MEMORANDUM TO:  Gary Taverman  
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations  

FROM: James Doyle  
Director, Office V  
Antidumping and Countervailing Duty Operations  


SUMMARY  

The Department of Commerce (the Department) analyzed the comments submitted by the petitioners¹ and the respondents² in the 12th administrative review of the antidumping duty order on certain frozen fish fillets (fish fillets) from the Socialist Republic of Vietnam (Vietnam). Following the Preliminary Results,³ and the analysis of the comments received, we made changes to the margin calculations for the final results. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.  

CASE ISSUES  

Comment 1  Assignment of Vietnam-Wide Rate to Caseamex  
Comment 2  Assignment of Vietnam-Wide Rate to Mandatory Respondents  
Comment 3  Whether the Department Must Corroborate the Vietnam-Wide Rate  
Comment 4  Treatment of HVG and the QVD Companies  
Comment 5  Ministerial Errors  

¹ The Catfish Farmers of America and individual U.S. catfish processors (collectively, the petitioners).  
² Case and/or rebuttal briefs were filed by the following respondents: (1) Cantho Import-Export Seafood Joint Stock Company (Caseamex), Golden Quality Seafood Corporation (Golden Quality), Hung Vuong Group (HVG), Thuan An Production Trading and Services Co., Ltd. (Tafishco), and Vinh Quang Fisheries Corporation (Vinh Quang).  
BACKGROUND

On October 6, 2015, the Department initiated the 12th administrative review of fish fillets from Vietnam.4 On September 19, 2016, the Department published the Preliminary Results of this administrative review. On January 11, 2017, the Department extended the deadline for the final results to February 16, 2017.5 On February 16, 2017, the Department fully extended the deadline for the final results to March 20, 2017.6 Between October 19, 2016 and February 14, 2017, interested parties submitted case and rebuttal briefs.7

SCOPE OF THE ORDER

The product covered by the 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) and 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 code 0304.62.0020 (Frozen Fish Fillets of the species Pangasius, including basa and tra), and may enter under tariff article codes 0305.59.0000, 1604.19.2100, 1604.19.3100, 1604.19.4100, 1604.19.5100, 1604.19.6100 and 1604.19.8100 of the Harmonized Tariff Schedule of the United States (HTSUS).8

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7 See the October 19, 2016, submissions of Petitioners, Golden Quality, Tafishco and Vinh Quang; the October 31, 2016, submissions of the petitioners, Tafishco; the February 14, 2017 submission of Tafishco.
8 Until June 30, 2004, these products were classifiable under HTSUS 0304.20.6030, 0304.20.6096, 0304.20.6043 and 0304.20.6057. From July 1, 2004, until December 31, 2006, these products were classifiable under HTSUS 0304.20.6033. From January 1, 2007, until December 31, 2011, these products were classifiable under HTSUS 0304.20.6033.
The order covers all frozen fish fillets meeting the above specifications, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

**SEPARATE RATES**

In the *Preliminary Results*, we determined that the following four companies met the criteria for separate rate status: (1) CUU Long Fish Joint Stock Company (CL-Fish Corp.); (2) GODACO Seafood Joint Stock Company (GODACO); (3) Green Farms Seafood Joint Stock Company (Green Farms Seafood JSC); and (4) NTSF Seafoods Joint Stock Company (NTSF Seafoods). With respect to these companies, we have not received any information or argument since the issuance of the *Preliminary Results* that provides a basis for reconsideration of these determinations. Therefore, the Department continues to find that CL-Fish Corp, GODACO, Green Farms Seafood JSC, and NTSF Seafoods meet the criteria for a separate rate.

**DISCUSSION OF THE ISSUES**

**Comment 1  Assignment of Vietnam-Wide Rate to Caseamex**

*Caseamex’s Comments*

- The Vietnamese government entity (the GOV) that owns a portion of Caseamex divested all of its shares of the company during the POR, and thus, “there is no longer any indicia of *de facto* (or *de jure*) government control over Caseamex.” Upon full payment for the transfer of shares owned by the GOV, the appointment of the General Director as its agent became null and void, and the GOV had no activity or involvement in the company.
- In *Brake Drum & Rotor Mfrs*, the Court found that the presumption that all companies are government controlled and should receive a single, country-wide rate is rebuttable if the respondent company can demonstrate both *de jure* and *de facto* autonomy from the government. In *Qingdao Taifa*, the Court recognized that a “town or local government’s ownership interest in a respondent, without more, does not render the respondent’s prices and costs inherently unreliable or sufficiently linked to a China-wide rate.”

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0304.29.6033. On March 2, 2011, the Department added two HTSUS numbers at the request of U.S. Customs and Border Protection (CBP) that the subject merchandise may enter under: 1604.19.2000 and 1604.19.3000, which were changed to 1604.19.2100 and 1604.19.3100 on January 1, 2012. On January 1, 2012, the Department added the following HTSUS numbers at the request of CBP: 0304.62.0020, 0305.59.0000, 1604.19.4100, 1604.19.5100, 1604.19.6100 and 1604.19.8100.

