

## Preliminary Results of Review

We preliminarily determine that the following margins exist for TMI during the period April 1, 2006, through March 31, 2007:

### MAGNESIUM METAL FROM THE PRC

Company	Weighted-Average Margin (Percent)
Tianjin Magnesium International Co., Ltd.	17.46

## Disclosure

The Department will disclose the calculations used in our analysis to parties to this administrative review within five days of the date of publication of this notice. Case briefs from interested parties may be submitted not later than 30 days of the date of publication of this notice, pursuant to 19 CFR 351.309(c). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. The Department also requests that interested parties provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. The Department requests that parties submitting written comments also provide the Department with an additional copy of those comments on diskette.

Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in the briefs.

The Department will issue the final results of this review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

## Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all

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

## Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) For the exporters listed above, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis*, no cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed review; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 141.49 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

## Notification to Importers

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

occurred and the subsequent assessment of double antidumping duties.

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

Dated: February 29, 2008.

**Stephen J. Claeys,**

*Acting Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**A-552-802**

## Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results, Preliminary Partial Rescission and Final Partial Rescission of the Second Administrative Review

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

**SUMMARY:** The Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam ("Vietnam"), covering the period of review ("POR") of February 1, 2006, through January 31, 2007. As discussed below, we preliminarily determine that sales have not 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 review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the POR for which the importer-specific assessment rates are above *de minimis*.

**EFFECTIVE DATE:** March 6, 2008.

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

## SUPPLEMENTARY INFORMATION:

### General Background

On February 1, 2005, the Department published in the **Federal Register** the antidumping duty order on frozen warmwater shrimp from Vietnam. *See*

*Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam.* 70 FR 5152 (February 1, 2005) (“VN Shrimp Order”). On February 2, 2007, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on frozen warmwater shrimp from Vietnam for the period February 1, 2006, through January 31, 2007. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 72 FR 5007 (February 2, 2007).

On February 28, 2007, we received requests to conduct administrative reviews of 92 companies from Petitioner,<sup>1</sup> 84 companies from the Louisiana Shrimp Association (“LSA”), and requests by certain Vietnamese companies.<sup>2</sup> *See Notice of Initiation of Administrative Reviews of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam and the People’s Republic of China* 72 FR 17095 (April 6, 2007) (“Initiation Notice”).

On March 30, 2007, Petitioner withdrew its request for an administrative review with respect to 58 Vietnamese producers/exporters.<sup>3</sup> On April 6, 2007, the Department initiated an administrative review of 101 producers/exporters of subject merchandise from Vietnam.<sup>4</sup> *See Initiation Notice.* However, after accounting for duplicates, the number of companies upon which we initiated is actually 76 companies/groups.

### Respondent Selection

On April 6, 2007, the Department sent a request for quantity and value (“Q&V”) information to all 76 companies/groups named in the

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

<sup>2</sup> Certain companies were requested by both Petitioner and LSA, thus creating an overlap in the number of companies upon which an administrative review was requested.

<sup>3</sup> Additionally, on July 5, 2007, LSA filed a timely withdrawal of its review requests with respect to Aquatic Products Trading Company, Kien Giang Sea Products Import - Export Company, Kisimex, Song Huong ASC Import-Export Company Ltd., and Viet Nhan Company. These four companies were also included in Petitioner’s March 30, 2007, withdrawal notice. As a result, no other active administrative requests remain on the record of this review for these four companies/groups.

<sup>4</sup> The Department inadvertently listed T.K. Co. as one of the initiated companies for review despite Petitioner’s withdrawal of the sole review request for T.K. Co. Thus, although we stated 100 companies would be initiated for review, we actually initiated upon 101 individually named companies.

*Initiation Notice.* Between April 16, 2007, and June 1, 2007, the Department received separate rate certifications from 47 companies/groups, Q&V questionnaire responses from 51 companies/groups, and separate rate applications from 2 companies/groups.

On May 2, May 7, May 22, and May 24, 2007, the Department issued follow-up letters to 44 companies/groups that did not submit either a separate rate certification or application, as appropriate, or a Q&V questionnaire response. On May 15 and May 21, 2007, the Department received responses from Viet Nhan and Bentre Aquaproduct Imports & Exports, respectively, indicating that they made no shipments of subject merchandise during the POR.

On June 6, 2007, the Department issued a letter to all interested parties inviting comments regarding the Department’s respondent selection methodology for this proceeding. On June 13, 2007, Petitioner and counsel for a number of Vietnamese companies<sup>5</sup> (“Vietnam respondents”) provided comments on the Department’s respondent selection methodology. On June 22, 2007, Petitioner provided additional comments with respect to the Department’s respondent selection methodology. On June 26, 2007, Vietnam respondents filed comments rebutting Petitioner’s June 22, 2007, supplemental comments.

On July 5, 2007, LSA filed a timely withdrawal of its review requests with respect to Aquatic Products Trading Company, Kien Giang Sea Products Import - Export Company aka Kisimex, Song Huong ASC Import-Export Company Ltd., and Viet Nhan Company. Additionally, on July 5, 2007, several Vietnamese companies collectively filed a request to extend the 90-day deadline to withdraw administrative review requests. The July 5, 2007, deadline to withdraw administrative review requests was extended to July 10, 2007. Consequently, of the 76 companies/group for which the Department initiated an administrative review, 72 companies/groups remained with active review requests. However, as noted above, the Department inadvertently

<sup>5</sup> The Vietnam respondents are: Seaprodex Minh Hai; Cuu Long Seapro; Minh Phu Seafood Export Import Corporation (and affiliated Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.); Minh Phu Seafood Corporation; Minh Phu Seafood Corp.; Minh Qui Seafood Co., Ltd.; Minh Qui Seafood; Minh Phat Seafood Co., Ltd.; Minh Phat Seafood.; Cofidec; Stapimex; Ngoc Sinh; Seaprimeco; Cafatec; Cadovimex; Vimex; Seaprodx Danang; Utxic; Nha Trang Seafoods; Nha Trang Fisco; Kisimex; Phu Cuong; Fimex; Incomfish; CP Livestock; Cataco; Thuan Phuoc; Grobest; Phuong Nam; Camimex; Minh Hai Jostoco; and Viet Foods.

included T.K. Co. in the *Initiation Notice* after Petitioner withdrew its request for review of T.K. Co. Consequently, the Department is rescinding the review with respect to T.K. Co. *See “Final Partial Rescission of Administrative Review” section below.* Thus, 71 companies/groups remain with active review requests.

