calculated positive margins for both the single mandatory respondent, Vinh Hoan, and the voluntary respondent, Vinh Quang. However, it is the Department's practice to only include the rates calculated for the mandatory respondents when calculating the separate rate for exporters determined to be eligible for separate rate status.<sup>11</sup> Accordingly, consistent with our practice for these preliminary results, the Department has preliminarily established a margin for the separate rate respondents based on the rate calculated for the single mandatory respondent, Vinh Hoan. The rate established for the separate rate respondents is a per-unit rate of \$4.22 dollars per kilogram. Entities receiving this rate are identified by name in the "Preliminary Results of Review" section of this notice.

#### **Scope of the Order**

The product covered by this *Order* is frozen fish fillets, including regular, shank, and strip fillets and portions

<sup>10</sup> See, e.g., *Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Results of New Shipper Review and Partial Rescission of Administrative Review*, 73 FR 8273, 8279 (February 13, 2008) (unchanged in *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review*, 73 FR 49162 (August 20, 2008)).

<sup>11</sup> See *Id.*

<sup>7</sup> See First Respondent Selection Memo at attachment I.

<sup>8</sup> See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews*, 75 FR 12726 (March 17, 2010) ("5th AR and 4th NSR Final").

<sup>9</sup> *East Sea Seafoods LLC, v. United States and Catfish Farmers of America*, Court No. 10–00102, Slip Op. 10–62 at 10 (CIT May 27, 2010). ESS LLC has filed a notice of appeal in that case.

thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti*, *Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*), and *Pangasius Micronemus*. Frozen fish fillets are lengthwise cuts of whole fish. The fillet products covered by the scope include boneless fillets with the belly flap intact (“regular” fillets), boneless fillets with the belly flap removed (“shank” fillets), boneless shank fillets cut into strips (“fillet strips/finger”), which include fillets cut into strips, chunks, blocks, skewers, or any other shape. Specifically excluded from the scope are frozen whole fish (whether or not dressed), frozen steaks, and frozen belly-flap nuggets. Frozen whole dressed fish are deheaded, skinned, and eviscerated. Steaks are bone-in, cross-section cuts of dressed fish. Nuggets are the belly-flaps. The subject merchandise will be hereinafter referred to as frozen “basa” and “tra” fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under tariff article codes 1604.19.4000, 1604.19.5000, 0305.59.4000, 0304.29.6033 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the Harmonized Tariff Schedule of the United States (“HTSUS”).<sup>12</sup> This *Order* covers all frozen fish fillets meeting the above specification, regardless of tariff classification. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the *Order* is dispositive.

#### Non-Market Economy Country Status

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

<sup>12</sup> Until July 1, 2004, these products were classifiable under tariff article codes 0304.20.60.30 (Frozen Catfish Fillets), 0304.20.60.96 (Frozen Fish Fillets, NESOI), 0304.20.60.43 (Frozen Freshwater Fish Fillets) and 0304.20.60.57 (Frozen Sole Fillets) of the HTSUS. Until February 1, 2007, these products were classifiable under tariff article code 0304.20.60.33 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the HTSUS.

the Act, which applies to NME countries.

#### Surrogate Country and Surrogate Values

On December 18, 2009, the Department sent interested parties a letter setting a deadline to submit comments on surrogate country selection and information pertaining to valuing factors of production (“FOPs”). Between April, 8, 2010, and August 16, 2010, Vinh Hoan, CL-Fish, the Vietnam Association of Seafood Exporters and Producers (“VASEP”), and/or Petitioners submitted surrogate country comments, surrogate value data and rebuttal comments.

#### Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer’s FOPs, valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.

The Department determined that Bangladesh, Pakistan, India, Sri Lanka, the Philippines and Indonesia are countries comparable to Vietnam in terms of economic development.<sup>13</sup>

As we have stated in prior administrative review determinations, there is no world production data of *Pangasius* frozen fish fillets available on the record with which the Department can identify producers of identical merchandise. Therefore, absent world production data, the Department’s practice is to compare, wherever possible, data for comparable merchandise and establish whether any economically comparable country was a significant producer.<sup>14</sup> In this case, we have determined to use the broader

<sup>13</sup> See Memorandum from Kelley Parkhill, Acting Director, Office of Policy, to Alex Villanueva, Program Manager, AD/CVD Enforcement, Office 9: Request for a list of Surrogate Countries for a New Shipper Review of the Antidumping Duty Order on Certain Frozen Fish Fillets (“Fish Fillets”) from the Socialist Republic of Vietnam, dated October 15, 2009.

