April 8, 2019

MEMORANDUM TO:  Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance

FROM:  James Maeder  
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations  
performing the duties of Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT:  Decision Memorandum for Preliminary Results of Antidumping  
Duty Administrative Review:  Certain Frozen Warmwater Shrimp  
from the Socialist Republic of Vietnam; 2017-2018

I.  SUMMARY

In response to requests from interested parties, the Department of Commerce (Commerce) is  
conducting this administrative review of the antidumping duty (AD) order on certain frozen  
warmwater shrimp from the Socialist Republic of Vietnam (Vietnam) for the period of review  
(POR) February 1, 2017, through January 31, 2018.  The mandatory respondents are Fimex VN  
and Nha Trang Seaproduct Company.1  Commerce preliminarily determines that sales of subject

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1 Commerce previously determined Nha Trang Seaproduct Company to be part of a single entity along with NT  
See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam:  Preliminary Results, Partial  
Rescission, and Request for Revocation, In Part, of the Fifth Administrative Review, 76 FR 12054, 12056 (March 4,  
2011), unchanged in Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and  
Final Partial Rescission of Antidumping Duty Administrative Review, 76 FR 56158 (September 12, 2011).  As the  
single entity has not reported changes since the preceding administrative review regarding the corporate or legal  
structure of the companies within the single entity, we continue to find that these companies are affiliated and  
comprise a single entity to which we will assign a single rate.  Further, while we have previously referred to the  
single entity as “Nha Trang Seafoods Group,” our use of this moniker may result in confusion as to the official  
name(s) of the companies within the single entity.  Thus, Commerce has discontinued its use of the moniker “Nha  
Trang Seafoods Group,” which was only used as a short-cite of the single entity in referring to it within the official  
record, rather than becoming an official company name to which status is granted.  We will, hereinafter, refer to the  
single entity as Nha Trang Seaproduct Company, representing all four of the collapsed companies.
merchandise by Fimex VN and Nha Trang Seaproduct Company were not at prices below 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 all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We intend to issue final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (Act) and 19 CFR 351.213(h)(1), unless this deadline is extended.

II. BACKGROUND

On April 16, 2018, Commerce initiated an administrative review of certain frozen warmwater shrimp (shrimp) from Vietnam.2 This review covers 116 producers and exporters of subject merchandise for the period February 1, 2017, through January 31, 2018.3

In the Initiation Notice, Commerce notified all interested parties that, due to the large number of firms requested for this administrative review and the resulting administrative burden to review each company for which a request had been made, Commerce was considering exercising its authority to limit the number of respondents selected for individual review, in accordance with section 777A(c)(2) of the Act, and that Commerce intended to select respondents based on CBP data for entries of the subject merchandise during the POR.

Section 777A(c)(1) of the Act directs Commerce to calculate individual weighted-average dumping margins for each known exporter and producer of the subject merchandise. However, when there is a large number of exporters involved in the investigation or review and it is not practicable to calculate individual weighted-average dumping margins, section 777A(c)(2) of the Act authorizes Commerce to determine the weighted-average dumping margins for a reasonable number of exporters/producers by limiting its examination to: (1) a statistically valid sampling of exporters, producer, or types of products; or (2) to the exporters/producers accounting for the largest volume of subject merchandise that can be reasonably examined. The Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) interprets this provision to mean that the authority to select respondents, whether by using a “statistically valid” sample or by examining respondents accounting for the largest volume of subject merchandise, rests exclusively with Commerce.4

On April 17, 2018, we placed CBP data on the record inviting comments on respondent selection.5 Commerce received timely comments on the CBP Data Memo from two exporters,6 both discussing their respective quantity and value of sales for the POR as compared to the CBP data. However, neither of these submissions contained comments regarding the selection of

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3 Id. While there were 186 individual names upon which we initiated an administrative review, the number of actual companies for which a review was initiated is significantly less (i.e., 116) when accounting for numerous duplicate names and minor name variations of the same companies requested by multiple interested parties and the groupings of companies that have been collapsed and/or have been previously found affiliated.
respondents. Pursuant to section 777A(c)(2) of the Act, we limited our examination of exporters or producers accounting for the largest volume of the subject merchandise, based on the CBP data we placed on the record.\(^7\) On May 17, 2017, Commerce determined to limit the number of respondents selected for individual examination to the two largest companies by U.S. import entry volume for which a review was requested.\(^8\) Commerce initially selected Fimex VN and Soc Trang Seafood Joint Stock Company for individual examination in this administrative review and issued the non-market economy (NME) AD questionnaire to each of them on the same date.\(^9\)

On July 11, 2018, Soc Trang Seafood Joint Stock Company withdrew its request for administrative review.\(^10\) On July 11, 2018, the petitioner\(^11\) and ASPA\(^12\) also withdrew their respective requests for an administrative review of Soc Trang Seafood Joint Stock Company and its various name variations, as were listed in the *Initiation Notice*.\(^13\) Subsequently, on July 12, 2018, the petitioner and ASPA also withdrew their respective requests for administrative review of Seavina Joint Stock Company (Seavina\(^14\)) and its name variations.\(^15\) Based on these timely withdrawals of review requests, we rescinded the administrative review with regard to Stapimex and Seavina,\(^16\) leaving 114 companies under active review.\(^17\) Consequently, Commerce determined that it was feasible and appropriate to select a mandatory respondent to replace Stapimex, as we rescinded it from review. Thus, we then selected Nha Trang Seaproduct Company as a mandatory respondent because it accounts for the next largest volume of subject merchandise in the CBP data.\(^18\)

On September 28, 2018, Commerce extended the deadline for the preliminary results by 120 days to February 28, 2019.\(^19\) Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.\(^20\) If the new deadline falls on a non-business day, in accordance

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\(^8\) Id.

\(^9\) See NME AD Questionnaires issued to Fimex VN and Stapimex, both dated May 17, 2018.


\(^11\) The petitioner is the Ad Hoc Shrimp Trade Action Committee.

\(^12\) ASPA is the American Shrimp Processors Association, a domestic interested party.


\(^14\) Commerce short-cite of Seavina Joint Stock Company.


\(^17\) The number of actual companies remaining under active review is 114 when accounting for numerous duplicate names and minor name variations of the same companies requested by multiple interested parties and the groupings of companies that have been collapsed and/or have been previously found affiliated, as noted above.

\(^18\) See Memorandum, “Selection of Additional Mandatory Respondent,” dated August 9, 2018, citing to Respondent Selection Memo at Attachment 1.


\(^20\) See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, “Deadlines Affected by the Partial Shutdown of the Federal Government,” dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.
with Commerce’s practice, the deadline will become the next business day. Accordingly, the revised deadline for these preliminary results is now April 9, 2019.

III. SCOPE OF THE ORDER

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

The frozen warmwater shrimp and prawn products included in the scope of the order, regardless of definitions in the HTS, are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count-size.

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

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

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

The products covered by this order are currently classified under the following HTS subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15,

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22 “Tails” in this context means the tail fan, which includes the telson and the uropods.
IV. DISCUSSION OF THE METHODOLOGY

A. Preliminary Determination of No Shipments

In the *Initiation Notice*, we instructed producers or exporters named in the notice that had no exports, sales, or entries during the POR, to notify Commerce of this fact within 30 days of publication of the notice. Eighteen companies filed no-shipment certifications indicating that they had no exports, sales, or entries of subject merchandise to the United States during the POR. Upon receiving claims of no exports, sales, or entries from companies subject to the administrative review, it is Commerce’s practice to send an inquiry message to CBP in which we request that it alert Commerce if it had information contrary to a party’s claim. We issued inquiry messages to CBP. CBP responded that it found no evidence of shipments from the 18 companies.