On July 18, 2007, the Department issued its respondent selection memorandum stating that we selected Camimex and Minh Phu Group<sup>6</sup> (“MPG”) as the two mandatory respondents (hereinafter “respondents”) because they were the two largest exporters, by volume, of the remaining companies. *See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, from James C. Doyle, Office Director, Office 9, Re: 2006/2007 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Selection of Respondents (“Respondent Selection Memo”).* Additionally, on July 18, 2007, the Department issued a memorandum discussing the proper treatment of the companies upon which we initiated a review, but were unresponsive to the Department’s requests for Q&V information. *See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration from James Doyle, Director, Office 9, Import Administration; Recommendation Memorandum Regarding Quantity and Value Questionnaire Responses and Lack Thereof: 2006/2007 Administrative Review on Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam (“Unresponsive Companies Memo”), dated July 18, 2007.* *See the “Vietnam-wide entity and Non-Responsive Companies” section below for the Department’s treatment of the non-responsive companies.*

### Questionnaires

On July 20, 2007, the Department issued its non-market economy questionnaire to the two selected respondents, Camimex and MPG.

Camimex and MPG responded to the Department’s non-market economy questionnaire and subsequent supplemental questionnaires between August 2007 and January 2008. Additionally, between August and November 2007, Petitioner submitted

<sup>6</sup> Minh Phu Group includes the following companies: Minh Phu Seafood Export Import Corporation (and affiliated Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.); Minh Phu Seafood Corporation; Minh Phu Seafood Corp.; Minh Qui Seafood Co., Ltd.; Minh Qui Seafood; Minh Phat Seafood Co., Ltd.; Minh Phat Seafood.

comments regarding Camimex's and MPG's questionnaire responses.

#### Extension of the Preliminary Results

On October 26, 2007, the Department extended the deadline for the preliminary results of the instant review until February 28, 2008. *See Certain Frozen Warmwater Shrimp From Brazil, Ecuador, India, Thailand, and the Socialist Republic of Vietnam: Notice of Extension of Time Limits for the Preliminary Results of the Second Administrative Reviews*, 72 FR 60800 (October 26, 2007).

#### Scope of the Order

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

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

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

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

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

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

#### Preliminary Partial Rescission of Administrative Review

Bac Lieu Fisheries Company Limited ("Bac Lieu"), Khanh Loi Trading ("Khanh Loi"), Pataya Food Industry (Vietnam) Ltd. ("Pataya"), Seaprodex, Bentre Aquaproduct Imports & Exports ("Bentre"), Hanoi Seaproducts Import Export Corporation ("Seaprodex Hanoi"), and Cam Ranh Seafoods Processing Enterprise Company ("Camranh") informed the Department that they did not export the subject merchandise to the United States during the POR. In our examination of CBP entry data, we did not find any information inconsistent with these

statements. *See Memorandum to the File from Irene Gorelik, Analyst, Re: 2006/2007 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: CBP Inquiry Regarding No Shipments*, dated February 28, 2008. Further, in response to our request for information relating to these claims, CBP did not provide any information that contradicted the respondents' claims. Therefore, because the record indicates that Bac Lieu, Khanh Loi, Pataya, Seaprodex, Bentre, Seaprodex Hanoi, and Camranh did not sell subject merchandise to the United States during the POR, we are preliminarily rescinding the instant administrative review with respect to Bac Lieu, Khanh Loi, Pataya, Seaprodex, Bentre, Seaprodex Hanoi, and Camranh. *See* 19 CFR 351.213(d)(3).

#### Final Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review if a party requesting a review withdraws the request within 90 days of the date of publication of the notice of initiation.<sup>8</sup> In accordance with 19 CFR 351.213(d)(1) and consistent with our practice, where the review requests were withdrawn within the 90-day time limit, we have rescinded the review because no other parties requested a review of these companies. Because both Petitioner and LSA withdrew their requests for a review of Aquatic Products Trading Company, Kien Giang Sea Products Import - Export Company, Kisimex, Song Huong ASC Import-Export Company Ltd., and Viet Nhan Company within 90 days of the date of publication of the notice of initiation and because no other interested party requested a review of these companies, we are rescinding the administrative review of Aquatic Products Trading Company, Kien Giang Sea Products Import - Export Company, Kisimex, Song Huong ASC Import-Export Company Ltd., and Viet Nhan Company. Additionally, as noted above, the Department inadvertently listed T.K. Co. as one of the initiated companies for

<sup>8</sup> As noted above, on March 30, 2007, Petitioner withdrew its request for an administrative review with respect to 58 producers/exporters including Aquatic Products Trading Company, Kien Giang Sea Products Import - Export Company, Kisimex, Song Huong ASC Import-Export Company Ltd., and Viet Nhan Company, in accordance with 19 CFR 351.213(d)(1). In addition, as noted above, pursuant to 19 CFR 351.213(d)(1), LSA withdrew its request for an administrative review of Aquatic Products Trading Company, Kien Giang Sea Products Import - Export Company, Kisimex, Song Huong ASC Import-Export Company Ltd., and Viet Nhan Company on July 5, 2007.

review, despite Petitioner's withdrawal of the sole review request for T.K. Co. Consequently, because Petitioner withdrew its request for a review of T.K. Co. within 90 days of the date of publication of the notice of initiation and because no other interested party requested a review of this company, we are rescinding the administrative review with respect to T.K. Co. Following the preliminary partial rescission and the final partial rescission totaling 12 companies/groups, the Department is left with 64 companies/groups with active review requests.