<sup>14</sup> See *Certain Magnesia Carbon Bricks From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 11847 (March 12, 2010), unchanged for the final determination, 75 FR 45468 (August 2, 2010).

category of frozen fish fillets data as the basis for identifying producers of comparable merchandise. Therefore, consistent with cases that have similar circumstances as are present here, we obtained export data for each country identified in the surrogate country list. Based on export data from U.N. Comtrade in 2007,<sup>15</sup> Bangladesh, the Philippines, Indonesia, India, Sri Lanka, and Pakistan are exporters of frozen fish fillets, and, thus, significant producers.

After applying the first two selection criteria, if more than one country remains, it is the Department’s practice to select an appropriate surrogate country based on the availability and reliability of data from those countries. See Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (“Surrogate Country Policy Bulletin”). In this case, the whole fish input is the most significant input because it accounts for the largest percentage of normal value (“NV”) as fish fillets are produced directly from the whole live fish. As such, we must consider the availability and reliability of the surrogate values for whole fish on the record. This record does not contain any data for whole live fish for Indonesia, India, Sri Lanka, and Pakistan. Therefore, these countries will not be considered for primary surrogate country purposes at this time. However, this record does contain whole fish surrogate value data from both Bangladesh and the Philippines.

#### Bangladesh

In the most recently completed segment involving a new shipper review, the Department selected Bangladesh as the surrogate country due to the superior quality of the Bangladeshi data available in the Economics of Aquaculture Feeding Practices in Selected Asian Countries: FAO Technical Paper 505 (Rome, 2007) (“FAO Report”). See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, Final Results of Fifth New Shipper Review*, 75 FR 38985 (July 7, 2010) and accompanying Issues and Decision Memorandum at Comment 1 (“5th NSR Final”). In the 5th NSR Final, we found that the whole fish input data from the FAO Report were the best information available to value the fish input because they satisfied the surrogate value selection criteria (e.g., are publicly

<sup>15</sup> U.N. Comtrade data from 2006 and 2007 are the only years in which all countries have data for comparison. 2008 and 2009 data contains gaps preventing the Department from making appropriate comparisons. World Trade Atlas data shares a similar problem. See Surrogate Value Memo at Attachment I.

available, represent a broad market average, are from an approved surrogate country, are specific to the input in question and are tax exclusive),<sup>16</sup> even though they are not contemporaneous with the POR. The information on this record with respect to the FAO Report data remains unchanged from the prior new shipper review.

#### The Philippines

In the fifth administrative review and fourth new shipper reviews, the Department was concerned with the public availability of the whole fish surrogate data from the Philippines. See *5th AR Final* at Comment 1. Subsequent to that segment, the Department again evaluated the public availability of the Philippines data and found that although Petitioners supplemented the record with additional information and documentation, serious concerns remained (e.g., not an official government publication in and of itself, an affidavit not made on behalf of the Philippines government, no discussion of public dissemination, etc.).<sup>17</sup> On the record of this review however, Petitioners submitted information clearly generated by a Philippine government agency, on official

<sup>16</sup> See e.g., *Fresh Garlic from the People's Republic of China: Final Results and Final Rescission, In Part, of New Shipper Reviews*, 74 FR 50952 (October 2, 2009), and accompanying Issues and Decision Memorandum at Comment 5; see also *Third Administrative Review of Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 46565 (September 10, 2009), and accompanying Issues and Decision Memorandum at Comment 3.

<sup>17</sup> In the most recently completed segment, we stated that "In analyzing the Fish Pond Report, the Department has serious concerns about the public availability of the data. By Petitioners' own admission, the data are not published as the Fish Pond Report per se, but rather, the Fish Pond Report represents source data to be used in a yet-to-be-determined manner for official publication in the Fisheries Situationer. Therefore, the Fish Pond Report is not an official government publication in and of itself, nor is it even an interim government publication. Accordingly, we do not find the Fish Pond Report to be public information. Moreover, we find our concerns in this regard amplified by the observation that the affidavit is not made on behalf of the Philippine government, further underscoring our concerns about the public availability of this information." \* \* \*

Furthermore, the document has a hand written title and appears to be incomplete in some of the data fields as discussed below. There is no mention in the affidavit that the data is regularly disseminated in the Fish Pond Report format or whether the affiant is responsible for providing this data to the public. There is no explanation as to whether the affiant provides this data as a regular part of her government job, reducing the likelihood the data as released were subject to the ordinary review and analysis accompanying their inclusion in the Fisheries Situationer. Given these concerns, the Department does not find that this data is publicly available." See *5th NSR Final* at Comment 1.

