

Dated: January 22, 2008.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-552-801]

#### **Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Partial Rescission and Preliminary Results of the First New Shipper Reviews**

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

**SUMMARY:** The Department of Commerce ("Department") is conducting new shipper reviews ("NSRs") of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam ("Vietnam") that cover the period of review ("POR") of August 1, 2006, through January 31, 2007.<sup>1</sup> See *Notice of Antidumping Duty Order: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 47909 (August 12, 2003) ("Order"). On March 22, 2007, the Department initiated the semi-annual new shipper reviews for Vinh Quang Fisheries Corporation ("Vinh Quang"), Ngoc Thai Company ("Ngoc Thai"), and Anvifish Co., Ltd. ("Anvifish"). See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Reviews*, 72 FR 15653 (April 2, 2007).

We are preliminarily rescinding the new shipper reviews of Vinh Quang and Ngoc Thai because at the time of their requests for a new shipper review, the deadline for such requests had passed, pursuant to section 351.214(c) of the Department's regulations. We preliminarily determine that Anvifish has made sales in the United States at less than normal value ("NV"). If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the POR for which the importer-specific assessment rates are above *de minimis*.

**DATES:** *Effective Date:* February 1, 2008.

<sup>1</sup> On November 6, 2007, the Department sent a letter informing parties that the POR was extended until February 26, 2007. Upon further review of the record, the Department determines that an extension of the POR is unnecessary.

**FOR FURTHER INFORMATION CONTACT:** Julia Hancock and Nicole Bankhead, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-1394 and (202) 482-9068, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Case History**

##### **General**

On January 31, February 21, and February 28, 2007, the Department received requests for new shipper reviews from Vinh Quang, Ngoc Thai, and Anvifish, respectively. On April 5, 2007, after initiating the reviews, the Department issued antidumping duty questionnaires to the three companies participating in the new shipper reviews. The Department subsequently issued supplemental questionnaires to all companies under review between June 2007 and December 2007.

##### **Extension of Preliminary Results**

On September 12, 2007, the Department extended the preliminary results of these new shipper reviews to December 21, 2007. See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Time Limits for the Preliminary Results of the 2006-2007 Semi-Annual New Shipper Reviews*, 72 FR 52048 (September 12, 2007). On December 21, 2007, the Department extended the preliminary results of these new shipper reviews a second time to January 22, 2008. See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Time Limits for the Preliminary Results of the 2006-2007 Semi-Annual New Shipper Reviews*, 72 FR 72668 (December 21, 2007).

##### **Surrogate Country and Surrogate Values**

On June 22, 2007, the Department sent interested parties a letter requesting comments on the surrogate country and information pertaining to valuing factors of production.

On August 7, 2007, Ngoc Thai requested that the Department extend the deadline to submit information pertaining to valuing factors of production. On August 9, 2007, the Department extended the deadline to submit information pertaining to valuing factors of production by three weeks to August 31, 2007.

On August 31, 2007, Catfish Farmers of America and individual U.S. catfish processors (collectively, "Petitioners") submitted comments on the surrogate

country and information pertaining to valuing factors of production. No other party has submitted surrogate values or surrogate country comments on the record of this proceeding.

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

The product covered by this *Order* is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti*, *Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*), and *Pangasius Micronemus*. Frozen fish fillets are lengthwise cuts of whole fish. The fillet products covered by the scope include boneless fillets with the belly flap intact ("regular" fillets), boneless fillets with the belly flap removed ("shank" fillets), boneless shank fillets cut into strips ("fillet strips/finger"), which include fillets cut into strips, chunks, blocks, skewers, or any other shape. Specifically excluded from the scope are frozen whole fish (whether or not dressed), frozen steaks, and frozen belly-flap nuggets. Frozen whole dressed fish are deheaded, skinned, and eviscerated. Steaks are bone-in, cross-section cuts of dressed fish. Nuggets are the belly-flaps.