#### Duty Absorption

On April 13, 2007, Petitioner requested that the Department determine whether antidumping duties had been absorbed for U.S. sales of shrimp made during the POR by the respondents selected for review. Section 751(a)(4) of the Act of 1930, as amended ("the Act"), provides for the Department, if requested, to determine during an administrative review initiated two or four years after publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. In this case, only MPG sold subject merchandise in the United States through an affiliated importer. Because the antidumping duty order underlying this review was issued in 2005, and this review was initiated in 2007, we are conducting a duty absorption inquiry for this segment of the proceeding.

In determining whether the antidumping duties have been absorbed by the respondent, we presume the duties will be absorbed for those sales that have been made at less than NV. This presumption can be rebutted with evidence (e.g., an agreement between the affiliated importer and unaffiliated purchaser) that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise. *See, e.g., Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part*, 70 FR 39735, 39737 (July 11, 2005) (unchanged in final results). On August 23, 2007, the Department requested both MPG and Camimex to provide evidence to demonstrate that its unaffiliated U.S. purchasers will pay any antidumping duties ultimately assessed on entries of subject merchandise. On August 29, 2007, Camimex rebutted the presumption of duty absorption by stating that it is not

affiliated with the importers of record for its U.S. sales during the POR. *See Camimex's Response to Duty Absorption Inquiry* dated August 29, 2007. Additionally, because Camimex reported sales of subject merchandise on an export price ("EP") basis, the Department did not conduct a duty absorption investigation of Camimex's sales to the United States during the POR.

On August 29, 2007, MPG filed a response rebutting the duty-absorption presumption with company-specific quantitative evidence that its unaffiliated U.S. purchasers will pay the full duty ultimately assessed on the subject merchandise. The quantitative evidence included invoices and financial statements on the record showing that MPG did not absorb duties during the POR. We conclude that this information sufficiently demonstrates that the unaffiliated purchasers in the United States will ultimately pay the assessed duties. Therefore, we preliminarily find that antidumping duties have not been absorbed by MPG on U.S. sales made through its affiliated importer. *See Minh Phu Group's Response to Duty Absorption Inquiry* dated August 29, 2007; *see also MPG's Section A questionnaire response* dated August 20, 2007, at Exhibits 8 and 20.

#### Surrogate Country and Surrogate Values

On August 3, 2007, the Department sent interested parties a letter requesting comments on surrogate country selection and information pertaining to valuing factors of production. On September 7, 2007, Petitioner submitted a request to extend the deadline of October 5, 2007, for the submission of surrogate country and factor valuation comments. On September 17, 2007, the Department extended the deadline to submit surrogate country and factor valuation comments until October 26, 2007. Camimex, MPG and Petitioner submitted surrogate country comments and surrogate value data on October 26, 2007.

On January 10, 2008, Camimex and MPG filed comments opposing Petitioner's request for the Department to select India as the surrogate country in this proceeding rather than Bangladesh, which the Department selected as the surrogate country in the underlying investigation, first administrative review, and new shipper review. On January 23, 2008, Petitioner submitted further comments reiterating its argument for India to serve as the surrogate country in this proceeding. On February 8, 2008, Respondents submitted additional comments in

rebuttal to Petitioner's January 23, 2008 comments. For a detailed account of the Respondents' and Petitioner's comments as well as the Department's surrogate country selection, please see the "Surrogate Country" section below.

#### Use of Facts Available

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

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

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

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

Furthermore, section 776(b) of the Act states that if the Department “finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission ..., in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.” *See also* Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act (URAA), H.R. Rep. No. 103-316, Vol. 1 at 870 (1994).

An adverse inference may include reliance on information derived from the Petition, the final determination in the investigation, any previous review, or any other information placed on the record. *See* section 776(b) of the Act.

#### **Vietnam-wide Entity and Non-Responsive Companies**

As mentioned above, based on withdrawals and subsequent rescissions, the administrative review covers 64 companies/groups. Of those 64 companies/groups, only two selected respondents, MPG and Camimex, and 27 separate rate companies/groups<sup>9</sup>

<sup>9</sup> These companies were: Amanda Foods (Vietnam) Ltd.; C.P. Vietnam Livestock Co. Ltd.; Ca Mau Seafood Joint Stock Company (“SEAPRIMEXCO”); Cadovimex Seafood Import-Export and Processing Joint Stock Company (“CADOVIMEX”); Cai Doi Vam Seafood Import-Export Company (Cadovimex); Cafatex Fishery Joint Stock Corporation (“Cafatex Corp.”); Cantho Animal Fisheries Product Processing Export Enterprise (Cafatex); Camau Frozen Seafood Processing Import Export Corporation, or Camau Seafood Factory No. 4 (“CAMIMEX”); Can Tho Agricultural and Animal Product Import Export Company (“CATACO”); Can Tho Agricultural Products aka CATAKO; Coastal Fishery Development; Coastal Fisheries Development Corporation (Cofidec); Coastal Fisheries Development Corporation (Cofidec); C P Vietnam Livestock Co. Ltd.; C P Livestock; Cuulong Seaproducts Company (“Cuu Long Seapro”); Cuu Long Seaproducts Limited (Cuulong Seapro); Danang Seaproducts Import Export Corporation (“Seaprodex Danang”) and Tho Quang Seafood Processing & Export Company; Frozen Seafoods Factory No. 32 aka thuan phuoc); Frozen Seafoods Fty aka above Thuan Phuoc; Grobest & I-Mei Industry Vietnam; Grobest; Investment Commerce Fisheries Corporation (“Incomfish”); Kim Anh Co., Ltd.; Minh Hai Export Frozen Seafood Processing Joint Stock Company; Minh Hai Export Frozen Seafood Processing Joint Stock Company (“Minh Hai Jostoco”); Minh Hai Joint-Stock Seafoods Processing Company (“Seaprodex Minh Hai”); Minh Hai Sea Products Import Export Company (Seaprimex Co); Minh Phat Seafood Co., Ltd.; Minh Phat Seafood; Minh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.); Minh Phu Seafood Corp.; Minh Phu Seafood Corporation; Minh Qui Seafood; Minh Qui Seafood Co., Ltd.; Ngoc Sinh Private Enterprise; Ngoc Sinh Seafoods; Nha Trang Fisheries Joint Stock Company (“Nha

chose to participate. The remaining 35<sup>10</sup> companies did not respond to the Department’s Q&V and separate rate questionnaires, or the follow-up letters sent by the Department. As these 35 companies/groups did not provide the information necessary to conduct a separate rate analysis, we consider these companies as part of the Vietnam-wide entity. Furthermore, at no point in the administrative review did any of these companies submit comments regarding their status in this proceeding. The Department’s numerous attempts to contact these companies are documented in the *Unresponsive Companies Memo* dated July 18, 2007. As such, we find it appropriate to apply facts available to the Vietnam-wide entity in accordance with sections 776(a)(2)(A) and (B) of the Act.