9 See PDM at 7.
10 See Caseamex’s case brief at 3-4.
12 See Caseamex’s case brief citing *Qingdao Taifa Group Co., v. United States*, 33 CIT at 1090, 1101-1102 (2009) (*Qingdao Taifa*).
In *Graphite Electrodes*, the Department disagreed with the petitioners that an individual’s concurrent positions as owner of the Fangda Group and the National People’s Congress did not amount to *de facto* control of the Fangda Group.\(^{13}\)

The GOV’s selection of the General Director as its legal representative does not confer control over both parties’ interests, nor did the GOV have exclusive shareholder voting rights. In authorizing the General Director to exercise the GOV’s shareholder rights, the government entity did not gain control of the General Director’s shares, rather it lost control of its shareholder rights. Moreover, no record evidence exists that the GOV controls the General Director’s shares.

Caseamex’s corporate structure indicates that the Board of Directors/management makes all management appointments which requires 65 percent voting by shareholders. No single shareholder, or group of shareholders controls the selection of the Board of Director/management members. No single shareholder can nominate all board members.

The General Director did not nominate all board members, and did not appoint all of the managers. The government entity did not appoint the General Director to be the Chairman of the Board and General Director.

Therefore, the Department should restore Caseamex’s separate rate status, retroactively apply Caseamex’s separate rate to entries during the POR, and assign Caseamex a forward cash deposit rate. The Department is required to adjust future deposit rates after a change in the status of a company pursuant to the Department’s changed circumstances regulations.

**Petitioners’ Comments**

- Caseamex’s separate rate application made it clear that it was not independent from government control.

- In the *10th AR Final Results*, the Department rejected Caseamex’s argument that the GOV’s selection of the General Director did not confer control. Rather, the Department found that the Vietnamese government exerted influence over the selection of Caseamex’s management.\(^{14}\)

- In the *11th AR Final Results*, the Department found that the two largest shareholders, one of which was the government, and the other of which was the “sole and exclusive representative” of the government and its respective shares, had the sole ability to nominate members of the company’s board.\(^{15}\)

- No record evidence exists to show that Caseamex’s new shareholders are free from GOV control after the date of transfer of shares.

- A determination as to whether Caseamex’s future sales of subject merchandise are free from *de jure* and *de facto* government control should be done in the context of the next administrative review.

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\(^{14}\) See the petitioners’ rebuttal brief at 4 citing *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 80 FR 2394 (January 16, 2015) (*10th AR Final Results*) and accompanying Issues and Decision Memorandum at Comment XXI (citing separate memorandum entitled “Proprietary Analysis of Comment XXI: Caseamex – Separate Rate Status,” dated January 7, 2015 (Caseamex Separate Rate Memo)).

\(^{15}\) See the petitioners’ rebuttal brief citing *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 17435 (March 29, 2016) (*11th AR Final Results*) and accompanying Issues and Decision Memorandum at Comment VI.
Caseamex has several name iterations. The Department should reference all name iterations in the final results to ensure all Caseamex entries are properly entered under the Vietnam-wide entity rate.

**Department’s Position:** At the outset we note that the Department faced this identical issue in several previous administrative reviews of this order. In the last review, the Department made the following finding with respect to Caseamex’s separate rate status:

Thus, based on these facts, we determine that Caseamex does not have autonomy from the Vietnamese government in making decisions regarding the selection of management. We find that Caseamex is part of the Vietnam-wide entity and does not qualify for a separate rate.

The Department considers Vietnam to be a non-market economy (NME) country under section 771(18) of the Tariff Act of 1930, as amended (the Act). In antidumping duty (AD) proceedings involving NME countries, such as Vietnam, the Department has a rebuttable presumption that the export activities of all firms within the country are subject to government control and influence. The Department analyzes whether each entity exporting the merchandise under consideration is sufficiently independent under a test established in *Sparklers* and further developed in *Silicon Carbide*. According to this separate rate test, the Department will assign a separate rate in NME proceedings if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over its export activities. Companies which do not demonstrate an absence of both *de jure* and *de facto* government control are assigned a rate established for the Vietnam-wide entity, which it applies to all imports from any exporter that has not established its eligibility for a separate rate.

The separate rate test, where the respondents must demonstrate the absence of both *de jure* and *de facto* government control over its export activities, has been subject to litigation in the Courts. In *Sigma*, the Court of Appeals for the Federal Circuit (CAFC) affirmed that it was within the Department’s authority to employ a presumption for state control in a NME country and place the burden on the exporters to demonstrate an absence of central government control.

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16 See 10th AR Final Results at Comment XXI, citing to Caseamex Separate Rate Memo; 11th AR Final Results at Comment VI.
17 See 11th AR Final Results at Comment VI.
19 See Final Determination of Sales at Less Than Fair Value: Sparklers from the People’s Republic of China, 56 FR 20588, 20589 (May 6, 1991) (*Sparklers*).
20 See 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*).
21 See Sigma Corp v. United States, 117 F.3d at 1405-06 (Fed. Cir. 1997) (*Sigma*) (“We agree with the government that it was within Commerce’s authority to employ a presumption of state control for exporters in a nonmarket economy, and to place the burden on the exporters to demonstrate an absence of central government control. The antidumping statute recognizes a close correlation between a nonmarket economy and government control of prices, output decisions, and the allocation of resources. Moreover, because exporters have the best access to information pertinent to the ‘state control’ issue, Commerce is justified in placing on them the burden of showing a lack of state control.”) (internal citations omitted).
CAFC found that sections 771(18)(B)(iv)-(v) of the Act recognized a close correlation between a NME economy and government control of prices, output decisions, and allocation of resources and, therefore, the Department’s presumption of government control was reasonable.\(^\text{22}\) In \textit{Jiangsu 2015}, the Court of International Trade (CIT) ruled that the Department could “make reasonable inferences from the record evidence” when examining the totality of the circumstances in determining whether a respondent had demonstrated \textit{de jure} and \textit{de facto} control of its export activities.\(^\text{23}\) In \textit{Advanced Tech. II}, the CIT ruled that majority ownership by a government entity, either directly or indirectly, rules out a respondent’s ability to demonstrate an absence of \textit{de facto} control.\(^\text{24}\) The Department has previously explained why evidence of indirect or direct government ownership is a sufficient evidentiary basis on which to conclude that a NME government has the ability to exercise control over a company such that the company is ineligible for a separate rate:

...the majority ownership holding in and of itself means that the government exercises or has the potential to exercise control over the company’s operations generally, which may include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with normal business practices, we would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profitability of the company.\(^\text{25}\)

Although in \textit{Advanced Tech. II and III} the respondent was majority-owned by a government entity, in other cases, consistent with \textit{Jiangsu 2015}, the Department has examined the totality of

\(^{22}\) \textit{Id.}; see also \textit{Brake Drum & Rotor Mfrs}, 44 F.Supp. 2d at 243 (quoting Sigma, 117 F.3d at 1405 (Under the broad authority delegated to it from Congress, Commerce has employed ‘a presumption of state control for exporters in a non-market economy’... Under this presumption, all exporters receive one non-market economy country (NME) rate, or country-wide rate, unless an exporter can ‘affirmatively demonstrate’ its entitlement to a separate, company-specific margin by showing ‘an absence of central government control, both in law and in fact, with respect to exports)).


\(^{24}\) See \textit{Jiangsu 2015}, 121 F. Supp. 3d at 1267, citing to \textit{Advanced Technology and Materials Co. v. United States}, 938 F. Supp. 2d 1342 (CIT 2013) (\textit{Advanced Tech. II}), aff’d, 581 Fed. App’x 900 (Fed. Cir. 2014) (\textit{Advanced Tech. III}) (“Specifically, as a result of litigation challenging Commerce’s separate rate determinations in the diamond sawblades proceedings, Commerce has clarified its practice with regard to evaluating NME companies’ \textit{de facto} independence from government control. This revised practice, which was sustained by this Court and subsequently affirmed by the Court of Appeals, holds that ‘where a government entity holds a majority ownership share, either directly or indirectly, in the respondent exporter {or producer},’ such majority ownership holding ‘in and of itself’ precludes a finding of \textit{de facto} autonomy”).

the circumstances where a respondent is not majority owned by a government entity, and made a reasonable inference that the respondent does not control its export activities. For example, in *Truck & Bus Tires*, we found that the top four shareholders of a respondent were People’s Republic of China (PRC) State-owned Assets Supervision and Administration Commission (SASAC) entities, *i.e.*, state owned enterprises (SOE). These shareholders did not own the majority of shares, they accounted for 49.06 percent of the respondent’s ownership. However, the Department found that despite minority ownership, record evidence indicated that the respondent was controlled by a SOE, and we denied the respondent a separate rate. In another example, *Containers*, we found that a respondent was indirectly controlled by a SOE, despite owning a minority of shares, and denied that company a separate rate. In that case, two minority shareholders owned a combined 48.2 percent of the respondent, but in turn were 100-percent-owned by a PRC SASAC. We examined the totality of the circumstances in *Containers* and made a reasonable inference that the PRC SASAC, through the minority shareholders it owned, exercised control over important management organizations, such as board of directors, which has the authority to appoint managers that controlled the operations of the respondent.

One of the two largest shareholders of Caseamex is the GOV, which: (a) directly administers investment policy on behalf of the government; (b) advises the government on investment projects in the Can Tho City area; and (c) acts as the entity which represents the local government’s equity interests in specific industries or companies. The General Director also served as the Chairman of the Board of Directors, and presides over the general meeting. The General Director stated that the government appointed him “as their sole and exclusive representative in the company to make all decision {sic} on their behalf, including the appointment, replacement and removal of any directors and management.” This shareholder has fulfilled these obligations at Caseamex.

We disagree with Caseamex’s assertions that the GOV and the General Director did not control the appointment of members to the Board of Directors. As noted above, the General Director was appointed by the GOV as its exclusive representative in the company. The Board of Directors then appointed the General Manager to appoint, replace and remove any directors and management. According to the Articles of Association, a shareholder, or group of

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27 *Id.*
28 *Id.*
30 *Id.*
31 *Id.*
32 See Caseamex Separate Rate Memo at 5.
33 *Id.*
34 *Id.* We note that in the Caseamex Separate Rate Memo, the Department inadvertently stated that the GOV appointed the General Director as a member of the Board of Directors, when there is no record evidence as to which entity appointed the General Director. See Caseamex Separate Rate Memo at 7.
35 *Id.*
shareholders, must have at least a five percent voting share to nominate an individual to the Board of Directors, which must be approved by a 65 percent shareholder vote in the General Meeting.  Only the two largest shareholders, the GOV and the General Director, surpassed the individual ownership threshold, which provides them with the right to nominate the company’s board members. While, in theory, the Articles of Association allow other shareholders to band together to put forward a nomination, a 65 percent shareholder vote is required by the General Meeting to approve any nomination. Due to the percentage of shares controlled by the General Manager, no nomination can meet the threshold to pass without his approval. While Caseamex correctly notes that the General Director and the GOV cannot simply appoint any individual they want to the Board of Directors, because of the number of shares they own, these shareholders completely control the nomination and approval process.