The subject merchandise will be hereinafter referred to as frozen "basa" and "tra" fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under tariff article codes 1604.19.4000,<sup>2</sup> 1604.19.5000,<sup>3</sup> 0305.59.4000,<sup>4</sup> 0304.29.6033<sup>5</sup> (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the Harmonized Tariff Schedule of the United States ("HTSUS").<sup>6</sup> This *Order*

<sup>2</sup> See Memorandum to the File, from Cindy Robinson, Senior Case Analyst, Office 9, Import Administration, Subject: Frozen Fish Fillets: Third Addition of Harmonized Tariff Number, (March 1, 2007). This HTS went into effect on March 1, 2007.

<sup>3</sup> See Memorandum to the File, from Cindy Robinson, Senior Case Analyst, Office 9, Import Administration, Subject: Frozen Fish Fillets: Third Addition of Harmonized Tariff Number, (March 1, 2007). This HTS went into effect on March 1, 2007.

<sup>4</sup> See Memorandum to the File, from Cindy Robinson, Senior Case Analyst, Office 9, Import Administration, Subject: Frozen Fish Fillets: Second Addition of Harmonized Tariff Number, (February 2, 2007). This HTS went into effect on February 1, 2007.

<sup>5</sup> See Memorandum to the File, from Cindy Robinson, Senior Case Analyst, Office 9, Import Administration, Subject: Frozen Fish Fillets: Addition of Harmonized Tariff Number, (January 30, 2007). This HTS went into effect on February 1, 2007.

<sup>6</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

Continued

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.

#### Verification

Pursuant to 19 CFR 351.307(b)(iv), we conducted verification of the sales and factors of production ("FOP") for Anvifish.<sup>7</sup>

#### Affiliation

Section 771(33) of the Tariff Act of 1930, as amended, ("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."

#### Vinh Quang

Based on the record evidence in these new shipper reviews, we preliminarily find that Vinh Quang is affiliated with New Century Trading Company ("New Century"), pursuant to section 771(33) of the Act. For a detailed discussion of our analysis, please see Memorandum to James C. Doyle, Director, Office 9,

through Alex Villanueva, Program Manager, Office 9, from Julia Hancock, Senior Case Analyst, Subject: New Shipper Review of the Antidumping Duty Order on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Affiliation and Collapsing, (January 22, 2008) ("Vinh Quang Affiliation Memo"). In addition, based on the evidence presented in Vinh Quang's questionnaire responses, we preliminarily find that Vinh Quang and New Century should be treated as a single entity for purposes of this new shipper review. See 19 CFR 351.401(f)(1); see also Vinh Quang Affiliation Memo for a discussion of the proprietary aspects of this relationship.

#### Ngoc Thai

Based on the record evidence in these new shipper reviews, we preliminarily find that Ngoc Thai is affiliated with Thai Tan Seafood Company ("Thai Tan"), Ngoc Thu Company Ltd. ("Ngoc Thu"), and Kim Anh Company ("Kim Anh"), pursuant to section 771(33) of the Act. For a detailed discussion of our analysis, please see Memorandum to James C. Doyle, Director, Office 9, through Alex Villanueva, Program Manager, Office 9, from Michael Holton, Senior Case Analyst, Subject: New Shipper Review of the Antidumping Duty Order on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Affiliation and Collapsing of Ngoc Thai Company Ltd., (January 22, 2008) ("Ngoc Thai Affiliation Memo"). In addition, based on the evidence presented in Ngoc Thai's questionnaire responses, we preliminarily find that Ngoc Thai, Thai Tan, Ngoc Thu, and Kim Anh should be treated as a single entity for purposes of this new shipper review. See 19 CFR 351.401(f)(1); see also Ngoc Thai Affiliation Memo for a discussion of the proprietary aspects of this relationship.

#### Anvifish

Based on the record evidence in these new shipper reviews, we preliminarily find that Anvifish was not affiliated with its U.S. customer, D&T Food Company ("D&T"), within the meaning of section 771(33) of the Act for the portion of the POR that Anvifish sold subject merchandise to D&T that were then resold by D&T. In their submissions, Anvifish reported that one of D&T's owners, Daniel Yet, was affiliated to Anvifish through his ownership in an investment company. Anvifish reported that this investment company was a shareholder of Anvifish during the POR. However, the Department finds that the record evidence demonstrates that Anvifish