23 On April 26, 2011, Commerce amended the antidumping duty order to include dusted shrimp, pursuant to the U.S. Court of International Trade decision in *Ad Hoc Shrimp Trade Action Committee v. United States*, 703 F. Supp. 2d 1330 (CIT 2010) and the U.S. International Trade Commission (ITC) determination, which found the domestic like product to include dusted shrimp. See *Certain Frozen Warmwater Shrimp from Brazil, India, the People’s Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision*, 76 FR 23277 (April 26, 2011); see also *Ad Hoc Shrimp Trade Action Committee v. United States*, 703 F. Supp. 2d 1330 (CIT 2010) and *Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam* (Investigation Nos. 731-TA-1063, 1064, 1066-1068 (Review), USITC Publication 4221, March 2011).

24 See *Initiation Notice*, 83 FR at 16298-16299: “Notice of No Sales.”

25 See the no-shipment certifications of the following companies submitted between April and May 2018: (1) Au Vung One Seafood Processing Import & Export Joint Stock Company; (2) Au Vung Two Seafood Processing Import & Export Joint Stock Company; (3) Bien Dong Seafood Co., Ltd.; (4) BIM Foods Joint Stock Company also initiated as BIM Seafood Joint Stock Company; (5) Cafatex Corporation; (6) Xi Nghiep Che Bien Thuy Suc San Xuat Kau Canho; (7) Taydo Seafood Enterprise (8) Cam Ranh Seafoods (9) Green Farms Joint Stock Company also initiated as Green Farms Seafoods Joint Stock Company; (10) Investment Commerce Fisheries Corporation (“INCOMFISH”) also initiated as Investment Commerce Fisheries Corporation (Incomfish); (11) Khanh Sung Co., Ltd.; (12) NGO BROS Seaprodcts Import-Export One Member Company Limited (“NGO BROS Company”) also initiated as Ngo Bros Seaprodcts Import-Export One Member Company Limited (“Ngo Bros. Co., Ltd.”); and Ngo Bros Seaprodcts Import-Export One Member Company Limited (Ngo Bros), (13) Tacvan Frozen Seafood Processing Export Company also initiated as Tacvan Frozen Seafood Processing Export Company (Tacvan Seafoods Co.) and Tacvan Seafoods Company (“TACVAN”); (14) Thanh Doan Sea Products Import & Export Processing Joint Stock Company Thadimexco also initiated as Thanh Doan Sea Products Import & Export Processing Joint Stock Company (THADIMEXCO); (15) Thong Thuan – Cam Ranh Seafood Joint Stock Company also initiated as Thong Thuan – Cam Ranh Seafood Joint Stock Company (T&T Cam Ranh) and Thong Thuan Cam Ranh Seafood Joint Stock Company (“T&T Cam Ranh”); (16) Thong Thuan Seafood Company Limited; (17) Trung Son Seafood Processing Joint Stock Company also initiated as Trung Son Corp.; and (18) Vinh Hoan Corp.


27 See CBP Message 8159303 dated June 8, 2018, available on ACCESS under Barcode 3716316-01; see also CBP Message 8213312 dated August 1, 2018, available on ACCESS under Barcode 3737552-01.

Thus, based on the no-shipment claims submitted by these 18 companies and our analysis of information on the record, we preliminarily determine that these 18 companies had no shipments of subject merchandise during the POR. In addition, Commerce finds that, consistent with its practice in NME cases, it is appropriate not to rescind the review, in part, for these companies in this circumstance, but rather to complete the review. Therefore, in accordance with Commerce’s practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, Commerce will instruct CBP to liquidate such entries at the Vietnam-wide rate. Additionally, if Commerce determines that an exporter had no shipments of the subject merchandise, any suspended entries that entered under that exporter’s case number (i.e., at that exporter’s rate) will be liquidated at the Vietnam-wide rate.

B. Non-Market Economy Country

Commerce considers Vietnam to be an 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. Therefore, we continue to treat Vietnam as an NME country for purposes of these preliminary results.

1. Separate Rates

Pursuant to section 771(18)(C) of the Act, in proceedings involving NME countries, Commerce maintains a rebuttable presumption that all companies within the country are subject to government control and, therefore, should be assessed a single weighted-average dumping margin. Commerce’s policy is to assign all exporters of subject merchandise that are in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Commerce analyzes whether each entity exporting the subject merchandise is sufficiently independent under a test established in Sparklers and further developed in Silicon Carbide. According to this separate rate test, Commerce 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. However, if Commerce determines that a company is wholly foreign-owned or located in a market economy (ME), then a separate rate analysis is not necessary to determine whether it is independent from government control. Commerce continues to evaluate its practice with regard to the separate rates analysis in light of the diamond sawblades from China AD proceeding, and its

31 For a full discussion of this practice, see Assessment Notice, 76 FR at 65695.
32 See Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 55039, 55040 (September 24, 2008).
33 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).
34 Id.
36 See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People’s Republic of China, 72 FR 52355, 52356 (September 13, 2007).
In particular, in litigation involving the diamond sawblades from China proceeding, the Court of International Trade (CIT) found Commerce’s existing separate rates analysis deficient in the circumstances of that case, in which a government-owned and controlled entity had significant ownership in the respondent exporter. Following the Court’s reasoning, we have concluded that where a government entity holds a majority 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 generally. 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. 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 profit distribution of the company. In this administrative review, 31 companies, including the two mandatory respondents, and excluding the two companies rescinded from review, filed separate rate applications or certifications.

a. Wholly Foreign-Owned Applicants

Of the 31 applicants/certifiers, two companies, Viet I-Mei Frozen Foods Co., Ltd. and C.P. Vietnam Corporation, filed separate rate documentation reporting that they are wholly owned by individuals or companies located in a market economy. Therefore, because they are wholly foreign-owned, and we have no evidence indicating that their export activities are under the control of the Vietnamese government, a further separate rate analysis is not necessary to determine whether these companies are independent from government control. Accordingly,

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38 See, e.g., Advanced Technology I, 885 F. Supp. 2d at 1349 (CIT 2012) (“The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it.”); Id., at 1351 (“Further substantial evidence of record does not support the inference that SASAC’s [state-owned assets supervision and administration commission] ‘management’ of its ‘state-owned assets’ is restricted to the kind of passive-investor de jure ‘separation’ that Commerce concludes.”) (footnotes omitted); Id., at 1355 (“The point here is that ‘governmental control’ in the context of the separate rate test appears to be a fuzzy concept, at least to this court, since a ‘degree’ of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to ‘day-to-day decisions of export operations,’ including terms, financing, and inputs into finished product for export.”); Id., at 1357 (“AT&M itself identifies its ‘controlling shareholder’ as CISRI [owned by SASAC] in its financial statements and the power to veto nomination does not equilibrate the power of control over nomination.”) (footnotes omitted).


40 See Viet I-Mei Frozen Foods Co., Ltd.’s Separate Rate Certification, dated May 2, 2018, at 5-7, and C.P. Vietnam Corporation’s Separate Rate Application, dated May 23, 2018, at 8-12.