Moreover, we find that because the Vietnam-wide entity did not respond to the Department’s questionnaires and subsequent letters, it did not cooperate to the best of its ability and therefore, adverse facts available (“AFA”) is appropriate pursuant to section 776(b) of the Act. Therefore, we are applying an adverse inference to the Vietnam-wide entity (including the 35 non-responsive companies/groups) in

Trang Fisco”); Nha Trang Seaproduct Company (“Nha Trang Seafoods”); Phu Cuong Seafood Processing and Import-Export Co., Ltd. ; Phuong Nam Co. Ltd.; Phuong Nam Seafood Co. Ltd.; Sao Ta Foods Joint Stock Company (“Fimex VN”); Soc Trang Aquatic Products and General Import Export Company (“Stampimex”); Thuan Phuoc Seafoods and Trading Corporation and frozen seafoods factory 32 and seafoods and foodstuff factory; UTXI Aquatic Products Processing Company; Viet Foods Co., Ltd. (“Viet Foods”); Viet Hai Seafoods Company Ltd. (“Vietnam Fish One Co. Ltd.”); Viet Hai Seafoods Company Ltd. (“Vietnam Fish One Co. Ltd.”); Vietnam Fish-One Co., Ltd.; Vinh Loi Import Export Company (“Vimexco”). Due to multiple name variations for companies upon which Petitioner and LSA requested an administrative review, the Department referred to these variations as companies/groups.

<sup>10</sup> These companies were: AAAS Logistics; Agrimex; American Container Line; An Giang Fisheries Import and Export Joint Stock Company (Agifish); Angiang Agricultural Technology Service Company; Bentre Frozen Aquaproduct Exports; Can Tho Seafood Exports; Cautre Enterprises; Dong Phuc Huynh; General Imports & Exports; Hacota; Hai Thuan Export Seaproduct Processing Co., Ltd.; Hai Viet; Hatrang Frozen Seaproduct Fty; Hoa Nam Marine Agricultural; Lamson Import-Export Foodstuffs Corporation; Nha Trang Company Limited; Nha Trang Fisheries Co. Ltd.; Saigon Orchide; Sea Product; Sea Products Imports & Exports; Seafood Processing Imports-Exports; Sonacos; Song Huong ASC Joint Stock Company; Special Aquatic Products Joint Stock Company (“Seaspimex”); Tacvan Frozen Seafoods Processing Export Company; Thami Shipping & Airfreight; Thanh Long; Thien Ma Seafood; Tourism Material and Equipment Company (Matourimex Hochiminh City Branch); Truc An Company; Vietnam Northern Viking Technology Co. Ltd.; Vietnam Northern Viking Technologie Co. Ltd.; Vilfood Co.; VITA; V N Seafoods.

accordance with section 776(b) of the Act.<sup>11</sup>

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

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

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company’s uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin

<sup>11</sup> *See, e.g., Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People’s Republic of China: Preliminary Results of Administrative Reviews and Preliminary Partial Rescission of Antidumping Duty Administrative Reviews*, 71 FR 11580 (March 8, 2006) (unchanged in final results); *Final Results of Antidumping Duty Administrative Review for Two Manufacturers/Exporters: Certain Preserved Mushrooms from the People’s Republic of China*, 65 FR 50183, 50184 (August 17, 2000).

that has been discredited. *See D&L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). None of these unusual circumstances are present with respect to the rate being used here. Moreover, the rate selected (*i.e.*, 25.76 percent) is the rate currently applicable to the Vietnam-wide entity. The Department assumes that if an uncooperative respondent could have demonstrated a lower rate, it would have cooperated. *See Rhone Poulen, Inc. v. United States*, 899 F2d 1185 (Fed. Cir. 1990); *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 24 CIT 841 (2000) (respondents should not benefit from failure to cooperate). As there is no information on the record of this review that demonstrates that this rate is not appropriate to use as AFA in the current review, we determine that this rate has relevance.

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

#### Non-Market Economy Country Status

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

#### Separate Rates Determination

A designation as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. Accordingly, there is a rebuttable presumption that all companies within Vietnam are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate

an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("Sparklers"), as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("Silicon Carbide").

One separate rate company, Amanda Foods (Vietnam) Limited, reported that it is wholly owned by individuals or companies located in a market economy in its separate-rate application. Therefore, because it is wholly foreign-owned, and we have no evidence indicating that its export activities are under the control of the Vietnamese government, a separate rates analysis is not necessary to determine whether this company is independent from government control. *See Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104-05 (December 20, 1999) (where the respondent was wholly foreign-owned and, thus, qualified for a separate rate). Accordingly, we have preliminarily granted a separate rate to Amanda Foods (Vietnam) Limited.

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

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

Although the Department has previously assigned a separate rate to 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, MPG and Camimex, and the 27 participating separate rate companies/groups submitted complete responses to the separate rates section of the Department's NME questionnaire.