was not affiliated with D&T through this investment company's ownership in Anvifish during the portion of the POR that Anvifish sold subject merchandise to D&T that was then resold by D&T. See *Honey from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review*, 70 FR 38873 (July 6, 2005) and accompanying Issues and Decision Memorandum at Comment 8 ("Honey 2nd AR") (the Department found that the respondents, Jinfu PRC and Jinfu USA, were not affiliated during the period of review because the purchase of stocks was not completed during the portion of the period of review that the sales occurred). In the *Honey 2nd AR*, the Department found that the respondents were not affiliated because the certificate of stock transfer was not dated within the portion of the period of review that the sales occurred and there was "no reliable evidence that the original owner received payment for his interest" prior to the issuance of the certificate of stock transfer. *Id.* In this case, the Department notes that the record does not contain a certificate of stock transfer or similar documentation that identifies that this investment company obtained shares in Anvifish during the portion of the POR that Anvifish sold subject merchandise to D&T and was then resold by D&T. Although it is the Department's practice to make affiliation determinations based on the context of the execution of a stock transfer and the purchase in a company, absent this information, the Department has relied upon payment documentation as the date for when the investment company transferred funds and thus became a part owner of Anvifish. See *Honey 2nd AR*, 70 FR 38873 at Comment 8; Anvifish's Verification Report, at 6.

During the POR, Anvifish made multiple sales to D&T. See Memorandum to the File through Alex Villanueva, Program Manager, Office 9, from Nicole Bankhead, Senior Case Analyst: Preliminary Results of the Antidumping New Shipper Review of Frozen Fish Fillets from Vietnam: Preliminary Results Analysis Memo of Anvifish Co., Ltd. ("Anvifish") (January 22, 2008) ("Anvifish's Preliminary Analysis Memo"), at 2. Out of these sales, all but one were made prior to the date the Department has determined as the appropriate date of affiliation, *i.e.*, investment payment date. The one sale made after the Department finds Anvifish affiliated with D&T within the meaning of section 771(33) of the Act was subsequently not resold during the

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.

<sup>7</sup> The verification of Anvifish's sales and FOPs took place from November 5 through November 13, 2007. See Memorandum to the File through Alex Villanueva, Program Manager, Office 9, from Nicole Bankhead, Senior Case Analyst: Verification of the Sales and Factors Response of Anvifish Co., Ltd. ("Anvifish") and its Affiliate D&T Food Company ("D&T") in the Antidumping New Shipper Review of Frozen Fish Fillets from Vietnam (January 22, 2008) ("Anvifish's Verification Report").

POR. Therefore, for these preliminary results, the Department is treating all but one sale made between Anvifish and D&T on an export price ("EP") basis. However, the Department finds that Anvifish is affiliated with D&T as of the date of the payment documentation, within the meaning of section 771(33) of the Act. *See* Anvifish's Preliminary Analysis Memo.

### Preliminary Intent To Rescind

#### Vinh Quang

Section 351.214(b)(2)(iv)(A) of the Department's regulations states that documentation establishing the date of first entry is: "The date on which subject merchandise of the exporter or producer making the request was first entered, or withdrawn from warehouse, for consumption, or, if the exporter or producer cannot establish the date of first entry, the date on which the exporter or producer first shipped the subject merchandise for export to the United States." *See* 19 CFR 351.214(b)(2)(iv)(A). Additionally, section 351.214(c) of the Department's regulations states: "An exporter or producer may request a new shipper review within one year of the date referred to in paragraph (b)(2)(iv)(A) of this section." *See* 19 CFR 351.214(c).

As discussed above, we preliminarily determine that Vinh Quang and New Century are a single entity. *See* Vinh Quang Affiliation Memo. Additionally, we find that as a single entity Vinh Quang and New Century shipped subject merchandise over a year prior to the POR of this new shipper review. As a result, at the time of Vinh Quang's request for review, the deadline for requesting a new shipper review of Vinh Quang and New Century's first entry of subject merchandise had passed, pursuant to sections 351.214(b)(2)(iv)(A) and 351.214(c) of the Department's regulations. *Id.* Accordingly, we find that Vinh Quang/New Century's request for a new shipper review is untimely, pursuant to sections 351.214(b)(2)(iv)(A) and 351.214(c) of the Department's regulations. *See* Vinh Quang Affiliation Memo. Therefore, the Department is preliminarily rescinding Vinh Quang's new shipper review.