41 See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People’s Republic of China, 64 FR 71104-05 (December 20, 1999) (where the respondent was wholly foreign-owned and, thus, qualified for a separate rate).
we have preliminarily granted a separate rate to Viet I-Mei Frozen Foods Co., Ltd. and C.P. Vietnam Corporation.

b. Absence of De Jure Control

Twenty-nine additional companies under active review, including the mandatory respondents, either filed separate rate certifications or applications. As noted above, Commerce 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; (2) legislative enactments decentralizing control over export activities of the companies; and (3) other formal measures by the government decentralizing control over export activities of companies. 42

In this review, the information provided by the remaining 27 separate rate applicants/certifiers, plus the two mandatory respondents, 43 supports a preliminary finding of an absence of de jure government control for each of these companies’ export activities. We find that the evidence on the record supports a preliminary finding of an absence of de jure based on the following: (1) an absence of restrictive stipulations associated with the individual exporters’ business and export licenses; (2) the existence of applicable legislative enactments decentralizing control of the companies; and (3) the implementation of formal measures by the government decentralizing control of Vietnamese companies.

c. Absence of De Facto Control

Typically, Commerce considers four factors in evaluating whether a respondent is subject to de facto government control of its export functions: (1) whether the export prices (EPs) are set by, or are subject to the approval of, a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. 44 Commerce has determined that an analysis of de facto control is critical in determining whether the respondents are, in fact, subject to a degree of government control which would preclude Commerce from assigning separate rates.

The information provided by the 27 separate rate applicants, plus Nha Trang Seaproduct Company and Fimex VN, 45 supports a preliminary finding of an absence of de facto government control, based on record statements and supporting documentation showing that the companies: (1) set their own EPs independent of the government and without the approval of a government authority; (2) have the authority to negotiate and sign contracts and other agreements; (3) maintain autonomy from the government in making decisions regarding the selection of

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42 See Sparklers, 56 FR at 20589.
43 See, e.g., Fimex VN’s Separate Rate Application dated May 21, 2018; Nha Trang Seaproduct Company’s Separate Rate Certification dated May 16, 2018.
44 See Silicon Carbide, 59 FR at 22586-87; Sparklers, 56 FR 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).
45 See, e.g., Cuulong Seaproduct Company’s Separate Rate Application dated May 23, 2018, at 11-20; Vietnam Fish One Co., Ltd.’s Separate Rate Certification dated May 4, 2018, at 8-9.
management; and (4) retain the proceeds of their respective export sales and make independent
decisions regarding the disposition of profits or financing of losses.

Therefore, the evidence placed on the record of this investigation by these companies
demonstrates an absence of *de jure* and *de facto* government control under the criteria identified
in *Sparklers* and *Silicon Carbide*. Accordingly, Commerce preliminarily grants separate rates to
these 29 companies, including Fimex VN and Nha Trang Seaproduction Company.

d. Separate Rate Status for Claimed Trade Names

We note that certain separate rate applicants/certifiers requested separate rate status for claimed
“trade names,” “dba names” or variations (spelling, punctuation differences, and abbreviations)
of the official company names. However: 1) these names were not included on their business
registration certificates; 2) the applicants/certifiers provided no evidence that those claimed
names, as written, were used commercially to export subject merchandise to the United States
during the POR; and 3) certain included names were superseded by new company names
following changed circumstances determinations. Further, we note the *Initiation Notice* included
variations of company names that are: 1) not official company names; or 2) not included in
either the separate rate applications or certifications of the separate rate applicants.46 Policy
Bulletin 5.1, states “{e}ach applicant seeking separate rate status must submit a separate and
complete individual application *regardless of any common ownership or affiliation* between firms . . . .”47 Moreover, a company that has not filed a separate rate application/certification is
not eligible for a separate rate, even if it is allegedly affiliated with another company seeking a
separate rate. Further, a company that did not export subject merchandise to the United States
during the relevant period is also not eligible for a separate rate.48 As Policy Bulletin 5.1 states,
“firms that produce the subject merchandise are not required to demonstrate their eligibility for
separate rate status unless they also export the merchandise to the United States.”49 Commerce’s
practice when the record does not contain either a separate rate application, certification or no-
shipment letter is to consider that company ineligible for a separate rate.50 Additionally, the
NME separate rate application states:

The name that is provided to the Department in the application must be the name
that appears on the exporter’s business license/regISTRATION documents. All
shipments to the United States declared to U.S. Customs and Border Protection

46 See *Initiation Notice*, 82 FR at 17194-17196.
47 See Policy Bulletin 5.1: Separate-Rates Practice and Application of Combination Rates in Antidumping
Investigations involving Non-Market Economy Countries (Policy Bulletin 5.1), dated April 5, 2005 found at:
http://enforcement.trade.gov/policy/bull05-1.pdf; see also Separate Rate Application at page 3; found at:
49 Id. at 6.
50 See, e.g., *Honey from the People’s Republic of China: Preliminary Results and Partial Rescission of Antidumping
Duty Administrative Review; 2011-2012*, 78 FR 38941 (June 28, 2013), and accompanying Preliminary Decision
Memorandum at page 3 (“during the review, Dongtai Peak did not file a separate rate application or certification,
nor did it file a no shipments certification. Accordingly, because Dongtai Peak did not demonstrate its eligibility for
a separate rate, Commerce will preliminarily treat Dongtai Peak as part of the PRC-wide Entity.”), unchanged in
*Honey from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011–
2012*, 78 FR 56860 (September 16, 2013) (*Honey 2011-2012*); see also *Steel Wire Garment Hangers from the
People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper
Review; 2011-2012*, 78 FR 70271, 70272 (November 25, 2013), unchanged in *Steel Wire Garment Hangers from the
People’s Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper
must identify the exporter by its legal business name, and this name must match
the name that appears on the exporter’s business/registration documents.51

While Commerce has preliminarily granted separate rate status to 27 non-individually examined
exporters, and the two mandatory respondents, numerous exporters requested separate rate status
for additional trade names that do not qualify for separate rate status based on the requirements
noted above. The trade names to which we granted separate rate status appear in the
“Preliminary Results of Review” section of the accompanying Federal Register notice.
Commerce has listed the trade names not granted separate rate status in a separate
memorandum.52

Further, Commerce notes that in the current and previous reviews, many names appearing in the
Initiation Notice, based on submitted review requests, have become duplicative or vary to some
degree due to abbreviations, etc.53 In the case of companies within the Vietnam-wide entity, we
have listed the names as they appeared in the Initiation Notice.54 In the case of companies
receiving a separate rate, we have only listed the trade names for which separate rate status is
granted.55 Thus, for those names in the Initiation Notice that are omitted in these preliminary
results, we determine that the claim of these alternate trade names for various exporters have not
met the requirement for separate-rate status, as explained in detail in the Trade Name Memo.56
Interested parties have an opportunity to submit comments, in the context of case briefs, on the
issue of trade names for consideration by Commerce in the final results.57

e. Margin for the Separate Rate Companies

The statute and Commerce’s regulations do not address the establishment of a separate rate to be
applied to individual respondents not selected for individual examination when Commerce limits
its examination pursuant to section 777A(c)(2) of the Act. Normally, Commerce’s practice is to
assign to separate rate entities that were not individually examined a rate equal to the weighted
average of the rates calculated for the individually examined respondents, excluding any rates
that are zero, de minimis, or based entirely on facts available, using as guidance section
735(c)(5)(A) of the Act.58 However, pursuant to section 735(c)(5)(B) of the Act, if the estimated
weighted-average dumping margins established for all exporters and producers individually
examined are zero, de minimis or determined based entirely under section 776 of the Act,
Commerce may use any reasonable method to establish the estimated weighted-average dumping
margin for all other producers or exporters, including averaging the calculated weighted-average