In Tetra, we found that government ownership is significant when the government’s ownership surpasses the threshold required to nominate a board member, and when the board controls the day-to-day operations of a company. In Tetra, we found that one shareholder, controlled by the government, can have the ability to control the appointment for all members of the Board of Directors. In this case, the GOV has surpassed the ownership threshold to nominate a board member. Consistent with Tetra, Caseamex’s board controls the day-to-day operations of Caseamex, determines the disposition of Caseamex’s profits, and makes other company decisions.

In its separate rate application, Caseamex indicated that there has been one change in its corporate structure, a sale of all shares held by the GOV, making the conditions under which the Department denied Caseamex a separate rate in previous reviews no longer applicable. However, although Caseamex contends that the GOV ceased any involvement in it, including voting rights and any other control of the company, this sale of shares was not finalized until after its sole POR sale was made. As such, Caseamex’s sale occurred under the conditions which the Department has found in previous reviews indicates that Caseamex does not have has autonomy from the GOV. Therefore, for these final results, we have continued to find that Caseamex is part of the Vietnam-wide entity and does not qualify for a separate rate.

36 See Caseamex’s November 5, 2015 submission at Exhibit 10.
37 See 1,1,1,2-Tetrafluoroethane from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 79 FR 62597 (October 20, 2014) (Tetra) and accompanying Issues and Decision Memorandum, at 10-11.
38 Id.
39 See Caseamex’s November 5, 2015 submission at Exhibit 11.
40 Id. at Exhibit 10. We noted in Vietnam Shrimp that where a government entity holds an ownership share, either directly or indirectly, in the respondent exporter, the majority ownership holding in and of itself means that the government exercises, or has the potential to exercise, control over the company’s operations. See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2013-2014, 80 FR 55328 (September 15, 2015) (Vietnam Shrimp) and accompanying Issues and Decision Memorandum at Comment 11. This may include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate. Id. Consistent with normal business practices, we would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profitability of the company. Id. While the combined holdings of the GOV and General Director are not a majority of shares, it is enough shares that these shareholders control who is nominated and approved to the Board of Directors, as explained above.
41 See Caseamex’s November 5, 2016 submission at 2.
It is important to note that, in NME cases, it is the respondents who have the responsibility to demonstrate their independence from government control, whether it be direct or indirect, and whether the government exercises or has the potential to exercise control over the respondents’ operations.\textsuperscript{42} We have examined the totality of the circumstances and made the reasonable inference from record evidence in determining that the GOV had the potential to exercise control of the selection of Caseamex’s management.\textsuperscript{43} As such, we have continued to deny Caseamex a separate rate in this administrative review.

Comment 2 Assignment of Vietnam-Wide Rate to Mandatory Respondents

\textit{Tafishco’s Comments}

- The Department has no statutory authority to issue a Vietnam-wide entity rate in this review. Specifically, the statute only provides for two types of rates, rates for individually investigated companies, and an all others rate. The Vietnam-wide rate is not an individual investigated rate, because the margin determined for the Vietnam-wide entity is unrelated to an individually investigated rate and all the others rate.

\textit{Golden Quality’s Comments}

- In the 8\textsuperscript{th} AR Final Results, the Department disagreed with the petitioners that adverse facts available (AFA) should be applied to Vinh Hoan for not reporting FOPs on a product matching control number (CONNUM)-specific basis. In that review, Vinh Hoan demonstrated why it could not provide CONNUM-specific FOP data, stating that its production and accounting records do not distinguish the physical characteristics requested by the Department, and the Department verified the information, as such.\textsuperscript{44} The Department accepted aggregated FOP reporting until the conclusion of the 11\textsuperscript{th} administrative review. The Department’s demand for CONNUM-specific data in the middle of that review was fundamentally unfair because Golden Quality does not keep/track CONNUM-specific information in its regular course of business. Golden Quality could not, post-facto, report data it did not have.\textsuperscript{45} As such, Golden Quality rationally and consistently maintained its books and records per the Department’s longstanding practice.

- In Activated Carbon, the Department noted that, as the final results occurred eight months into the current POR, it would be unreasonable to expect the respondent and its producers to adjust the way they maintained their records.\textsuperscript{46} Similarly, in Steel Nails, the Department

\textsuperscript{42} See Jiangsu 2015, 121 F. Supp. 3d at 1267; Wire Rod and accompanying Preliminary Decision Memorandum at “Separate Rates”.
\textsuperscript{43} See Jiangsu 2015, 121 F. Supp. 3d at 1266.
\textsuperscript{44} See Golden Quality’s case brief citing Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2010-2011, 78 FR 17350, 17354 (March 21, 2013) (8\textsuperscript{th} AR Final Results).
\textsuperscript{45} See Golden Quality’s case brief at 22.
found that the respondents in the fifth review did not have sufficient notice to begin tracking production and accounting records on a CONNUM-specific basis.\textsuperscript{47}

- In \textit{Shikoku Chems}, the CIT reminded the Department to refrain from imposing new methodology requirements without providing sufficient advance notice to interested parties.\textsuperscript{48}

- In \textit{Ad Hoc Shrimp}, the Court upheld the Department’s determination that AFA was unwarranted, whereby the Court cited that the “maximum efforts” obligation is subject to reasonableness.\textsuperscript{49}

- In this review, the Department’s imposition of a CONNUM-specific reporting requirement barred Golden Quality from being able to respond to the Department’s questionnaire, especially section D for the questionnaire, the portions of the questionnaire concerning FOPs. Moreover, this requirement reverses 11 years of prior practice and precedent.\textsuperscript{50} It would be unreasonable and unrealistic to compel Golden Quality to respond to a full antidumping questionnaire, only to have its data be rejected and find that Golden Quality failed anyway. Golden Quality should not be subjected to AFA due to futility and legal frustration presented to Golden Quality. The Department cannot apply AFA on an interested party that is unable to provide information in accordance with a new methodological change without providing interested parties prior notice.