#### Ngoc Thai

Section 351.214(b)(2)(iv)(A) of the Department's regulations states that documentation establishing the date of first entry is: "The date on which subject merchandise of the exporter or producer making the request was first entered, or withdrawn from warehouse, for consumption, or, if the exporter or producer cannot establish the date of

first entry, the date on which the exporter or producer first shipped the subject merchandise for export to the United States." *See* 19 CFR 351.214(b)(2)(iv)(A). Additionally, section 351.214(c) of the Department's regulations states: "An exporter or producer may request a new shipper review within one year of the date referred to in paragraph (b)(2)(iv)(A) of this section." *See* 19 CFR 351.214(c).

As discussed above, we preliminarily determine that the Kim Anh Group, including Ngoc Thai, is a single entity. *See* Ngoc Thai Affiliation Memo. Additionally, we find that as a single entity the Kim Anh Group shipped subject merchandise over a year prior to the POR of this new shipper review. As a result, at the time of Ngoc Thai's request for review, the deadline for requesting a new shipper review of the Kim Anh Group's first entry of subject merchandise had passed, pursuant to sections 351.214(b)(2)(iv)(A) and 351.214(c) of the Department's regulations. *Id.* Accordingly, we find that the Kim Anh Group's request for a new shipper review is untimely, pursuant to sections 351.214(b)(2)(iv)(A) and 351.214(c) of the Department's regulations. *See* Ngoc Thai Affiliation Memo. Therefore, the Department is preliminarily rescinding Ngoc Thai's new shipper review.

### New Shipper Review Bona Fide Analysis

Consistent with the Department's practice, we investigated the *bona fide* nature of the sale made by Anvifish for this new shipper review. We found that the new shipper sale by Anvifish was made on a *bona fide* basis. Based on our investigation into the *bona fide* nature of the sales, the questionnaire responses submitted by Anvifish, and our verification thereof, as well the companies' eligibility for a separate rate (*see* Separate Rates Determination section below) and the Department's preliminary determination that Anvifish was not affiliated with any exporter or producer that had previously shipped subject merchandise to the United States, we preliminarily determine that Anvifish 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 Anvifish's sales of subject merchandise to the United States as an appropriate transaction for this new shipper review.<sup>8</sup>

<sup>8</sup> For more detailed discussion of this issue, please *see* Memorandum from Nicole Bankhead, Senior Case Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9, to James C.

### Facts Available ("FA")

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

Doyle, Director, Office 9: Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Anvifish Co., Ltd., (January 22, 2008).

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).

Adverse inferences are appropriate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.” See SAA; *Mannesmannrohrwerke AG v. United States*, 77 F. Supp. 2d 1302 (CIT 1999). The Court of Appeals for the Federal Circuit (“CAFC”), in *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (“*Nippon Steel*”), provided an explanation of the “failure to act to the best of its ability” standard, stating that the ordinary meaning of “best” means “one’s maximum effort,” and that the statutory mandate that a respondent act to the “best of its ability” requires the respondent to do the maximum it is able to do. *Id.* The CAFC acknowledged, however, that “deliberate concealment or inaccurate reporting” would certainly be sufficient to find that a respondent did not act to the best of its ability, although it indicated that inadequate responses to agency inquiries “would suffice” as well. *Id.* Compliance with the “best of the ability” standard is determined by assessing whether a respondent has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in an investigation. *Id.* The CAFC further noted that while the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping. *Id.*

For these preliminary results, in accordance with section 776(a)(2)(A) of the Act, we have determined that the use of facts available is appropriate for Anvifish’s reported indirect labor usage and its unreported containerization.