51 See NME Separate Rate Application, at page 4, available at: http://enforcement.trade.gov/nme/sep-rate-files/app-
20150323/srv-sr-app-20150416.pdf.
52 See Memorandum to the File, “Antidumping Duty Administrative of Certain Frozen Warmwater Shrimp from the
Socialist Republic of Vietnam: Requested Trade Names Not Granted Separate Rate Status at the Preliminary
Results,” dated concurrently with this memorandum (Trade Name Memo).
53 See Initiation Notice, 82 FR at 17194-17196.
54 See Appendix II of the accompanying Federal Register notice.
55 See the Appendix to this memorandum.
56 See Trade Name Memo.
57 See 19 CFR 351.309(c).
58 See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of
Critical Circumstances: Certain Polyester Staple Fiber from the People’s Republic of China, 71 FR 77373, 77377
(December 26, 2006), unchanged in Final Determination of Sales at Less Than Fair Value and Partial Affirmative
Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People’s Republic of China, 72
FR 19690 (April 19, 2007).
margins of the mandatory respondents.59 Because we have preliminarily calculated weighted-average dumping margins equal to zero for both mandatory respondents, we have averaged those calculated rates, pursuant to section 735(c)(5)(B) of the Act, and applied the result as the separate rate to the companies to which we are preliminarily granting a separate rate (see Appendix). Consequently, the rate established for the non-individually examined companies is an ad valorem rate of 0.00 percent.60

2. Vietnam-Wide Entity

Upon initiation of this administrative review, we provided the opportunity to each of the companies under review to: 1) submit either the separate rate application or certification; or 2) certify it had no shipments.61 However, 67 companies neither applied for a separate rate nor filed “no-shipment” certifications and, therefore, we determine them to be ineligible for a separate rate and, thus, part of the Vietnam-wide entity.

Commerce’s policy regarding conditional review of the Vietnam-wide entity applies to this administrative review.62 Under this policy, the Vietnam-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the Vietnam-wide entity in this review, the entity is not under review and the entity’s rate is not subject to change. Thus, Commerce preliminarily finds that these 67 companies under active review do not qualify for a separate rate, and are, consequently part of the Vietnam-wide entity.63

C. Surrogate Country and Surrogate Values

When Commerce is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer’s factors of production (FOPs), valued in a surrogate ME country or countries considered to be appropriate by Commerce. Specifically, in accordance with section 773(c)(4) of the Act, in valuing the FOPs, Commerce shall utilize, “to the extent possible, the prices or costs of {FOPs} in one or more ME countries that are — (A) at a level of economic development comparable to that of the {NME} country; and (B) significant producers of comparable merchandise.”64 As a general rule, Commerce selects a surrogate country that is at the same level of economic development as the NME unless it is determined that none of the countries are viable options because (a) they either are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available surrogate value data, or (c) are not suitable for use based on other reasons. Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic

59 See SAA at 870-873. See also section 735(c)(5)(B) of the Act.
63 See Appendix II of the accompanying Federal Register notice.
development. To determine which countries are at the same level of economic development, Commerce generally relies on per capita gross national income (GNI) data from the World Bank’s World Development Report. Identifying potential surrogate countries based on GNI data has been affirmed by the CIT. Further, Commerce normally values all FOPs in a single surrogate country.

On August 3, 2018, Commerce issued a letter to interested parties identifying six countries (Bolivia, Egypt, India, Honduras, Nicaragua, and Nigeria) at the same level of economic development as Vietnam, and invited comments on the surrogate country list, surrogate country selection and surrogate value data. On August 10, 2018, the petitioner filed comments regarding the Surrogate Country List, noting that in addition to the six countries on the list, Commerce may also consider the expanded list of countries which are “bookended” by India at the lowest GNI and by Bolivia at the highest GNI. On August 24, 2018, the Vietnam Association of Seafood Exporters and Producers (VASEP) submitted comments regarding the 2017 GNI data, arguing that Commerce has no basis for excluding Indonesia from the list of countries found to be at the same level of economic development as Vietnam. VASEP argues that, because Indonesia had been included on the list of surrogate countries in past segments of the proceeding, Commerce must include Indonesia for consideration as a surrogate country in the instant review. On August 29, 2018, the petitioner filed rebuttal comments, arguing that there is no basis for singling out Indonesia for surrogate country consideration without also considering the numerous other countries on the expanded list simply because Commerce selected Indonesia a single time as the primary surrogate country. The petitioner noted that if this is the standard to follow, then Commerce should provide equal, if not greater, consideration for Bangladesh than it does for Indonesia because Commerce relied on Bangladesh as the surrogate country in the underlying investigation and in 11 completed administrative reviews but selected Indonesia only once as the surrogate country.

On September 4, 2018, VASEP submitted comments regarding surrogate country selection, wherein VASEP continued its arguments that Indonesia should be considered as the primary surrogate country because it fulfills the surrogate country selection criteria under section 773(c) of the Act. No other interested parties filed rebuttal comments regarding the selection of the surrogate country. On October 5, 2018, VASEP submitted surrogate values for consideration, consisting entirely of Indian sources and values for all FOPs. On March 11, 2019, VASEP filed additional data from Indian sources for calculating surrogate financial ratios. No other

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66 Id.
68 See 19 CFR 351.408(c)(2).
69 See Surrogate Comments Letter at Attachment.
72 Id. at 2-5.
interested parties filed surrogate value comments or data on the record, or new factual information rebutting VASEP’s March 11, 2019, submission of surrogate financial statements.

While VASEP has argued in this review that Commerce must include Indonesia for consideration of surrogate country selection, the argument is moot because neither VASEP, nor any other interested party, submitted any surrogate value data from Indonesia. Thus, we will not consider Indonesia as a potential surrogate country in this review, regardless of any arguments submitted on economic comparability or significant production of comparable merchandise, with respect to this country.

1. Economic Comparability

As explained in our Surrogate Comments Letter, Commerce considers Bolivia, Egypt, India, Honduras, Nicaragua, and Nigeria to be at the same level of economic development as Vietnam.77 Commerce treats each of these countries as equally comparable.78 No one country is “more” comparable than another on the list. Accordingly, unless we find that all of these countries are not significant producers of comparable merchandise, do not provide a reliable source of publicly available surrogate data, or are unsuitable for use for other reasons, or we find that another equally comparable country is an appropriate surrogate, we will rely on data from one of these countries.79 Therefore, we consider all six countries identified in the Surrogate Comments Letter to have met this prong of the surrogate country selection criteria.

Further, as explained in our Policy Bulletin 04.1, “[t]he surrogate countries on the list are not ranked.”80 This lack of ranking reflects our long-standing practice that, for the purpose of surrogate country selection, the countries on the list “should be considered equivalent”81 from the standpoint of their level of economic development based on GNI as compared to Vietnam’s level of economic development and recognition of the fact that the concept of “level” in an economic development context necessarily implies a range GNI, not a specific GNI. This long-standing practice of providing a non-exhaustive list of countries at the same level of economic development as the NME country fulfills the statutory requirement to value FOPs using data from “one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country. . . .”82

2. Significant Producer of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires Commerce to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor Commerce’s regulations provide further guidance on what may be considered comparable merchandise. Policy Bulletin 04.1, however, explains that “in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise.”83 Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in

77 See Surrogate Comments Letter at Attachment.
78 Id.
80 See Policy Bulletin 04.1.
81 Id.
82 See section 773(c)(4) of the Act.
selecting a surrogate country. Further, when selecting a surrogate country, the statute requires Commerce to consider the comparability of the merchandise, not the comparability of the industry. “In cases where the identical merchandise is not produced, Commerce must determine if other merchandise that is comparable is produced. How Commerce does this depends on the subject merchandise.” In this regard, Commerce recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

In other cases, however, where there are major inputs, i.e., inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, e.g., processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.

Further, the statute grants Commerce discretion to examine various data sources for determining the best available information. Moreover, while the legislative history provides that the term “significant producer” includes any country that is a significant “net exporter,” it does not preclude reliance on additional or alternative metrics. In this case, we reviewed shrimp production information from the Food and Agriculture Organization of the United Nations Fisheries Statistics (UN FAO Statistics). These statistics demonstrate that Egypt, Honduras, India, Nicaragua, Papua New Guinea, Vanuatu and Vietnam are producers of identical merchandise. Among these countries, only Egypt, India, Honduras, and Nicaragua are also identified on the Surrogate Country List. Thus, four of the six countries on the Surrogate Country List meet this criterion and will be considered for the final step in the surrogate country selection process.

3. Data Availability

When evaluating surrogate value data, Commerce considers several factors including whether the surrogate value is publicly available, contemporaneous with the POR, represents a broad-market average, from an approved surrogate country, tax and duty-exclusive, and specific to the input. There is no hierarchy among these criteria. It is Commerce’s practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis. As noted above, VASEP submitted surrogate value data for India. The record does not contain surrogate value data from Egypt, Honduras, and Nicaragua; thus, Egypt,

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84 Policy Bulletin 04.1 also states that “if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise.” Id. at note 6.
85 See Sebacic Acid from the People’s Republic of China; Final Results of Antidumping Duty Administrative Review, 62 FR 65674, 65675-76 (December 15, 1997) (“[T]o impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.”).
86 See Policy Bulletin 04.1 at 2.
87 Id. at 3.
88 See Sebacic Acid from the People’s Republic of China; Final Results of Antidumping Duty Administrative Review, 62 FR 65674, 65675-76 (December 15, 1997) (“[T]o impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.”).
89 See section 773(c) of the Act; see also Nation Ford Chem. Co. v. United States, 166 F.3d 1373, 1377 (Fed. Cir. 1990).
91 See AHSTAC GNI Comments at Attachment 1.
92 See, e.g., First Administrative Review of Certain Polyester Staple Fiber from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 75 FR 1336 (January 11, 2010), and accompanying Issues and Decision Memorandum at Comment 1.
93 See Policy Bulletin 04.1.
Honduras, and Nicaragua are disqualified from consideration as the primary surrogate country. Therefore, India is the only country on the Surrogate Country List that satisfies the statutory criteria for surrogate country.

**Fresh Shrimp Surrogate Value Data**

Commerce notes that the value of the main input, head-on, shell-on shrimp, is critical in the dumping calculation as it accounts for the majority of the NV. Consequently, Commerce has consistently placed great weight on the available sources of fresh, whole shrimp prices—more so than for non-shrimp FOPs. The record contains publicly available surrogate value information for all FOPs from India. With respect to the main raw material input, fresh shrimp, VASEP submitted fresh shrimp data from an online pricing portal covering *vannamei* (whiteleg) shrimp. The prices published by the pricing portal are weekly average, ex-farm prices for *vannamei* shrimp sold by farmers in Andhra Pradesh, India’s largest shrimp producing region and represent actual trading by processing plants. The data are compiled from various producers from procurement centers at the processing plants by Aqua Brahma. However, the India seafood pricing portal provides price data limited to count-sizes of 30 pieces per kilogram through 100 pieces per kilogram. Thus, in that respect, the Indian pricing data do not cover a wide range of shrimp count-sizes, particularly the largest, most expensive shrimp count-sizes (i.e., under 30 pieces per kilogram). While the data do not cover count-sizes below 30 pieces per kilogram and above 100 pieces per kilogram, Commerce has been applying since the third administrative review, and continues to apply here, a methodology of extrapolating missing count-size data from existing count-size data to fill gaps. Further, the fresh shrimp surrogate value data are, among other criteria, useable, contemporaneous, and representative of a broad-market average. Moreover, it is the only surrogate value data on the record to value fresh shrimp.

With respect to the non-shrimp surrogate values, the record contains Global Trade Atlas (GTA) data from India for all other reported FOPs as well as surrogate financial statements from Indian producers of comparable merchandise. As stated above, Commerce’s practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, surrogate values which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR and exclusive of taxes and duties. Thus, given the above facts, Commerce has preliminarily selected India as

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93 See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results Antidumping Duty Administrative Review, 79 FR 15944 (March 24, 2014) (VN Shrimp AR8 Prelim), and accompanying Preliminary Decision Memorandum at 14; unchanged VN Shrimp AR8 Final. See also Tri Union I.
94 See VASEP SV Comments.
95 Id., at 3 and Exhibits SV-2a and SV-2b.
96 Id.
97 Id., at Exhibit SV-2b.
98 Id.
99 See VN Shrimp AR8 Final at Comment 1 (“the CIT affirmed our placement of great weight on count size stating that ‘because the count size of shrimp is unquestionably an important consideration, the Department reasonably placed more weight on its specificity criterion than on its four other criteria.’”) and Comment 3.
101 See, e.g., Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of the Eleventh Administrative Review and New Shipper Reviews, 72 FR 34438 (June 22, 2007), and accompanying Issues and Decision Memorandum at Comment 2A.
the surrogate country for this review. A detailed explanation of the surrogate values used is provided below in the “Normal Value” section of this notice.

D. Date of Sale

Fimex VN reported date of sale based on the invoice date because it best represented the point where the price and quantity of goods were fixed.\(^{102}\) Fimex VN reported that it and its U.S. customers “do not settle the actual shipment until the issuance of the commercial invoice.”\(^{103}\) Nha Trang Seaproduction Company reported the “invoice date as the date of sale for all U.S. sales as this is the date on which the material terms of sale are set.”\(^{104}\) In this case, as Commerce found no evidence contrary to these claims that invoice date was the appropriate date of sale, Commerce used invoice date as the date of sale for these preliminary results in accordance with 19 CFR 351.401(i).\(^{105}\)

E. Fair Value Comparisons

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether the respondent’s sales of the subject merchandise from Vietnam to the United States were made at less than NV, Commerce compared the EP to the NV as described in the “Export Price” and “Normal Value” sections of this memorandum.