- Golden Quality timely filed its separate rate certification and no changes have occurred to change its separate rate status. As such, the Department should restore Golden Quality’s \textit{de minimis} antidumping duty rate.

\textbf{Petitioners’ Comments}

- The contention that the Vietnam-wide rate is a country-wide rate is incorrect, because the Vietnam-wide rate is not assigned to all Vietnamese exporters, rather, it is an individual investigated rate assigned to exporters and producers that failed to demonstrate that they are free from government influence, particularly in their export activities.

- Regarding Golden Quality’s arguments, its submission of their separate rate certification does not preclude them from receiving an adverse determination.

- Contrary to Golden Quality’s assertions, in \textit{Activated Carbon}, the Department discovered during the course of the third review that the respondents were unable to report four out of 15 CONNUM product characteristics based on their accounting books and records, and the Department excused the respondents from having to report FOPs for those four CONNUMs because the respondents did not have sufficient notice of the agency’s reporting requirements.\textsuperscript{51} In \textit{Steel Nails}, the Department found that the respondents did not have adequate notice and the Department temporarily excused them from this requirement only for that review. Moreover, the Department placed all respondents on notice that it would require all respondents in future cases to report FOPs data on a CONNUM-specific basis.\textsuperscript{52} In


\textsuperscript{49}See Golden Quality’s case brief citing \textit{Ad Hoc Shrimp Trade Action Committee v. United States}, 675 F. Supp. 2d 1287 (CIT) (\textit{Ad Hoc Shrimp}).

\textsuperscript{50}See Golden Quality’s case brief at 6.

\textsuperscript{51}See the petitioners’ case brief citing \textit{Activated Carbon}.

\textsuperscript{52}See \textit{Steel Nails}, 81 FR at 14092 and accompanying Issues and Decision Memorandum at Comment 4.
Activated Carbon and Steel Nails, the respondents were not made aware of the CONNUM-specific reporting until during the proceedings.

- The Department’s requirement for reporting FOPs on a CONNUM-specific basis is a long-standing agency requirement. CONNUM-specific reporting stems from the antidumping statute that requires that U.S. sales reflect the normal values of subject merchandise based on the FOPs utilized in producing the merchandise. Golden Quality’s contention that CONNUM-specific reporting reverses 11 years of prior practice and precedent is false. The Department has required CONNUM-specific FOP information in each questionnaire issued in every segment of this proceeding since the original less-than-fair-value (LFTV) investigation.

- Golden Quality had ample time to modify its production process and accounting records, or could have provided estimates of CONNUM-specific data using established product-specific yields and allocated FOPs.

Department’s Position: As we found in the Preliminary Results, Golden Quality, Tafishco, and Viet Phu Foods and Fish Corporation (Viet Phu) were selected as mandatory respondents in the review, these companies did not respond to the AD questionnaire and, therefore, did not demonstrate that they were entitled to separate rates. Accordingly, we found these companies to be part of the Vietnam-wide entity, and applied the Vietnam-wide rate to their entries of subject merchandise during the POR. We did not apply AFA to Golden Quality, Tafishco, or Viet Phu, as Golden Quality and Tafishco suggest.

We disagree with Tafishco’s contention that the Department has no statutory or regulatory authority to issue a rate for the Vietnam-wide entity. While Tafishco argues that Congress intended to withhold from the Department the authority to determine a “country-wide” rate, it provided no information on the record of this review that speaks to Congress’ express intent in drafting the relevant statutory provisions to support its contention. The Department clearly has the authority to issue a Vietnam-wide rate. The Department’s practice of assigning a rate to all NME exporters that do not establish their eligibility for a separate rate is well-established, and has been upheld by the courts. In contrast to Tafishco’s argument, Sigma upholds the Department’s presumption of government control, and under this presumption, all exporters receive one NME country rate. Our presumption has been upheld by the courts, and the CAFC has stated that sections 771(18)(B)(iv)-(v) of the Act recognizes a close correlation between a NME economy and government control of prices, output decisions, and allocation of resources.