#### A. Labor

Under section 776(a)(2)(D) of the Act, the Department may use facts otherwise available in reaching the applicable determination if the respondent provides information but the

information cannot be verified. In the original Section D questionnaire response, Anvifish stated that its reported indirect labor included supervisors, technical workers, and contract labor but that it did not keep daily records of its contract labor. See Anvifish’s Section D Questionnaire Response, (May 4, 2007) at D–12. The Department issued two supplemental questionnaires requesting that Anvifish provide supporting documentation for its reported technical and contract labor, which were based on estimated labor hours. In its supplemental Section D questionnaire response, Anvifish stated that it did not see the need to record the working hours of the contract labor as they were not paid by the hour. See Anvifish’s Supplemental Section D Questionnaire Response, (August 13, 2007) at 23 and Exhibit 27. In its second supplemental Section D questionnaire response, Anvifish stated that it reported its technical workers as indirect labor and provided a contract for the technical workers. See Anvifish’s Second Supplemental Section D Questionnaire Response, (October 16, 2007) at 32 and Exhibit 28. However, at verification, Anvifish stated that they were unable to recreate the estimated hours reported for technical and contract labor in Anvifish’s questionnaire responses because they did not track the actual hours. See Anvifish’s Verification Report at 38–39 and Exhibit AV VE 15. Accordingly, the Department was unable to verify Anvifish’s reported indirect labor hours for technical and contract labor. *Id.* Because Anvifish did not provide verifiable documentation for Anvifish’s technical and contract labor, we applied facts available to Anvifish’s consumption of indirect labor pursuant to section 776(a)(2)(D) of the Act.

Pursuant to section 776(b) of the Act, the Department may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available when the party fails to cooperate by not acting to best of its ability. See *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808 (October 16, 1997); *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (August 30, 2002). Additionally, the Department notes that the standard for using adverse facts available (“AFA”) does not condone “inattentiveness, carelessness, or inadequate record keeping.” See *Nippon*

*Steel Corp. v. United States*, 337 F. 3d 1373, 1382 (Fed. Cir. 2003).

Accordingly, adverse inferences are appropriate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.” See SAA, at 870. Furthermore, “{a}ffirmative evidence of bad faith on the part of a Respondent is not required before the Department may make an adverse inference.” See *Antidumping Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997).

In this instance, Anvifish failed to act to the best of its ability to provide the Department with indirect labor hours that could be verified. Anvifish reported indirect labor hours for technical and contract labor. As a respondent, Anvifish had the responsibility to accurately report its indirect labor usage rates. However, it was only at verification that it became clear that the numbers provided by Anvifish had no basis in documentary evidence of actual consumption. Despite numerous opportunities, Anvifish did not act to the best of its ability to provide accurate, verifiable information. Contrary to Anvifish’s pre-verification representations, at verification the Department discovered that the indirect labor usage rates reported by Anvifish were not representative of the actual use of that factor of production. Consistent with the Department’s practice in other cases where a respondent fails to cooperate to the best of its ability, and in keeping with section 776(b) of the Act, the Department finds that the use of partial AFA is warranted for Anvifish’s unverifiable labor usage rates. Therefore, for the preliminary results, the Department will apply as partial AFA, the single highest month of attendance days for the technical workers to calculate the AFA labor usage rate for Anvifish’s total indirect labor for technical workers and contract labor. See *Notice of Final Determination of Sales at Less than Fair Value: Tetrahydrofurfuryl Alcohol from the People’s Republic of China*, 69 FR 34130 (June 18, 2004) and accompanying Issues and Decision Memorandum at Comment 1; *Notice of Final Antidumping Duty Determination of Sales at Less than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003) (“*Vietnam Fish Fillets*”) and accompanying Issues and Decision Memorandum at Comment 1.

#### B. Containerization

Under section 776(a)(A) and (D) of the Act, the Department may use facts

otherwise available in reaching the applicable determination if the respondent withheld information that had been requested and provides information that cannot be verified. In its three Section C questionnaire responses, Anvifish did not report that it incurred containerization at the port as a sales expense for its sales of subject merchandise. However, at verification, the Department discovered that Anvifish did incur containerization at the port as a sales expense for certain of its sales of subject merchandise. See Anvifish's Verification Report, at 27 and GRO VE 9C. Because Anvifish withheld this data and failed to report containerization as a sales expense to the Department, despite the Department's giving Anvifish two additional opportunities to correct its U.S. sales data, we have applied facts available for Anvifish's containerization pursuant to section 776(a)(2)(A) and (D) of the Act. As partial facts available, the Department is deducting containerization using a surrogate value for those sales where Anvifish incurred this expense.

#### Non-Market Economy Country Status

In every Vietnamese antidumping duty ("AD") case conducted by the Department, 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 *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004); *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the First Administrative Review*, 71 FR 14170 (March 21, 2006) ("FFF1 Final Results"); *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Second Administrative Review*, 72 FR 13242 (March 21, 2007) ("FFF2 Final Results"). No party to this proceeding has contested such treatment. Accordingly, we calculated normal value ("NV") in accordance with section 773(c) of the Act, which applies to NME countries.

#### Separate Rates Determination

A designation of a country 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* ("Sparklers"), 56 FR 20588 (May 6, 1991), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("Silicon Carbide").

##### 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.

Throughout the course of this proceeding, Anvifish has placed sufficient evidence on the record that demonstrate the absence of *de jure* control. Specifically, Anvifish has placed on the record a number of documents to demonstrate absence of *de jure* control including business licenses, financial statements, and narrative information regarding government laws and regulations on corporate ownership, and the companies' operations and selection of management. The evidence provided by Anvifish supports a finding of a *de jure* absence of governmental control over its export activities. 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 respondent.

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

The absence of *de facto* governmental control over exports is based on whether a company: (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 and *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).

The Department conducted a separate-rates analysis for Anvifish. In its questionnaire responses, Anvifish submitted evidence indicating an absence of *de facto* governmental control over its export activities. Specifically, this evidence indicates that: (1) Anvifish sets its own export prices independent of the government and without the approval of a government authority; (2) Anvifish retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) Anvifish 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 Anvifish's use of export revenues. The questionnaire responses of Anvifish do not suggest that pricing is coordinated among exporters. During our analysis of the information on the record, we found no information indicating the existence of government control. Therefore, the Department preliminarily finds that Anvifish has established *prima facie* that they qualify for separate rates under the criteria established by *Silicon Carbide* and *Sparklers*.

##### 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 sources of the surrogate factor values are discussed under the "Normal Value" section

below and in the Memorandum to the File through Alex Villanueva, Program Manager, Office 9 from Julia Hancock, Senior Analyst, Office 9: Antidumping Duty Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results, (January 22, 2008) ("Factor Valuation Memo").

As discussed in the "Separate Rates" section, above, the Department considers Vietnam to be an NME country. The Department has treated Vietnam as an NME country in all previous antidumping proceedings. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding contested such treatment. Accordingly, we treated Vietnam as an NME country for purposes of these reviews and calculated NV, pursuant to section 773(c) of the Act, by valuing the FOPs in a surrogate country.

The Department determined that Bangladesh, Pakistan, India, Indonesia, and Sri Lanka are countries comparable to Vietnam in terms of economic development.<sup>9</sup> Once it has identified economically comparable countries, the Department's practice is to select an appropriate surrogate country from the list 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 have found that Bangladesh is a significant producer of comparable merchandise. We find Bangladesh to be a reliable source for surrogate values because Bangladesh is at a similar level of economic development pursuant to section 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has publicly available and reliable data. See Memorandum to the File, through James C. Doyle, Office Director, Office 9, Import Administration, and Alex Villanueva, Program Manager, Office 9, from Julia Hancock, Senior Analyst, Re: New Shipper Reviews of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Selection of a Surrogate Country, (January 22, 2008). Thus, we have selected Bangladesh as the primary surrogate country for this administrative review.

However, in certain instances where Bangladeshi data was not available, we used data from Indian sources.

#### Fair Value Comparisons

To determine whether sales of the subject merchandise made by Anvifish to the United States were at prices below NV, we compared Anvifish's export price ("EP") to NV, as described below.

#### Export Price

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

Where movement expenses were provided by NME-service providers or paid for in NME currency, we valued these services using either Bangladeshi or Indian surrogate values. See Factor Valuation Memo. Where applicable, we used the actual reported expense for those movement expenses provided by ME suppliers and paid for in ME currency.

#### 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 Anvifish, pursuant to sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). As the basis for NV, Anvifish provided FOPs used in each of the stages for processing frozen fish fillets.