The evidence submitted by these companies includes government laws and regulations on corporate ownership, business licenses, and narrative information regarding the companies' operations and selection of management. The evidence provided by these companies supports a finding of a *de jure* absence of government control over their export activities. We have no information in this proceeding that would cause us to reconsider this determination. Thus, we believe that the evidence on the record supports a preliminary finding of an absence of *de jure* government control based on: (1) an absence of restrictive stipulations associated with the exporter's business license; and (2) the legal authority on the record decentralizing control over the respondents.<sup>12</sup>

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

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

In their questionnaire responses, MPG, Camimex, and the separate rate companies submitted evidence indicating an absence of *de facto*

<sup>12</sup> This preliminary finding applies to (1) the two selected respondents of this administrative review: MPG and Camimex; and (2) the non-selected respondents of this administrative review seeking a separate rate: C.P. Vietnam Livestock Co., Ltd.; Ca Mau Seafood Joint Stock Company; Cadovimex Seafood Import-Export and Processing Joint-Stock Company; Cafatex Fishery Joint Stock Corporation; Can Tho Agricultural and Animal Products Import and Export Company; Coastal Fisheries Development Corporation; Cuulong Seaproducts Company; Danang Seaproducts Import Export Corporation; Thuan Phuoc Seafoods and Trading Corporation; Grobest and I-Mei Industrial Vietnam Co., Ltd.; Investment Commerce Fisheries Corporation; Kim Anh Company Limited; Minh Hai Export Frozen Seafoods Processing Joint Stock Company; Minh Hai Joint Stock Seafoods Processing Company; Ngoc Sinh Private Enterprise; Nha Trang Fisheries Joint Stock Company; Nha Trang Seaproduct Company; Phu Cuong Seafood Processing & Import-Export Co., Ltd.; Phuong Nam Co., Ltd.; Sao Ta Foods Joint Stock Company; Soc Trang Seafood Joint Stock Company; UTXI Aquatic Products Processing Corporation; Viet Foods Co., Ltd.; Vietnam Fish One Co., Ltd.; and Vinh Lai Import Export Company.

government control over their export activities. Specifically, this evidence indicates that: (1) each company sets its own export prices independent of the government and without the approval of a government authority; (2) each company retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) each company has a general manager, branch manager or division manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the board of directors or company employees, and the general manager appoints the deputy managers and the manager of each department; and (5) there is no restriction on any of the companies use of export revenues. Therefore, the Department preliminarily finds that MPG, Camimex, and the separate rate companies have established *prima facie* that they qualify for separate rates under the criteria established by *Silicon Carbide and Sparklers*.<sup>13</sup>

#### Separate Rate Calculation

Based on timely requests from individual exporters and petitioners, the Department originally initiated this review with respect to 76 companies/groups. During the course of the review, multiple requests for review were withdrawn; however, the Department employed a limited examination methodology, as it did not have the resources to examine all companies for which a review request was made. As stated previously, the Department selected two exporters, MPG and Camimex, as mandatory respondents in this review. Twenty-seven additional companies submitted timely information as requested by the Department and remain subject to review as cooperative separate rate respondents.

The Department must also assign a rate to the remaining 27 cooperative separate rate respondents not selected for individual examination. We note that the statute and the Department's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for examination where the Department limited its examination in an administrative review pursuant to section 777(A)(c)(2) of the Act. The Department's practice in this regard, in cases involving limited selection based on exporters accounting for the largest volumes of trade, has been to weight-average the rates for the selected

companies excluding zero and *de minimis* rates and rates based entirely on AFA. However, in the instant review, we have calculated *de minimis* company-specific dumping margins for MPG and Camimex, and assigned the 27 separate rate respondents a dumping margin equal to the weighted average of the dumping margins calculated for MPG and Camimex pursuant to section 735(c)(5)(B) of the Act. See "Preliminary Results of the Review" section below for additional detail regarding the Department's methodology to calculate the weighted average of the dumping margins for the separate rate companies.

#### Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production ("FOPs"), valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the "Normal Value" section below and in *Memorandum to the File through Alex Villanueva, Program Manager, Office 9 from Irene Gorelik, Senior Analyst, Office 9: Second Antidumping Duty Administrative Reviews of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results*, dated February 28, 2008 ("Factor Valuation Memo").

The Department determined that Bangladesh, Pakistan, India, Sri Lanka, and Indonesia are countries comparable to Vietnam in terms of economic development.<sup>14</sup> Moreover, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data from the countries. See *Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process* (March 1, 2004). In this case, we find that the information on the record shows that Bangladesh is the appropriate surrogate country because

Bangladesh is at a similar level of economic development pursuant to section 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has reliable, publicly available data representing a broad-market average. See *Memorandum to the File, through James C. Doyle, Office Director, Office 9, Import Administration, from Irene Gorelik, Senior Case Analyst, Subject: Second Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Selection of a Surrogate Country* (February 28, 2008).

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

#### U.S. Price

##### A. Export Price

In accordance with section 772(a) of the Act, we calculated the EP for sales to the United States for Camimex because the first sale to an unaffiliated party was made before the date of importation and the use of constructed EP ("CEP") was not otherwise warranted. Additionally, we calculated the EP for a portion of MPG's sales to the United States. We calculated EP based on the price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, as appropriate, we deducted from the starting price to unaffiliated purchasers foreign inland freight and brokerage and handling. Each of these services was either provided by an NME vendor or paid for using an NME currency. Thus, we based the deduction of these movement charges on surrogate values. Additionally, for international freight provided by a market economy provider and paid in U.S. dollars, we used the actual cost per kilogram of the freight. See *Factor Valuation Memo* for details regarding the surrogate values for movement expenses.

##### B. Constructed Export Price

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

<sup>13</sup> This preliminary finding applies to the same companies listed in footnote 12.

<sup>14</sup> *Memorandum from Ron Lorentzen, Director, Office of Policy, to Jim Doyle, Office Director, AD/CVD Enforcement, Office 9: Administrative Review of Certain Warmwater Shrimp from Vietnam: Request for a List of Surrogate Countries*, dated July 31, 2007, at Attachment I.

expenses, U.S. movement expenses, and appropriate selling adjustments, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States. We deducted, where appropriate, commissions, inventory carrying costs, credit expenses, and indirect selling expenses. Where foreign movement expenses, international movement expenses, or U.S. movement expenses were provided by Vietnam service providers or paid for in Vietnamese Dong, we valued these services using surrogate values (see “Factors of Production” section below for further discussion). For those expenses that were provided by a market-economy provider and paid for in market-economy currency, we used the reported expense. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for MPG, see *Memorandum to the File, through Alex Villanueva, Program Manager, Office 9, from Irene Gorelik, Senior Analyst, Office 9; Company Analysis Memorandum in the Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam; Minh Phu Group*, dated February 28, 2008.