53 See the petitioners’ case brief citing 19 USC 1677b(a).
54 See the petitioners’ rebuttal brief at 10.
55 See PDM at 10.
56 This rate was a calculated rate in the eighth administrative review. See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Amended Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 29323 (May 20, 2013) (8th AR Amended Final Results).
57 See PDM at 10.
58 See Sigma, 117 F.3d at 1401.
59 See, e.g., Tetra, 79 FR at 62597 and accompanying Issues and Decision Memorandum at Comment 1.
60 See, e.g., Sigma, 117 F.3d at 1405.
61 See Brake Drum & Rotor Mfrs., 44 F. Supp. 2d at 243, citing to Sigma, 117 F.3d at 1405.
62 Id. at 229, 243, quoting Sigma, 117 F.3d at 1405 (“Under the broad authority delegated to it from Congress, Commerce has employed ‘a presumption of state control for exporters in a non-market economy’... Under this presumption, all exporters receive one non-market economy country (‘NME’) rate, or country-wide rate, unless an
The Department considers Vietnam to be a NME under section 771(18) of the Act. In this AD proceeding, which involves a NME country, the Department has a rebuttable presumption that the export activities of all firms within the country are subject to government control and influence and applies a rate established for the Vietnam-wide entity to all imports from an exporter that has not established its eligibility for a separate rate. The Department’s practice of assigning a NME-wide entity rate has been upheld by the CAFC. In Sigma, the CAFC affirmed that it was within the Department’s authority to employ a presumption for state control in a NME country and place the burden on the exporters to demonstrate an absence of central government control. Both the CAFC in Sigma and the CIT in Brake Drum & Rotor Mfrs, reasoned that sections 771(18)(B)(iv)-(v) of the Act recognize a close correlation between a NME economy and government control of prices, output decisions, and allocation of resources, and, therefore, these courts held that the Department’s presumption was reasonable. The application of a PRC-wide entity rate to all parties which were not eligible for a separate rate was also affirmed by the CAFC in Transcom II in 2002.

Thus, contrary to Tafishco’s assertions, the courts have
consistently upheld the Department’s authority to apply a presumption of state control in NME countries and to apply a single rate to all exporters that fail to rebut that presumption. The courts have agreed that, once a respondent has been held to be part of the NME-wide entity, inquiring into said respondent’s separate sales behavior ceases to be meaningful.\(^{69}\) Therefore, because Golden Quality, Tafishco, and Viet Phu failed to rebut the presumption of government control, the Department is no longer required to base the margin assigned to the Vietnam-wide entity, of which Golden Quality, Tafishco, and Viet Phu are a part, solely on their individual behavior.

We also disagree with Golden Quality’s contention that we have inappropriately assigned AFA to Golden Quality, as well as Tafishco and Viet Phu, as all three companies are a part of the Vietnam-wide entity. In Advanced Tech II, the CIT addressed and rejected a similar argument, stating that the following:

> Commerce did not apply adverse facts available to AT&M, Commerce rather found that AT&M had not rebutted the presumption of state control and assigned it the PRC-wide entity rate. These are two distinct legal concepts: a separate AFA rate applies to a respondent who has received a separate rate but has otherwise failed to cooperate fully whereas the PRC-wide rate applies to a respondent who has not received a separate rate.\(^{70}\)

Here, as in Advanced Tech II, the Department is not applying AFA to Golden Quality, as well as Tafishco and Viet Phu, but, rather, finds that these companies failed to rebut the presumption of government control and, as such, should receive the rate applied to the Vietnam-wide entity.

With respect to Golden Quality’s speculative arguments concerning the outcome of this administrative review had it responded to the Department’s AD questionnaire, at the outset, we note that the Department’s practice is clear with regard to the reporting of CONNUM-specific FOPs. Although the respondents participating in the original LTFV investigation were excused from reporting CONNUM-specific FOPs, the Department recognized the inaccuracies that could result in future administrative reviews if the respondents did not report CONNUM-specific FOPs.\(^{71}\) As a result, in the LTFV investigation, the Department placed the respondents on notice that in future segments it would require CONNUM-specific FOPs.\(^{72}\) In the 8th AR Final Results, the Department reminded the respondents of their obligation to report CONNUM-specific FOPs, noting that the Department “may require Vinh Hoan and other respondents to report {their} under 1677e in the first place”). \(^{\text{Id. at 1376 (citing Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1191 (Fed. Cir. 1990)).}}\)

\(^{69}\) See Advanced Tech II, 938 F. Supp. 2d at 1351, citing Watanabe Group Slip-Op 10-139 at 8 (“Commerce’s permissible determination that [a respondent] is part of the PRC-wide entity means that inquiring into [that respondent]’s separate sales behavior ceases to be meaningful.”) and Jiangsu 2014, 28 F. Supp. 3d at 1312 (referencing Watanabe at 8) (“losing all entitlement to an individualized inquiry appears to be a necessary consequence of the way in which Commerce applies the presumption of government control... applying a countrywide AFA rate without individualized findings of failure to cooperate is no different from applying such a countrywide AFA rate without individualized corroboration.”) (internal citations omitted).

\(^{70}\) See Advanced Tech II, 938 F. Supp. 2d at 1351.

\(^{71}\) See 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) and accompanying Issues and Decision Memorandum at Comment 18.

\(^{72}\) Id.
FOPs on a CONNUM-specific basis...” The Department noted that, although the respondent argued that it was unable to report FOP data on a CONNUM-specific basis, based on its experience as a respondent in the investigation and numerous administrative reviews, it should by now fully understand the Department’s documentation and data collection requirements for reporting CONNUM-specific FOPs. The Department has consistently requested CONNUM-specific FOP information in each questionnaire issued in every segment of this case since the investigation. In fact, the agency’s requirement for CONNUM-specific FOPs is explicitly set forth in the Department’s standard NME questionnaire, which has been publicly available on the Department’s website for years.

Golden Quality declined to participate in this review. Therefore, the Department was unable, based on Golden Quality’s submissions, to determine if a separate was warranted and, thus, the Department determined to treat the company as part of the Vietnam-wide entity. Assuming, arguendo, that Golden Quality did not keep/track CONNUM-specific information in their regular course of business as it suggests, it could have proposed a reasonable allocation methodology for its FOPs. However, in declining to participate in the review, Golden Quality denied itself the opportunity to provide a reasonable allocation methodology. As such, we find that without any questionnaire response to analyze, Golden Quality’s arguments concerning possible outcomes of this administrative review are wholly speculative.