To calculate NV, we valued Anvifish's reported per-unit factor quantities using publicly available Bangladeshi, Indian, and Indonesian surrogate values. In selecting surrogate values, we considered the quality, specificity, and

contemporaneity of the available values. As appropriate, we adjusted the value of material inputs to account for delivery costs. Specifically, we added surrogate freight costs to surrogate values using the reported distances from the Vietnam port to the Vietnam factory, or from the domestic supplier to the factory, where appropriate. This adjustment is in accordance with the decision of the 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*. Import data from South Korea, Thailand and Indonesia were excluded from the surrogate country import data due to generally available export subsidies. See *China Nat'l Mach. Import & Export Corp. v. United States*, CIT 01–1114, 293 F. Supp. 2d 1334 (CIT 2003), *aff'd* 104 Fed. Appx. 183 (Fed. Cir. 2004), and *Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651, and accompanying Issues and Decision Memorandum at Comment 4 (March 15, 2005). Additionally, we excluded prices from NME countries and imports that were labeled as originating from an "unspecified" Asian country. The Department excluded these imports because it could not ascertain whether they were from either an NME country or a country with general export subsidies. We converted the surrogate values to U.S. dollars as appropriate, using the official exchange rate recorded on the dates of sale of subject merchandise in this case, obtained from Import Administration's Web site at <http://www.ia.ita.doc.gov/exchange/index.html>. For further detail, see Factor Valuation Memo.

#### Preliminary Results of the Reviews

As a result of our review, we preliminarily find that the following margins exist for the period August 1, 2006, through January 1, 2007:

#### CERTAIN FROZEN FISH FILLETS FROM VIETNAM

Manufacturer/exporter	Weighted-average margin (percent)
Anvifish .....	34.33

The Department will disclose to parties of this proceeding the calculations performed in reaching the

<sup>9</sup> See Memorandum from Ron Lorentzen, Director, Office of Policy, to Alex Villanueva, Program Manager, China/NME Group, Office 9: Antidumping Administrative Review of Certain Frozen Fish Fillets ("Frozen Fish") from the Socialist Republic of Vietnam: Request for a List of Surrogate Countries (May 23, 2007).

preliminary results within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping duty new shipper review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, in accordance with 19 CFR 351.301(c)(1), for the final results of this new shipper review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. 19 CFR 351.301(c)(1) does not envision the submission of additional, previously absent-from-the-record alternative surrogate value information. Therefore, parties should take note that surrogate value data that are introduced as rebuttal to a surrogate value submission generally will not fall within the meaning and applicability of 19 CFR 351.301(c)(1). *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission*, in Part, 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of this new shipper 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 5 days after the deadline for submitting the case briefs. *See* 19 CFR 351.309(d). The Department requests that interested parties provide an executive summary of each argument contained within the case briefs and rebuttal briefs.

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 intends to issue the final results of these new shipper reviews, which will include the results of its analysis raised in any such comments, within 90 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

#### Assessment Rates

Upon completion of the final results, pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries on a per-unit basis.<sup>10</sup> calculate an assessment rate on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. If these preliminary results are adopted in our final results of review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer) per-unit duty assessment rates. 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 is above *de minimis*.

#### Cash-Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of subject merchandise from Anvifish 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 Anvifish, 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 subject merchandise exported by Anvifish but not manufactured by Anvifish, the cash deposit rate will continue to be the

<sup>10</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 of each entry of the subject merchandise during the POR.

Vietnam-wide rate (*i.e.*, 63.88 percent); and (3) for subject merchandise manufactured by Anvifish, 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 for those specific producer-exporter combinations. 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), 751(a)(2)(B), and 777(i) of the Act and 19 CFR 351.214(h)(i).

Dated: January 22, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

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#### DEPARTMENT OF COMMERCE

##### International Trade Administration

[A-533-840]

#### Certain Frozen Warmwater Shrimp from India; Partial Rescission of Antidumping Duty Administrative Review

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

**SUMMARY:** The Department of Commerce (the Department) is rescinding the administrative reviews of the antidumping duty order on certain frozen warmwater shrimp from India for the period February 1, 2006, through January 31, 2007, for 114 companies, based on: 1) timely withdrawals of the review requests; 2) confirmed statements of no shipments during the period of review (POR); 3) our inability to locate certain companies; and/or 4) duplicated names in our notice of initiation.