## Normal Value

### 1. Methodology

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

### 2. Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by respondents for the POR, except as noted above. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available Bangladeshi surrogate values. In selecting the surrogate values, we considered the quality, specificity, and

contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Bangladeshi import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory of production or the distance from the nearest seaport to the factory of production where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407–1408 (Fed. Cir. 1997). Where we did not use Bangladeshi Import Statistics, we calculated freight based on the reported distance from the supplier to the factory.

With regard to surrogate values and the market-economy input values, we have disregarded prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, Thailand, and India may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004) (“CTVs from the PRC”), and accompanying Issues and Decision Memorandum at Comment 7; see also *Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651 (March 15, 2005), and accompanying Issues and Decision Memorandum at Comment 4. The legislative history provides that in making its determination as to whether input values may be subsidized, the Department is not required to conduct a formal investigation, rather, Congress directed the Department to base its decision on information that is available to it at the time it makes its determination. See H.R. Rep. 100–576 at 590 (1988).

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

used Bangladeshi import-based surrogate values to value the input. To value the main input, head-on, shell-on shrimp, the Department used data contained in a study of the Bangladeshi shrimp industry published by the Network of Aquaculture Centres in Asia-Pacific, an intergovernmental organization affiliated with the UN's Food and Agriculture Organization.<sup>15</sup> The Department used United Nations ComTrade Statistics, provided by the United Nations Department of Economic and Social Affairs' Statistics Division, as its primary source of Bangladeshi surrogate value data.<sup>16</sup> The data represents cumulative values for the calendar year 2004, for inputs classified by the Harmonized Commodity Description and Coding System number. For each input value, we used the average value per unit for that input imported into Bangladesh from all countries that the Department has not previously determined to be NME countries. Import statistics from countries that the Department has determined to be countries which subsidized exports (i.e., Indonesia, Korea, Thailand, and India) and imports from unspecified countries also were excluded in the calculation of the average value. See *CTVs from the PRC*, 69 FR 20594 (April 16, 2004).

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

Certain surrogate values were calculated using data from the 2004 Statistical Yearbook of Bangladesh, published by the Bangladesh Bureau of Statistics, Planning Division, Ministry of Planning. The information represents

<sup>15</sup> For a detailed explanation of the Department's valuation of shrimp, see *Factor Valuation Memo*.

<sup>16</sup> This can be accessed online at: <http://www.unstats.un.org/unsd/comtrade/>.

cumulative values for the period of 2004. Certain other Bangladeshi sources were used as well. *See Factor Valuation Memo*. The unit values were initially calculated in takas/unit.

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

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

To value factory overhead, Selling, General & Administrative expenses, and profit, we used the simple average of the 2005–2006 financial statement of Apex Foods Limited and the 2005–2006 financial statement of Gemini Seafood Limited, both of which are Bangladeshi

shrimp processors. *See Factor Valuation Memo*, at Exhibit 12.

#### Preliminary Results of the Review

The Department has determined that the following preliminary dumping margins exist for the period February 1, 2006, through January 31, 2007:

#### CERTAIN FROZEN WARMWATER SHRIMP FROM VIETNAM

Manufacturer/Exporter	Weighted-Average Margin (Percent)
<b>Minh Phu Group.</b>	
Minh Phat Seafood Co., Ltd., aka Minh Phat Seafood aka Minh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.) aka Minh Phu Seafood Corp. aka Minh Phu Seafood Corporation aka Minh Qui Seafood aka Minh Qui Seafood Co., Ltd. ....	0.01 ( <i>de minimis</i> )
Camau Frozen Seafood Processing Import Export Corporation, aka Camau Seafood Factory No. 4 ("CAMIMEX") ....	0.00 ( <i>de minimis</i> )
Amanda Foods (Vietnam) Ltd. ....	0.01 ( <i>de minimis</i> )
C.P. Vietnam Livestock Co. Ltd., aka C P Vietnam Livestock Co. Ltd., aka C P Livestock ....	0.01 ( <i>de minimis</i> )
Cadovimex Seafood Import-Export and Processing Joint Stock Company ("CADOVIMEX") aka Cai Doi Vam Seafood Import-Export Company (Cadovimex) ....	0.01 ( <i>de minimis</i> )
Cafatex Fishery Joint Stock Corporation ("Cafatex Corp.") aka Cantho Animal Fisheries Product Processing Export Enterprise (Cafatex) ....	0.01 ( <i>de minimis</i> )
Can Tho Agricultural and Animal Product Import Export Company ("CATACO") aka Can Tho Agricultural Products aka CATACO <sup>17</sup> ....	0.01 ( <i>de minimis</i> )
Coastal Fishery Development aka Coastal Fisheries Development Corporation (Cofidec) aka Coastal Fisheries Development Corporation (Cofidec) ....	0.01 ( <i>de minimis</i> )
Cuulong Seaproducts Company ("Cuu Long Seapro") aka Cuu Long Seaproducts Limited (Cuulong Seapro) 2	0.01 ( <i>de minimis</i> )
Danang Seaproducts Import Export Corporation ("Seaprodex Danang") aka Tho Quang Seafood Processing & Export Company ....	0.01 ( <i>de minimis</i> )
Frozen Seafoods Factory No. 32, aka Frozen Seafoods Fty, aka Thuan Phuoc, aka Thuan Phuoc Seafoods and Trading Corporation, aka Frozen Seafoods Factory 32, aka Seafoods and Foodstuff Factory ....	0.01 ( <i>de minimis</i> )
Grobest & I-Mei Industry Vietnam, aka Grobest ....	0.01 ( <i>de minimis</i> )
Investment Commerce Fisheries Corporation ("Incomfish") ....	0.01 ( <i>de minimis</i> )
Kim Anh Co., Ltd. ....	0.01 ( <i>de minimis</i> )
Minh Hai Export Frozen Seafood Processing Joint Stock Company, aka Minh Hai Export Frozen Seafood Processing Joint Stock Company ("Minh Hai Jostoco") ....	0.01 ( <i>de minimis</i> )
Minh Hai Joint-Stock Seafoods Processing Company ("Seaprodex Minh Hai") ....	0.01 ( <i>de minimis</i> )
Minh Hai Sea Products Import Export Company (Seaprimex Co), aka Ca Mau Seafood Joint Stock Company ("SEAPRIMEXCO") ....	0.01 ( <i>de minimis</i> )
Ngoc Sinh Private Enterprise ....	0.01 ( <i>de minimis</i> )
Ngoc Sinh Seafoods ....	0.01 ( <i>de minimis</i> )
Nha Trang Fisheries Joint Stock Company ("Nha Trang Fisco") ....	0.01 ( <i>de minimis</i> )
Nha Trang Seaproduct Company ( Nha Trang Seafoods") ....	0.01 ( <i>de minimis</i> )
Phu Cuong Seafood Processing and Import-Export Co., Ltd. ....	0.01 ( <i>de minimis</i> )
Phuong Nam Co. Ltd., aka Phuong Nam Seafood Co. Ltd. ....	0.01 ( <i>de minimis</i> )
Sao Ta Foods Joint Stock Company ("Fimex VN") ....	0.01 ( <i>de minimis</i> )
Soc Trang Aquatic Products and General Import Export Company ("Stampimex") ....	0.01 ( <i>de minimis</i> )
UTXI Aquatic Products Processing Company ....	0.01 ( <i>de minimis</i> )
Viet Foods Co., Ltd. ("Viet Foods") ....	0.01 ( <i>de minimis</i> )
Viet Hai Seafoods Company Ltd. ("Vietnam Fish One Co. Ltd.") aka Vietnam Fish-One Co., Ltd. ....	0.01 ( <i>de minimis</i> )
Vinh Lai Import Export Company ("Vimexco") ....	0.01 ( <i>de minimis</i> )
Vietnam-Wide Rate <sup>18</sup> ....	25.76

<sup>17</sup> The separate rate granted to Cataco is limited to only Cataco's exports of subject merchandise during the POR. Cataco's separate rate does not apply to Cantho Import-Export Seafood Joint Stock Company, aka Caseamex. For more discussion, *see Memorandum to the File from Irene Gorelik, Analyst, re: 2006/2007 Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam; Cataco's Separate Rate*, dated February 28, 2008.

<sup>18</sup> The Vietnam-Wide entity includes the companies listed in footnote 10 above.

While the Department has, for these preliminary results, applied the weighted-average rates calculated for the two mandatory respondents, Camimex and MPG, to the companies

not individually examined,<sup>19</sup> we invite

<sup>19</sup> These companies are: Amanda Foods (Vietnam) Ltd.; C.P. Vietnam Livestock Co. Ltd.; C P Vietnam Livestock Co. Ltd.; C P Livestock; Ca Mau Seafood Joint Stock Company ("SEAPRIMEXCO"); Minh Hai Sea Products Import Export Company (Seaprimex Co); Cadovimex Seafood Import-Export and Processing Joint Stock Company ("CADOVIMEX");

Cai Doi Vam Seafood Import-Export Company (Cadovimex); Cafatex Fishery Joint Stock Corporation ("Cafatex Corp."); Cantho Animal Fisheries Product Processing Export Enterprise (Cafatex); Can Tho Agricultural and Animal Products Import Export Company ("CATACO"); Can Tho Agricultural Products aka CATACO; Coastal Fishery Development; Coastal Fisheries Development

Continued

comments from interested parties regarding the methodology to be used to determine the rate for non-examined companies. Specifically, we invite interested parties to comment on the rate to be applied to the non-examined companies, considering, but not limited to, the following factors: (a) The Department has limited its examination of respondents pursuant to section 777A(c)(2)(B) of the Act, (b) section 735(c)(5) provides that, with some exceptions, the all-others rate in an investigation is to be calculated excluding any margins that are zero, *de minimis* or based entirely on facts available, and (c) the SAA states that with respect to the calculation of the all-others rate in such cases, “the expected method will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available, provided that volume data is available. However, if this method is not feasible, or if it results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers, Commerce may use other reasonable methods.” See SAA at 873.

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

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of

Corporation (Cofidec); Coastal Fisheries Development Corporation (Cofidec); Cuulong Seaproducts Company (“Cuu Long Seapro”); Cuu Long Seaproducts Limited (Cuulong Seapro); Danang Seaproducts Import Export Corporation (“Seaprodex Danang”) and THO Q Tho Quang Seafood Processing & Export Company; Thuan Phuoc Seafoods and Trading Corporation aka Frozen Seafoods Factory 32 aka Seafoods and Foodstuff Factory; Frozen Seafoods Factory No. 32 aka thuan phuoc) Frozen Seafoods Fty aka above Thuan Phuoc; Grobest & I-Mei Industry Vietnam; Grobest; Investment Commerce Fisheries Corporation (“Incomfish”); Kim Anh Co., Ltd.; Minh Hai Export Frozen Seafood Processing Joint Stock Company; Minh Hai Export Frozen Seafood Processing Joint Stock Company (“Minh Hai Jostoco”); Minh Hai Joint-Stock Seafoods Processing Company (“Seaprodex Minh Hai”); Ngoc Sinh Private Enterprise; Ngoc Sinh Seafoods; Nha Trang Fisheries Joint Stock Company (“Nha Trang Fisco”); Nha Trang Seaproduct Company (“Nha Trang Seafoods”); Phu Cuong Seafood Processing and Import-Export Co., Ltd.; Phuong Nam Co. Ltd.; Phuong Nam Seafood Co. Ltd.; Sao Ta Foods Joint Stock Company (“Fimex VN”); Soc Trang Aquatic Products and General Import Export Company (“Stampimex”); UTXI Aquatic Products Processing Company; Viet Foods Co., Ltd. (“Viet Foods”); Viet Hai Seafoods Company Ltd. (“Vietnam Fish One Co. Ltd.”); Viet Hai Seafoods Company Ltd. (“Vietnam Fish One Co. Ltd.”); Vietnam Fish-One Co., Ltd.; and Vinh Loi Import Export Company (“Vimexco”).

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

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

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

#### Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by these reviews. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. In accordance with 19 CFR 351.212(b)(1), for Camimex and MPG, we calculated an exporter/importer (or customer)-specific assessment rate for the merchandise subject to this review. Where the respondent has reported reliable entered values, we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer). See 19 CFR 351.212(b)(1). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis*, we will apply the assessment rate to the entered value of the importer’s/customer’s entries during the review period. See 19 CFR 351.212(b)(1).

Where we do not have entered values for all U.S. sales, we calculated a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total

quantity sold to that importer (or customer). See 19 CFR 351.212(b)(1). To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* ratios based on the estimated entered value. Where an importer (or customer)-specific *ad valorem* rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. See 19 CFR 351.106(c)(2).

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

For Bac Lieu, Khanh Loi, Pataya, Seaprodex, Bentre, Seaprodex Hanoi, and Camranh, companies for which this review is preliminarily rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2).

#### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of the administrative review for all shipments of warmwater shrimp from Vietnam entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) for the exporters listed above, the cash-deposit rate will be that established in these final results of review (except, if the rate is zero or *de minimis*, no cash deposit will be required); (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash-deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all other Vietnamese exporters of subject merchandise, which have not been found to be entitled to a separate rate, the cash-deposit rate will be the Vietnam-wide rate of 25.76 percent; and (4) for all non-Vietnamese exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the rate applicable to the Vietnamese exporter that supplied that exporter. These deposit

requirements, when imposed, shall remain in effect until further notice.

#### Notification to Importers

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

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

Dated: February 28, 2008.

**Stephen J. Claeys,**  
Acting Assistant Secretary for Import Administration.

[FR Doc. E8-4412 Filed 3-5-08; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XF97**

#### Marine Mammals; File No. 10137

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; receipt of application.

**SUMMARY:** Notice is hereby given that the NMFS Pacific Islands Fisheries Science Center, Marine Mammal Research Program (MMRP), 2570 Dole Street, Honolulu, HI 96822-2396 (Responsible Party: George A. [Bud] Antonelis, Jr.), has applied in due form for a permit to conduct research and enhancement activities on Hawaiian monk seals (*Monachus schauinslandi*).

**DATES:** Written, telefaxed, or e-mail comments must be received on or before April 7, 2008.

**ADDRESSES:** The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713-2289; fax (301)713-0376; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814-4700; phone (808)944-2200; fax (808)973-2941.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713-0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 10137.

**FOR FURTHER INFORMATION CONTACT:** Amy Sloan or Kate Swails, (301)713-2289.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222-226).

The MMRP proposes to continue research and enhancement activities on Hawaiian monk seals currently authorized under Permit No. 848-1695. The purposes of the proposed activities are to (1) assess survivorship, reproductive rates, pup production, condition, abundance, movements among subpopulations, and incidence and causes of injury or mortality; (2) diagnose disease, monitor exposure to disease, and develop normal baseline hematology and biochemistry parameters; (3) conduct activities to increase survival of individuals; and (4) investigate foraging ecology to determine foraging locations, diving parameters, characteristics of foraging substrate, and prey identification and foraging behaviors.

The type and manner of research takes proposed include monitoring (ground, vessel, and aerial surveys); marking (bleach marks, flipper tags, passive integrated transponder [PIT] tags, photo-identification) and measuring (morphometrics); health and disease assessments (capture, sedation,

biological sampling [swabs, fecal loop, blood, blubber biopsy]; administration of an anthelmintic to assess efficacy of reducing intestinal parasite loads in pups and juveniles; import/export of specimens; necropsies; and opportunistic specimen collection); and foraging studies (instrumentation). The type and manner of enhancement takes includes translocations of pups and juveniles to increase survival; removal of adult males known to kill immature seals; and disentanglements of seals.

The following takes will occur annually: Up to 1,440 seals of any age/sex could be incidentally disturbed from monitoring activities; 200 seals may be incidentally disturbed during all other research and enhancement activities. Up to 1,315 seals will be bleach marked, and a total of 556 seals of any size or sex except lactating females and nursing pups will be flipper and PIT tagged, measured, and sampled for flipper plugs (includes retagging). Up to 80 seals of any age/sex will be sampled for health and disease screening, tagged, and measured. Up to 75 immature seals of either sex will be translocated. Up to 50 seals of any age/sex except lactating females or nursing pups will be externally tagged with instrumentation, flipper/PIT tagged, and sampled for health and disease screening (additional to above screening). Up to 200 seals of either sex, up to age 3 years, will be treated for intestinal parasites. An unlimited number of seals will be disentangled. Necropsies will be performed on all carcasses, and samples (molt, scat, spew, urine, placentae) will be collected opportunistically from beaches. Samples may be exported/imported for analysis.

The following takes may occur over the 5-year duration of the permit: Up to 5 adult males may be relocated or removed to enhance survival of immature animals; up to 10 moribund seals of any age/sex may be humanely euthanized or die incidental to handling; up to 5 incidental mortalities may occur during research and enhancement activities.

Other species which may be incidentally taken annually are threatened green turtles (*Chelonia mydas*) and endangered Laysan finches (*Telespyza cantans*). Non-listed marine mammals that may be incidentally taken are spinner dolphins (*Stenella longirostris*).

Geographic locations of the take include the Hawaiian Archipelago (Main Hawaiian Islands and Northwestern Hawaiian Islands) and Johnston Atoll. Specimen samples may be imported/exported world-wide. The permit is requested for a 5-year period.