We also disagree with Golden Quality’s arguments concerning its separate rate certification and its request to restore its de minimis cash deposit rate. Although it submitted a separate certification, upon receiving the original AD questionnaire, Golden Quality declined to participate in this review. The Initiation is clear on the obligations of a respondent that submits a separate rate certification and is selected as a mandatory respondent. Specifically, the Initiation states: “For exporters and producers who submit a separate rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.”

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73 See 8th AR Final Results at Comment XXII.
74 Id.
76 Id.
77 See Golden Quality’s April 19, 2016 submission.
78 See the Department’s letter to Golden Quality, dated, March 22, 2016, at D-2. In reporting FOPs, the AD questionnaire states: “If you are not reporting factors of production (FOPs) using actual quantities consumed to produce the merchandise under review on a CONNUM-specific basis, please provide a detailed explanation of all efforts undertaken to report the actual quantity of each FOP consumed to produce the merchandise under review on a CONNUM-specific basis. Additionally, please provide a detailed explanation of how you derived your estimated FOP consumption for merchandise under review on a CONNUM-specific basis and explain why the methodology you selected is the best way to accurately demonstrate an accurate consumption amount.”
79 See Golden Quality’s November 5, 2015 submission.
80 See the Department’s letter to Golden Quality, dated, March 22, 2016.
81 See Golden Quality’s April 19, 2016 submission.
82 See Initiation, 80 FR 60356, 60358 (October 6, 2015)
Comment 3      Whether the Department Must Corroborate the Vietnam-Wide Rate

Tafishco’s Comments
• The Vietnam-wide rate cannot be based on facts available.
• The record of this review fails to corroborate a $2.39/kg rate, which is unreasonably punitive and not commercially reasonable. In Gallant Ocean, the CAFC held that the Department must use reliable facts with “some grounding in commercial reality.”83 In Shandong Machinery, the Court found Commerce’s application of the China-wide rate to be uncorroborated.84 No company received such a high calculated rate in the three previous reviews.

Petitioners’ Comments
• The Department’s longstanding practice is to treat the Vietnam-wide entity like every other individual entity examined in an antidumping proceeding, and pursuant to section 776 of the Act, the Department may determine the entity’s rate using facts available if the members of the entity refuse to cooperate.
• The Department does not need to corroborate the $2.39/kg rate because this rate originated from an individually calculated rate during the 8th administrative review, and under the Trade Preferences Act of 2015, the rate no longer requires corroboration because the Department is not required to corroborate claims regarding “alleged commercial reality” of non-cooperating parties.85
• Should the Department benchmark the $2.39/kg rate, the Department has evidence on the record to corroborate this rate.
• If the Department removes Tafishco and Golden Quality from the Vietnam-wide entity, then it must base this rate on an adverse facts available rate that is higher than $2.39/kg, because this rate is not sufficient to deter non-cooperation.

Department’s Position: We found Golden Quality, Tafishco, and Viet Phu to be part of the Vietnam-wide entity, and applied the Vietnam-wide rate of $2.39/kg to their entries of subject merchandise during the POR.87 We disagree with Tafishco that the rate applied to the Vietnam-wide entity must be corroborated. Under the TPEA, the Department is not required to corroborate a dumping margin applied in a separate segment of the same proceeding.88 Here, the rate at issue was calculated in the 8th administrative review using the factors and sales information reported by one of the mandatory respondents,89 and previously applied to the

83 See Tafishco’s case brief citing Gallant Ocean (Thai.) Co. v United States, 602 F. 3d 1319. 1323-1324 (Fed. Cir. 2010) (Gallant Ocean).
86 This rate was a calculated rate in the eighth administrative review. See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Amended Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 29323 (May 20, 2013) (8th AR Amended Final Results) and accompanying Ministerial Error Memorandum.
87 See PDM at 10.
88 See Section 776(c)(2) of the Act; TPEA, section 502(2).
89 See 8th AR Amended Final Results, 78 FR 29323, 29324 (May 20, 2013).
Vietnam-wide entity, as AFA, in the 10th administrative review.\(^90\) Thus, because the \$2.39/kg rate was applied in a separate segment of this proceeding, corroboration is not required.

**Comment 4  Whether to Rescind Review of the Hung Vuong Group and the QVD Companies**

**Petitioners’ Comments**

- The Department was in error when it rescinded the review with respect to HVG\(^91\) based upon the petitioners’ withdrawal of its request on one of its members, Asia Pangasius. The Department cannot impute the petitioners’ withdrawal of their request on Asia Pangasius and apply it to all members of HVG. The Department has a longstanding practice of requiring each member of a collapsed entity to establish its eligibility for a separate rate. With regard to HVG, only one member, Agifish, submitted a no shipment certification.\(^92\)
- With regard to QVD,\(^93\) only one member of the group, QVD Food, submitted a no shipment certification.\(^94\)
- Therefore, in accordance with longstanding practice, the Department should find that both the HVG and QVD had shipments and are under review. Finally, as HVG and QVD are under review and did not demonstrate their eligibility for a separate rate by each member, the Department should deny both groups separate rates and include both groups in the Vietnam-wide entity for the final results.