Philippines government letterhead, and with an explanation of the data collection methods. In addition, they provided a complete copy of the *Fisheries Statistics of the Philippines, 2006–2008, published by the Bureau of Agricultural Statistics, Department of Agriculture, ("Fisheries Statistics")* published in November 2009, which links the Philippines data provided in this and prior segments to an official Philippines government publication. Therefore, the Department no longer has concerns with the public availability of the Philippines data in this segment.

#### Analysis

First, we note that both the FAO Report data and the Fisheries Statistics data are publicly available, tax- and duty-exclusive, and from an approved surrogate country. Therefore, we examined each source with respect to the broad market average, specificity, and contemporaneity. With respect to the broad market average, we find that the data from both the FAO Report and the Fisheries Statistics are considered broad market averages. As we have stated in prior reviews, the FAO Report data were obtained directly from 60 fish farmers from a region that produces fish in Bangladesh. However, the FAO Report does state why this particular region was selected (i.e., importance of this region in *Pangasius* farming, the availability of hatchery produced fry, availability of ponds, warm climate, cheap and abundant labor). See FAO Report at 38. Similarly, the Philippines data were collected from 34 respondents (i.e., "farmers, operators, or caretakers. Other possible respondents are aqua farm traders and persons knowledgeable of aquaculture production in the locality.") See Petitioners' July 9, 2010 Submission at Attachment 1, page 2. Although we recognize that the Philippines data volume is only 12 metric tons, while the Bangladeshi data is 178 metric tons, for these preliminary results, we find that both of these sources are significant broad market averages because they represent national level data of similar quality using similar collection methods (i.e., interviews, questionnaires, etc.).

With respect to specificity, the Bangladeshi data in the FAO Report specifically identify the whole live fish examined as *Pangasianodon Hypophthalmus*, which is one of the fish fillets species identified in the scope of the Order. The Philippines data in the *Fisheries Statistics* are identified as *Pangasius*, which is the genus name for the fish fillets subject to the Order. First, we note that *Pangasius* is a genus name and *Pangasianodon Hypophthalmus* is a

species in that genus. In prior reviews, we used whole fish surrogate value data identified as *Pangas* and found it comparable to the fish input used by Respondents. See *3rd AR Final Results* at Comment 4. In this case, although the whole fish data from Bangladesh are more specific to the input used by the Respondents in producing fish fillets, we note that the record does not contain any information that would lead us to preliminarily determine that any difference between the two sources would necessarily generate a difference in price. Moreover, *Pangasianodon Hypophthalmus* is considered a component of *Pangasius* so it is reasonable to find that the *Pangasius* price from the Philippines in the *Fisheries Statistics* is likely to include *Pangasianodon Hypophthalmus* and other comparable species names also listed in the Order.

Finally, with respect to contemporaneity, we find that the Philippine data are contemporaneous with the POR as they are based on data collected in calendar year 2008. See Petitioners' July 9, 2010 Submission at Attachment 1, page 3. The Bangladeshi data in the FAO Report are from calendar year 2005. Therefore, the Philippines data are contemporaneous with the POR, while the Bangladeshi data are not.

After examining all the factors considered in selecting the surrogate value for fish as part of our surrogate country analysis, we find that the data available from the Philippines for the whole live fish represent the best surrogate values for these preliminary results. Given that Philippines data are contemporaneous, as equally a broad market average as the Bangladeshi data and of a similar genus of the fish used by the Respondents to produce fish fillets, we preliminarily select the Philippines as the most appropriate surrogate country. However, we hereby invite parties to submit additional comments and data from Bangladesh and the Philippines with respect to fish farming and fisheries that can be considered for the final results.

#### Affiliations and Collapsing

Section 771 (33) of the Act provides that:

The following persons shall be considered to be 'affiliated' or 'affiliated persons':

- (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants;
- (B) Any officer or director of an organization and such organization;
- (C) Partners;
- (D) Employer and employee;

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization;

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person;

(G) Any person who controls any other person and such other person.

Additionally, section 771 (33) of the Act stipulates that: "For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person."

Finally, according to 19 CFR 351.401(f)(1) and (2), two or more companies may be treated as a single entity for antidumping duty purposes if: (1) The producers are affiliated, (2) the producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (3) there is a significant potential for manipulation of price or production. See 19 CFR 351.401(f)(1) and (2).

#### *Vinh Hoan*

In the final results of the fifth antidumping duty administrative review, the Department determined that Vinh Hoan and Van Duc Food Export Joint Company ("Van Duc") should be treated as a single entity. See *5th AR Final*, and accompanying Issues and Decision Memorandum at Comment 4. The Department did not collapse Vinh Hoan Feed 1 Company ("Vinh Hoan Feed") with these other companies, however, because Vinh Hoan Feed lacked a critical capital component (freezing machines) in order to produce comparable merchandise. *Id.*

Based on evidence submitted by Vinh Hoan in this administrative review, the Department finds that Vinh Hoan is affiliated with Vinh Hoan Feed, Vinh Hoan USA, Van Duc, and another entity, Van Duc Tien Giang ("VD TG") pursuant to section 771 (33) of the Act. See Vinh Hoan's March 2, 2010, submission at 2–8. Furthermore, based on evidence on the record, the Department preliminarily finds that Vinh Hoan, Van Duc, and VD TG should be treated as a single entity for purposes of this administrative review. See 19 CFR 351.401(f)(1) and (2). All three companies have the ability to produce and/or export subject merchandise. Furthermore, the companies are under the common control of Ms. Truong and her family by virtue of ownership, common board members or managers. As such, there is significant potential for

manipulation of price or production. The Department still determines, however, that Vinh Hoan Feed lacks the critical capital component (freezing machines) in order to produce comparable merchandise. Therefore, pursuant to 19 CFR 351.401(f)(1) and (2), the Department preliminarily finds that Vinh Hoan, Van Duc, and VD TG but not Vinh Hoan Feed, should be treated as a single entity (collectively, the "Vinh Hoan Group") in these preliminary results.

#### *Vinh Quang*

With regard to Vinh Quang, the Department preliminarily finds that Vinh Quang is affiliated with the following customers that resold the subject merchandise in the United States: (1) H&N Foods International ("H&N"); (2) Blue River Seafood Inc. ("Blue River") (dba Joe Pucci & Sons ("Pucci")); (3) Expack Seafoods, Inc. ("Expack"); and, (4) Clemente Seafood Center, Inc. ("Clemente") (collectively "CEP Entities"). The Department also finds Vinh Quang to be affiliated with H&N, Blue River/Pucci and Clemente under Section 771(33)(A) of the Act because members of the Lam Family<sup>18</sup> own directly or indirectly (with their husbands) the majority of these entities and are in a position to control them. See Vinh Quang July 13, 2010, submission at 2–9. Finally, the Department determines that Expack is affiliated with H&N (and indirectly to Vinh Quang) under 771(33)(E) and (F) of the Act because H&N is the majority owner of Expack and because the Lam Family members (one of the Lam sisters, her husband and children) are in a position to directly or indirectly control Expack. *Id.*

Therefore, for these preliminary results the Department will use the constructed export price ("CEP") price paid to H&N, Blue River/Pucci, and Expack by their first unaffiliated U.S. customers of subject merchandise during the POR. For Clemente, please see *Facts Available* section below.

#### **Fair Value Comparisons**

To determine whether sales of the subject merchandise made by Vinh Hoan, Vinh Quang or CL-Fish to the United States were at prices below NV, we compared each company's export price ("EP") or CEP, where appropriate, to NV, as described below.

#### **U.S. Price**

For Vinh Hoan's and CL-Fish's EP sales, we used the EP methodology,

<sup>18</sup> These individuals include Quang Lam and his three blood sisters and their children.

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

In accordance with section 772(b) of the Act, we used the CEP methodology when the first sale to an unaffiliated purchaser occurred after importation of the merchandise into the United States. In this instance, we calculated CEP for Vinh Hoan's and Vinh Quang's U.S. sales through its respective U.S. affiliates, Vinh Hoan USA and the Vinh Quang's CEP Entities, respectively, to unaffiliated customers.

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

Where movement expenses were provided by NME-service providers or paid for in NME currency, we valued these services using surrogate values from Descartes Carrier Rate Retrieval Database ("Descartes") Web site. See Surrogate Value Memo. Where applicable, we used the actual reported expense for those movement expenses provided by ME suppliers and paid for in ME currency.

#### **New Shipper Review Bona Fide Analysis**

Consistent with the Department's practice, we investigated the *bona fide* nature of the sales made by CL-Fish in the new shipper review. We found that the new shipper sales by CL-Fish were

made on a *bona fide* basis.<sup>19</sup> Based on our investigation into the *bona fide* nature of the sales, the questionnaire responses submitted by CL-Fish, as well as the company's eligibility for separate rates (see *Separate Rates Determination* section above), we preliminarily determine that CL-Fish has met the requirements to qualify as a new shipper during this POR. Therefore, for the purposes of these preliminary results of review, we are treating CL-Fish's sales of subject merchandise to the United States as appropriate transactions for this new shipper review.

### Normal Value

Section 773(c)(1) of the Act provides that, in the case of an NME, the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Because information on the record does not permit the calculation of NV using home-market prices, third-country prices, or constructed value and no party has argued otherwise, we calculated NV based on FOPs reported by Vinh Hoan, Vinh Quang, and CL-Fish, pursuant to sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

As the basis for NV, Vinh Hoan, Vinh Quang, and CL-Fish provided FOPs used in each of the stages for processing frozen fish fillets. The Department's general policy, consistent with section 773(c)(1)(B) of the Act, is to value the FOPs that a respondent uses to produce the subject merchandise.

To calculate NV, the Department valued Vinh Hoan's, Vinh Quang's, and CL-Fish's reported per-unit factor quantities using publicly available Philippine, Bangladeshi, Indian, and Indonesian surrogate values. The Philippines was our first surrogate country source from which to obtain data to value inputs, and when data were not available from there, we used Bangladeshi, Indian, or Indonesian sources. In selecting surrogate values, we considered the quality, specificity, and contemporaneity of the available values. As appropriate, we adjusted the value of material inputs to account for delivery costs. Specifically, we added surrogate freight costs to surrogate

values using the reported distances from the Vietnam port to the Vietnam factory or from the domestic supplier to the factory, where appropriate. This adjustment is in accordance with the decision of the CAFC in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997). For those values not contemporaneous with the POR, we adjusted for inflation using data published in the International Monetary Fund's International Financial Statistics.

In accordance with the *OTCA 1988* legislative history, the Department continues to apply its long-standing practice of disregarding surrogate values if it has a reason to believe or suspect the source data may be subsidized.<sup>20</sup> In this regard, the Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies.<sup>21</sup> Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea and Thailand may have benefitted from these subsidies.

Additionally, we disregarded prices from NME countries. Finally, imports that were labeled as originating from an "unspecified" country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies. For further detail, see *Surrogate Values Memo*.

As a consequence of the CAFC's ruling in *Dorbest II*,<sup>22</sup> the Department is

<sup>20</sup> See *Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) ("OTCA 1988")* at 590.

<sup>21</sup> See, e.g., *Expedited Sunset Review of the Countervailing Duty Order on Carbazole Violet Pigment 23 from India*, 75 FR 13257 (March 19, 2010) and accompanying Issues and Decision Memorandum at pages 4–5; *Expedited Sunset Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia*, 70 FR 45692 (August 8, 2005) and accompanying Issues and Decision Memorandum at page 4; *See Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009) and accompanying Issues and Decision Memorandum at pages 17, 19–20; *See Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Countervailing Duty Determination*, 66 FR 50410 (October 3, 2001) and accompanying Issues and Decision Memorandum at page 23.

<sup>22</sup> See *Dorbest Ltd. v. United States*, 604 F.3d 1363 (CAFC 2010).

no longer relying on the regression-based wage rate described in 19 CFR 351.408(c)(3). The Department is continuing to evaluate options for determining labor values in light of the recent CAFC decision. For these preliminary results, we have calculated an hourly wage rate to use in valuing the reported labor input by averaging earnings and/or wages in countries that are economically comparable to Vietnam and that are significant producers of comparable merchandise. For further information on the calculation of the wage rate, please see the *Surrogate Value Memo*.

### Currency Conversion

Where necessary, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

### Preliminary Results of the Review

As a result of our review, we preliminarily find that the following margins exist for the period August 1, 2008, through July 31, 2009.

#### CERTAIN FROZEN FISH FILLETS FROM VIETNAM

Manufacturer/Exporter	Weighted-average margin (Dollars per kilogram)
(1) Vinh Hoan <sup>23</sup> .....	4.22
(2) Vinh Quang .....	2.44
(3) Agifish .....	4.22
(4) ESS LLC .....	4.22
(5) South Vina .....	4.22
Vietnam-Wide Rate <sup>24</sup> .....	2.11

As a result of the new-shipper review, the Department preliminarily determines that a weighted-average dumping margin of \$0.93 per kilogram exists for merchandise produced and exported by CL-Fish for the period August 1, 2008, through July 31, 2009.

With respect to Anvifish JSC, although there is now evidence on the record of this review that Anvifish Co., Ltd. underwent a name change to become Anvifish JSC during the fourth administrative review,<sup>25</sup> there is still insufficient information to determine if Anvifish JSC is in fact the successor in interest to Anvifish Co., Ltd. Therefore, the Department will issue a post-preliminary supplemental questionnaire

<sup>23</sup> This rate is applicable to the Vinh Hoan Group which includes Vinh Hoan, Van Duc, and VD TG.

<sup>24</sup> This rate is applicable to Anvifish JSC.

<sup>25</sup> See Anvifish JSC's submission, dated July 16, 2010.

<sup>19</sup> See Memorandum from Javier Barrientos, Case Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9: *Bona Fide Nature of the Sales in the Antidumping Duty New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Cuu Long Fish Joint Stock Company*, dated September 7, 2010.

to determine if Anvifish JSC is the successor to Anvifish Co., Ltd. and if Anvifish JSC is entitled to use the rate assigned to Anvifish Co., Ltd. Until the Department determines otherwise, Anvifish JSC will remain part of the Vietnam-wide entity.

#### Public Comment

The Department will disclose to parties of this proceeding the calculations performed in reaching the preliminary results within five days of the date of announcement of the preliminary results. See 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of the preliminary results. See 19 CFR 351.310(c). Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, within five days after the time limit for filing case briefs. See 19 CFR 351.309(c)(1)(ii) and 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days of publication of the preliminary results. The assessment of antidumping duties on entries of merchandise covered by this review and future deposits of estimated duties shall be based on the final results of this review.

#### Assessment Rates

Upon completion of this administrative review, pursuant to 19 CFR 351.212(b), the Department will calculate an assessment rate on all appropriate entries. For the mandatory respondents, Vinh Hoan and Vinh Quang, and new shipper, CL-Fish, we will calculate importer-specific duty assessment rates on a per-unit basis.<sup>26</sup>

<sup>26</sup> We divided the total dumping margins (calculated as the difference between NV and EP or CEP) for each importer by the total quantity of subject merchandise sold to that importer during the POR to calculate a per-unit assessment amount. We will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (*i.e.*, per-kilogram) rates by the weight in kilograms

Where the assessment rate is *de minimis*, we will instruct CBP to assess no duties on all entries of subject merchandise by that importer. We will instruct CBP to liquidate entries containing merchandise from the Vietnam-wide entity at the Vietnam-wide rate we determine in the final results of review. We intend to issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

#### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, except for CL-Fish (*see below*), the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis*, the cash deposit will be zero); (2) for previously investigated or reviewed Vietnam and non-Vietnam exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all Vietnam exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the Vietnam-wide rate of \$2.11 per kilogram; and (4) for all non-Vietnam exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Vietnam exporters that supplied that non-Vietnam exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

The following cash deposit requirements will be effective upon publication of the final results of this review for all shipments of subject merchandise from new shipper CL-Fish entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For subject merchandise produced and exported by CL-Fish, the cash deposit rate will be the rate established in the final results; (2) for subject merchandise exported by CL-Fish but not manufactured by CL-Fish, the cash deposit rate will continue to be the Vietnam-wide rate (*i.e.*, \$2.11 per kilogram); and (3) for subject

of each entry of the subject merchandise during the POR.

merchandise manufactured by CL-Fish, but exported by any other party, the cash deposit rate will be the rate applicable to the exporter. If the cash deposit rate calculated in the final results is zero or *de minimis*, no cash deposit will be required where CL-Fish is the exporter and manufacturer. These cash deposit requirements, when imposed, shall remain in effect until further notice.

#### Notification to Interested Parties

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

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

Dated: September 7, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2010-23001 Filed 9-14-10; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-909]

#### **Certain Steel Nails From the People's Republic of China: Notice of Preliminary Results and Preliminary Rescission, in Part, of the Antidumping Duty Administrative Review**

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

**SUMMARY:** The Department of Commerce ("Department") is conducting the first administrative review of the antidumping duty order on certain steel nails ("nails") from the People's Republic of China ("PRC") for the period of review ("POR") January 23, 2008, through July 31, 2009. The Department has preliminarily determined that sales have been made below normal value ("NV") with respect to certain exporters who participated fully and are entitled to a separate rate in this administrative review. If these preliminary results are adopted in our final results of this review, the Department will instruct U.S. Customs and Border Protection