1. Determination of the Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or constructed export prices (CEPs)) (i.e., the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, Commerce examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales (i.e., the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not directly apply to Commerce’s examination of this question in the context of administrative reviews, Commerce finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in AD investigations.\(^{106}\)

Commerce applies a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation, pursuant to 19 CFR

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\(^{102}\) See Fimex VN’s Section A Questionnaire Response (SAQR), dated June 6, 2018, at 21 and Section C Questionnaire Response, dated July 2, 2018, at C-13 and C-14.

\(^{103}\) Id., at 21.

\(^{104}\) See Nha Trang Seaproduction Company’s Supplemental Section C Questionnaire Response, dated October 29, 2018, at 2.

\(^{105}\) See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10.

\(^{106}\) See Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews: 2010-2011, 77 FR 73415 (December 10, 2012).
Commerce finds that the differential pricing analysis used in its investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce’s additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent’s weighted-average dumping margin.

The differential pricing analysis used in these preliminary results was affirmed by the CAFC as in accordance with law in *Apex Frozen Foods Private Ltd. v. United States*. That analysis examines whether there exists a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer codes (CUSCODU). Regions are defined using the reported destination code (i.e., zip code (DESTU)) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that Commerce uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s $d$ test” is applied. The Cohen’s $d$ coefficient is a generally recognized statistical measure of the extent of the difference between the mean (i.e., weighted-average price) of a test group and the mean (i.e., weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s $d$ coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s $d$ coefficient is used to evaluate the extent to which the net prices to the particular purchaser, region or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s $d$ test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen’s $d$ test, if the calculated Cohen’s $d$ coefficient is equal to or exceeds the large (i.e., 0.8) threshold.

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Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s $d$ test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s $d$ test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s $d$ test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s $d$ test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s $d$ test. If 33 percent or less of the value of total sales passes the Cohen’s $d$ test, then the results of the Cohen’s $d$ test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (i.e., the Cohen’s $d$ test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison method, based on the results of the Cohen’s $d$ and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if (1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the de minimis threshold, or (2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the de minimis threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

2. Results of the Differential Pricing Analysis

For Fimex VN, based on the results of the differential pricing analysis, Commerce preliminarily finds that 53.3 percent of the value of U.S. sales pass the Cohen’s $d$ test,109 and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen’s $d$ test and the average-to-average method to those sales which did not pass the Cohen’s $d$ test. Thus, for these preliminary results, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Fimex VN.

109 See Memorandum, “Preliminary Results Margin Calculation for Fimex VN,” dated concurrently with this memorandum (Fimex VN Preliminary Calculation Memo).
For Nha Trang Seaproducts Company, based on the results of the differential pricing analysis, Commerce preliminarily finds that 79.10 percent of the value of U.S. sales pass the Cohen’s d test, and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for these preliminary results, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Nha Trang Seaproduct Company.

**F. U.S. Price**

*Export Price*

In accordance with section 772(a) of the Act, Commerce calculated EP for all of Fimex VN’s and a portion of Nha Trang Seaproduct Company’s sales to the United States because the first sale to an unaffiliated party was made before the date of importation and the use of CEP was not otherwise warranted. Commerce calculated EP based on the sales price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, as appropriate, Commerce deducted from the starting price (gross unit price) certain foreign inland freight expenses, brokerage and handling expenses (which may include, individually, lift and containerization expenses), and international movement costs. Where the respondents incurred movement expenses provided by an NME vendor or paid for using an NME currency, Commerce based the deduction of these charges on surrogate values. Where movement expenses were provided by an ME supplier and paid in an ME currency, we relied on the reported expenses in our calculation.

*Constructed Export Price*

For some of Nha Trang Seaproduct Company’s sales, Commerce based U.S. price on CEP in accordance with section 772(b) of the Act, because sales were made on behalf of the Vietnam-based company by U.S. affiliates to unaffiliated purchasers in the United States. For these sales, Commerce based CEP on prices to the first unaffiliated purchaser in the United States. As with the EP deductions noted above, where appropriate, Commerce made deductions from the starting price (gross unit price) for foreign movement expenses and international movement expenses, in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, Commerce also deducted those selling expenses associated with economic activities occurring in the United States, such as credit expenses and indirect selling expenses for Nha Trang Seaproduct Company. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for each company, see the company-specific calculation memoranda, dated concurrently with these preliminary results.

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110 See Memorandum, “Preliminary Results Margin Calculation for Nha Trang Seaproduct Company,” dated concurrently with this memorandum (Nha Trang Seaproduct Company Preliminary Calculation Memo).
111 See the company-specific calculation memoranda.
112 See Preliminary SV Memo and company-specific calculation memoranda.
113 See, e.g., Nha Trang Seaproduct Company Preliminary Calculation Memo.
G. Normal Value

Section 773(c)(1) of the Act provides that Commerce shall determine NV using the 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. Commerce bases NV on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under Commerce’s normal methodologies.\(^\text{114}\) Therefore, in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c), Commerce calculated NV based on FOPs. Under section 773(c)(3) of the Act, FOPs include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs.\(^\text{115}\)

Exclusion Requests

On June 12, 2017, Fimex VN requested to be excused from reporting FOPs separately for purchased frozen shrimp.\(^\text{116}\) Following our determination beginning in \textit{VN Shrimp AR9 Final},\(^\text{117}\) Commerce continues to decline requests for companies to be excused from reporting frozen shrimp purchases/consumption as FOPs and it declines to treat purchased frozen shrimp FOPs as equivalent to fresh shrimp FOPs.\(^\text{118}\) Thus, we requested that Fimex VN report fresh shrimp as separate FOPs from purchased frozen shrimp FOPs. Further, Nha Tang Seaproduct Company reported that it did not purchase frozen shrimp for thawing and reprocessing into subject merchandise; thus, it did not report purchased frozen shrimp as a FOP.\(^\text{119}\)

H. Factor Valuation Methodology

In accordance with section 773(c) of the Act, for subject merchandise produced by Fimex VN and Nha Trang Seaproduct Company, Commerce calculated NV based on the FOPs reported by both companies for the POR. Commerce used Indian import data and other publicly available Indian sources in order to calculate surrogate values for all reported FOPs. To calculate NV, Commerce multiplied the reported per-unit FOP quantities by publicly available surrogate values. Commerce’s practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, surrogate values which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.\(^\text{120}\)


\(^{115}\) See sections 773(c)(3)(A)-(D) of the Act.


\(^{117}\) See VN Shrimp AR9 Final and accompanying Issues and Decision Memorandum at Comment 2.


\(^{119}\) See Nha Trang Seaproduct Company’s Supplemental Section D Questionnaire Response, dated November 13, 2018, at 2-3.

\(^{120}\) See, e.g., Electrolytic Manganese Dioxide from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 48195 (August 18, 2008), and accompanying Issues and Decision Memorandum at Comment 2.
As appropriate, Commerce adjusted input prices by including freight costs to render them delivered prices. Specifically, Commerce added to Indian import surrogate values a surrogate freight cost using the less expensive of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where it relied on an import value. This adjustment has been upheld by the Court of Appeals for the Federal Circuit (CAFC). Additionally, where necessary, Commerce adjusted surrogate values for inflation and exchange rates, taxes, and Commerce converted all applicable FOPs to a per-kilogram basis.

Consistent with section 773(c)(5) of the Act, we disregarded import prices from countries that we have determined maintain broadly available export subsidies. We have reason to believe or suspect that prices of inputs from, Indonesia, South Korea, and Thailand may have been subsidized because we have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies. Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. Further, guided by the legislative history, it is Commerce’s practice not to conduct a formal investigation to ensure that such prices are not subsidized. Additionally, consistent with our practice, we disregarded prices from NME countries and excluded imports labeled as originating from an “unspecified” country from the average value because Commerce could not be certain that they were not from either an NME country or a country with general export subsidies. Therefore, we have not used prices from these countries in calculating the import-based surrogate values or in calculating ME input values.

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from a ME supplier in meaningful quantities (i.e., not insignificant quantities) and pays in an ME currency, Commerce uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping and/or subsidization. Where Commerce finds ME purchases to be of significant quantities (i.e., 85 percent or more), in accordance with our statement of policy as outlined in ME Inputs Final Rule, Commerce uses the actual purchase prices to value the inputs. Alternatively, when the volume of an NME firm’s purchases of an input from ME suppliers during the period is below 85 percent of its total volume of purchases of

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121 See Sigma Corp. v. United States, 117 F.3d 1401, 1408 (Fed. Cir. 1997).
122 See, e.g., Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination, 78 FR 50379 (August 19, 2013); Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19-20; Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review, 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4; and Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order, 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4-5.
126 See, e.g., Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27366 (May 19, 1997).
the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, Commerce will weight-average the ME purchase price with an appropriate surrogate value, according to the respective share of ME and NME purchases relative to the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption.\textsuperscript{128} When a firm has made ME input purchases that may have been dumped or subsidized, are not \textit{bona fide}, or are otherwise not acceptable for use in a dumping calculation, Commerce will exclude them from the numerator of the ratio to ensure a fair determination of whether valid ME purchases meet the 85 percent threshold.\textsuperscript{129} Commerce addresses Fimex VN’s reported ME purchases of inputs during the POR that were paid for in ME currency in Fimex VN Preliminary Calculation Memo.

Commerce used India GTA as its source of Indian surrogate value data to value non-fresh shrimp raw materials, certain energy inputs, and packing material inputs that the respondents used to produce subject merchandise during the POR. The data represent cumulative values for the POR for inputs classified by the Harmonized Commodity Description and Coding System (HS) code, as provided in VASEP SV Comments for the direct materials used to produce subject merchandise.\textsuperscript{130} For each input value, we used the average per-unit value for that input imported into India from all countries that Commerce has not previously determined to be NME countries. Import statistics from countries that Commerce determines to be countries which subsidized exports (\textit{i.e.,} Indonesia, South Korea, and Thailand) and imports from unspecified countries also were excluded in the calculation of the average value.

\textit{Fresh Shrimp and Frozen Shrimp}

VASEP submitted Indian fresh shrimp surrogate values from an online seafood pricing periodical. The data are, among other criteria, contemporaneous, specific to the input, and publicly available. Specifically, the prices are weekly averages of ex-farm prices for \textit{vannamei} sold by farmers in Andhra Pradesh, and represent actual trading done by processing plants.\textsuperscript{131} The shrimp are sold whole fresh and raw, \textit{i.e.,} head-on shell-on (HOSO).\textsuperscript{132} The published price data is historical data sourced from various producers from procurement centers at the processing plants by Aqua Brahma.\textsuperscript{133} As noted above, the fresh shrimp prices cover count sizes between 30 pieces per kilogram through 100 pieces per kilogram. Thus, Commerce was required to extrapolate, from those existing prices, surrogate values covering count-size ranges below 30 pieces per kilogram and above 100 pieces per kilogram.\textsuperscript{134}

Where Fimex VN reported ME purchases of frozen shrimp, there were no usable purchase prices to value the frozen shrimp;\textsuperscript{135} thus, we applied an India GTA surrogate value to Fimex VN’s reported consumption of purchased frozen shrimp using HS 0306.17.\textsuperscript{136}

\textsuperscript{128} \textit{Id.; see also} Fimex VN Preliminary Calculation Memo.
\textsuperscript{129} \textit{Id.}
\textsuperscript{130} \textit{See} VASEP SV Comments.
\textsuperscript{131} \textit{Id.}
\textsuperscript{132} \textit{Id.}
\textsuperscript{133} \textit{Id.} at Exhibit SV-2. For a detailed explanation of Commerce’s valuation of shrimp, \textit{see} Preliminary SV Memo.
\textsuperscript{134} \textit{See} Preliminary SV Memo.
\textsuperscript{135} \textit{See, e.g.,} Fimex VN’s Section D Questionnaire Response dated July 13, 2018, at Exhibit D-7.
\textsuperscript{136} \textit{See} Preliminary SV Memo and Fimex VN Preliminary Calculation Memo.
Shrimp Scrap Byproduct

We valued shrimp scrap/byproduct using HS 0508.00.50: “Shells Of Moluscs, Crstacns/Echinodrms,” which is specific to the shrimp scrap byproduct generated as an offset to NV.

Shrimp Larvae

To value farming FOPs reported by Fimex VN, such as shrimp larvae, which is not available in GTA, we preliminarily relied on the shrimp larvae surrogate value that we have used since VN Shrimp AR9, unchanged in VN Shrimp AR9 Final. The shrimp larvae surrogate value is from an annual report of an Indian company, Sharat Industries’ 2009-2010 Annual Report, which VASEP placed on the record. Commerce previously relied on this same source in China Shrimp AR5 Final Results. We inflated the shrimp larvae surrogate value using the POR average consumer price index (CPI) rate.

Water and Electricity

Commerce valued water using publicly available Indian data from the Maharashtra Industrial Development Corporation, which is contemporaneous with the POR. While VASEP placed an Indian water surrogate value on the record, this value appears to be a part of a discussion of water tariff changes by the State of Maharashtra, as quoted within a Times of India article from the news agency’s website absent the source documents for the water tariffs. This article contains no source documentation of the published water tariffs, nor did VASEP provide the source documents for its suggested water surrogate value. Thus, Commerce obtained, and is placing on the record with the preliminary results, a reliable, contemporaneous commercial-use water tariffs directly from Maharashtra Industrial Development Corporation, inclusive of the underlying sources of the individual water tariffs by regions of the Maharashtra state, which we simple-averaged.

We valued electricity using the Doing Business 2018: India report, which is contemporaneous with the POR.

Movement

We valued brokerage and handling costs incurred at the domestic port using a price list of export procedures necessary to export a standardized cargo of goods from India. The price list is

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137 See Preliminary SV Memo.  
138 See VN Shrimp AR9 Prelim, and accompanying Preliminary Decision Memorandum at 25.  
139 See VASEP SV Comments.  
141 See Preliminary SV Memo.  
142 See VASEP SV Comments at Exhibits SV-1 and SV-5.  
143 See, e.g., Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value, 81 FR 75042 (October 28, 2016), and accompanying Issues and Decision Memorandum at Comment 2.  
144 See Preliminary SV Memo.  
145 See VASEP SV Comment at Exhibits SV-1 and SV-4.
compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport from India that is published in Doing Business 2018: India by the World Bank. This World Bank report gathers information concerning the cost to transport 15,000 kilograms in a 20-foot container. The brokerage and handling surrogate value is based on the average of itemized charges from Mumbai and Delhi for various export procedures identified as “Documents Preparation” valued at $92/15,000 kilograms, and “Border Compliance” valued at $381/15,000 kilograms. Because Doing Business India does not identify lift and containerization charges, individually, we relied on the “Border Compliance” fee of $381/15,000 kilograms and divided it evenly to value reported lift and containerization expenses at $190.25/15,000 kilograms. The total of all itemized charges (“Documents Preparation” and “Border Compliance”) is $473/15,000 kilograms, which we used to value brokerage and handling expenses, generally.

We used Indian transport information in order to value the freight-in cost of the raw materials. Commerce determined the best available information for valuing truck freight to be from Doing Business 2018: India. We valued ocean freight using data obtained from the Descartes Carrier Rate Retrieval Database (Descartes), accessed through http://descartes.com, which publishes international ocean freight rates offered by numerous carriers. These rates are publicly available and cover a wide range of shipping rates which are reported on a daily basis. We did not inflate or deflate the rate cited in this survey because it is contemporaneous with the POR. We valued marine insurance expense using a rate offered by RJG Consultants. RJG Consultants is a ME provider of marine insurance. The rate is a percentage of the value of the shipment; thus, we did not inflate or deflate the rate.

Labor

On June 21, 2011, Commerce revised its methodology for valuing the labor input in NME antidumping proceedings. In Labor Methodologies, Commerce determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, Commerce determined that the best data source for industry-specific labor rates is Chapter 5B: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics (ILO Yearbook).

The record contains an Indian labor surrogate value from the ILO Yearbook that we find to be the best available information on the record, as it is from Chapter 6A of the ILO and specific to manufacturing of food products. Thus, we relied on the Indian ILO data to value labor, and inflated the value using the POR average Indian CPI rate.

Surrogate Financial Ratios

To value factory overhead, selling, general, and administrative expenses, and profit, Commerce relied on the financial statements of one of three Indian producers of comparable merchandise on

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146 See VASEP SV Comments at Attachment SV-4.
147 See Preliminary SV Memo.
148 Id.
149 Id.
151 See VASEP SV Comments at Exhibit SV-6.
152 See Preliminary SV Memo.
the record, as submitted by VASEP.\textsuperscript{153} VASEP originally provided three comparable producers’ surrogate financial statements on the record covering 2016-2017.\textsuperscript{154} Subsequently, VASEP filed three additional financial statements for the same three Indian companies for the 2017-2018 fiscal period, which cover more months of the POR. However, in its second round of comments, VASEP noted that two of the Indian companies were recipients of countervailable subsidies in 2016-2017 and 2017-2018, as reflected in their respective 2017-2018 financial statements.\textsuperscript{155} VASEP also provided arguments citing Commerce’s stated practice with respect to surrogate financial statements that demonstrate evidence of countervailable subsidies.\textsuperscript{156} Commerce cannot ignore the information on the record regarding the evidence of export subsidies (e.g., sale of Merchandise Exports from India Scheme (“MEIS”)) for the 2016-2017 and 2017-2018 fiscal periods in the Falcon Marine Exports Limited and Asvini Fisheries Private Limited 2017-2018 audited financial statements.\textsuperscript{157} Commerce has previously determined MEIS to be a countervailable subsidy.\textsuperscript{158}

Thus, Commerce calculated the surrogate financial ratios using the 2017-2018 financial statements of MMC Exports Limited, a producer/processor of marine products, which we find to be comparable merchandise based on the evidence VASEP placed on the record.\textsuperscript{159} Furthermore, there is no evidence on the record that MMC Exports Limited benefitted from any countervailable subsidies, consistent with recent court determinations demonstrating our preference for financial statements with no evidence of countervailable subsidies.\textsuperscript{160}

V. CURRENCY CONVERSION

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

\textsuperscript{153} See VASEP SV2 Comments at Exhibit SV-10c.
\textsuperscript{154} See VASEP SV Comments at Exhibit 7.
\textsuperscript{155} See VASEP SV2 Comments at 1-5 and Exhibits SV-10a and SV-10b.
\textsuperscript{156} Id., at 1-5 and Exhibit SV-11.
\textsuperscript{157} Id., at Exhibit SV-11, .pdf pages 239 (Falcon Marine) and 350-351 (Asvini).
\textsuperscript{158} This practice was most recently affirmed in Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of Countervailing Duty Administrative Review; 2016, 84 FR 10789 (March 22, 2019), and accompanying Issues and Decision Memorandum at Comment 1 (“We agree with the petitioners, and disagree with the GOI, that the GOI failed to demonstrate that the MEIS Program is not countervailable under the Act and Commerce’s regulations.”)
\textsuperscript{159} See VASEP SV2 Comments at SV-12.
\textsuperscript{160} See, e.g., Weishan Hongda Aquatic Food Co., Ltd., et al. v. United States, 2019 U.S. App. LEXIS 6596 (Fed. Cir. March 2019) (“Substantial evidence supports Commerce’s determination that the Oceana Report is the best available information on the record to value the surrogate financial ratios. Surapon and Kiang Huat’s financial statements reveal that each received export subsidies…”).
VI. CONCLUSION

We recommend applying the above methodology for these preliminary results.

☑ ☐

Agree Disagree

4/8/2019

Signed by: GARY TAVERMAN
Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance
Appendix

Companies Preliminarily Granted Separate Rates

1. Fimex VN, aka
   Sao Ta Foods Joint Stock Company
2. Nha Trang Seaproducmt Company,
   NT Seafoods Corporation,
   Nha Trang Seafoods -- F89 Joint Stock Company, and
   NTSF Seafoods Joint Stock Company
3. Bac Lieu Fisheries Joint Stock Company
4. Bentre Forestry and Aquaproducmt Import-Export Joint Stock Company, aka
   FAQUIMEX
5. C.P. Vietnam Corporation
6. Cadovimex Seafood Import-Export and Processing Joint Stock Company
7. Camau Frozen Seafood Processing Import Export Corporation, aka
   Camimex
8. Camau Seafood Processing and Service Joint Stock Corporation, aka
   Camau Seafood Processing and Service Joint-Stock Corporation, aka
   CASES
9. Can Tho Import Export Fishery Limited Company, aka
   CAFISH
10. Cuulong Seaproducmt Company, aka
    Cuulong Seapro
11. Fine Foods Co, aka
    FFC
12. Frozen Seafoods Factory No. 32
13. Hai Viet Corporation, aka
    HAVICO
14. Kim Anh Company Limited
15. Minh Hai Export Frozen Seafood Processing Joint-Stock Company, aka
    Minh Hai Jostoco
    Sea Minh Hai, aka
    Seaprodex Minh Hai, aka
    Minh Hai Joint Stock Seafoods
17. Ngoc Tri Seafood Joint Stock Company
18. Q N L Company Limited
20. Seaprimexco Vietnam, aka Seaprimexco
21. Seafoods and Foodstuff Factory
22. Taika Seafood Corporation
23. Thong Thuan Company Limited
24. Thuan Phuoc Seafoods and Trading Corporation
25. Trang Khanh Trading Company Limited, aka Trang Khanh Seafood Co., Ltd
26. Trong Nhan Seafood Company Limited
27. UTXI Aquatic Products Processing Corporation
28. Viet Foods Co., Ltd.
30. Vietnam Fish One Co., Ltd.
31. Vietnam Clean Seafood Corporation, aka Vina Cleanfood, aka Viet Nam Clean Seafood Corporation