**HVG’s and QVD’s Comments**

- The Department should continue to find that rescission of review for HVG is appropriate for the final results. Specifically, as HVG is collapsed into a single entity, the Department was correct to rescind the review for HVG because of the petitioners’ withdrawal of request for one of HVG’s members, Asia Pangasius.
- The petitioners’ argument that HVG should be included in the Vietnam-wide entity fails because the Department has already rescinded HVG’s review. Moreover, per the Department’s practice, which treats a filing by/with respect to one of the entities as a filing related to the entire collapsed entity as noted above, Agifish’s no shipment certification covers the remaining members of HVG.
- The petitioners raised a similar argument in the last review, when they argued that one

\(^90\) See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results of the Antidumping Duty Administrative Review; 2012-2013, 79 FR 40055 (July 11, 2014) and accompanying Preliminary Decision Memorandum at 1, and 8-12, unchanged in 10th AR Final Results.


\(^92\) See Agifish’s November 2, 2015, submission.


\(^94\) See QVD Food’s November 5, 2015, submission.
member’s failure to submit a separate rate certification warranted a finding that all members failed to show eligibility for a separate rate. The Department found that one member, QVD Food, submitted a no shipment response and, consistent with Department practice, also applied this decision to Thufico and QVD DT.

**Department’s Position:** Pursuant to 19 CFR 351.401(f), in the 9th AR Final Results, we collapsed the members of HVG, treated these companies as a single entity, and because there have been no changes relevant to this determination since that administrative review, we continue to find these companies to be part of a single entity. The petitioners withdrew their review requests for some members of HVG, and the parent company of HVG, Hung Vuong Corporation. Because HVG is a single entity, we rescinded the review with respect to HVG in the Preliminary Results, pursuant to 19 CFR 351.213(d)(3). The petitioners are correct that the Department’s practice is that when one member of a single entity fails to establish its eligibility for a separate rate, the NME-wide entity rate is applied to the entire collapsed entity. However, we disagree with the petitioners’ contention that the collapsing determination (and rescission) should be reversed to achieve this result. Once a collapsing determination is made, the Department does not remove the constituent companies from the single entity unless there is a basis to reevaluate the collapsing determination itself. That inquiry, as well as the determination to rescind with respect to the collapsed entity, precedes the separate rate inquiry. Treating parties of a collapsed entity differently could allow manipulation by the parties to obtain different rates for its members, other than the single rate assigned to the collapsed entity. Moreover, as HVG is no longer under review, arguments concerning HVG, and companies comprising that single entity, are moot.

In the second review of this order, the Department found QVD Food, QVD DT and Thufico to be a single entity and, because there have been no changes to this determination since that administrative review, we continue to find these companies to be part of a single entity, QVD. The petitioners withdrew their review request for the QVD Group, and QVD Food submitted a no shipment certification for itself. For the reasons noted above, we do not agree with the petitioners’ contention that the companies that comprise QVD should be split up. As such, we inadvertently rescinded the review with respect to only Thufico in the Preliminary Results, rather than the single entity, QVD. We will correct this inadvertent error in the final results.

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95 See 9th AR Final Results, 79 FR at 19053 and accompanying Issues and Decision Memorandum at 3.
96 See the petitioners’ January 4, 2016 submission.
97 See PDM at “Partial Rescission.”
100 Id.
101 See 2nd AR Preliminary Results, 71 FR at 53392.
102 See the petitioners’ January 4, 2016 submission.
103 See QVD Food’s November 5, 2015 submission.
104 See, e.g., Aluminum Extrusions 2014 at Comment 6.
105 See PDM at “Partial Rescission.”

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Comment 5  Ministerial Errors

Petitioners’ Comments

- Anvifish and BASACO failed to file separate rate applications or certifications; however, the Department inadvertently did not include Anvifish and BASACO in its list of companies that are part of the Vietnam-wide entity. For the final results, the Department should find that Anvifish and BASACO are a part of the Vietnam-wide entity.
- For the Preliminary Results, the Department stated its intention to rescind the review with respect to Bien Dong Seafood Co., Ltd. (Bien Dong), Hai Huong Seafood Joint Stock Company (HHFish), Hung Vuong Seafood Joint Stock Company (Hung Vuong Seafood), Vinh Hoan Corporation (Vinh Hoan), and Vinh Quang Fisheries Corporation (Vinh Quang), but inadvertently did not include these companies in the list of rescinded companies. This should be corrected for the final results.
- In the Preliminary Results, the Department determined that Hoang Long had no shipments and stated its intention not to rescind the review for Hoang Long but rather to complete the review. The Department inadvertently placed Hoang Long in its list of rescinded companies. The Department should correct this error for the final results.

Department’s Position: With regard to Anvifish and BASACO, we agree with the petitioners that we inadvertently did not include these companies in the list of companies that are part of the Vietnam-wide entity, and have corrected this error for the final results. With regard to Bien Dong, HHFish, Hung Vuong Seafood, Vinh Hoan, and Vinh Quang, we agree with the petitioners that we inadvertently did not include these companies in the list of companies for which we are rescinding the review, and have corrected this error for the final results. With respect to Hoang Long, we agree with the petitioners that we inadvertently did not include this company in the list of companies which had no reviewable entries, and have corrected this error for the final results.
RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting the margin calculation program accordingly. If accepted, we will publish the final results of review and the final dumping margins in the Federal Register.

☐ ☐

Agree Disagree

3/20/2017

Signed by: GARY TAVERMAN

Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations