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DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-801]

Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam

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

EFFECTIVE DATE: January 31, 2003.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3208.

Preliminary Determination

We preliminarily determine that certain frozen fish fillets from the Socialist Republic of Vietnam are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

On June 28, 2002, the Department of Commerce ("Department") received a petition on imports of certain frozen fish fillets from the Socialist Republic of Vietnam ("Vietnam") filed in proper form by Catfish Farmers of America ("CFA") and the individual U.S. catfish processors America's Catch Inc.; Consolidated Catfish Co., L.L.C.;

Delta Pride Catfish, Inc.; Harvest Select Catfish, Inc.; Heartland Catfish Company; Pride of the Pond; Simmons Farm Raised Catfish, Inc.; and Southern Pride Catfish Co., Inc., hereinafter referred to collectively as "the petitioners." This investigation was initiated on July 18, 2002. See Notice of Initiation of Antidumping Duty Investigation: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam ("Notice of Initiation"), 67 FR 48437 (July 24, 2002). The Department initiated the investigation using both a market economy and non-market economy analysis. For a further discussion of Vietnam's market analysis, please see the "Non Market Economy Country Status" section below. The Department set aside a period for all interested parties to raise issues regarding product coverage. See Notice of Initiation at 48437-38. We received comments regarding product coverage from interested parties. For a detailed discussion of the comments regarding the scope of the merchandise under investigation, please see the "Scope of the Investigation" section below.

On August 8, 2002, the United States International Trade Commission ("ITC") issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Vietnam of certain frozen fish fillets, which was published in the

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Federal Register on August 15, 2002. See Certain Frozen Fish Fillets from Vietnam, 67 FR 53362 (August 15, 2002).

On August 9, 2002, the Department requested quantity and value ("Q&V") information from a total of fifty-three Vietnamese companies, which were identified in the Petition for the Imposition of Antidumping Duties: Frozen Fish Fillets from the Socialist Republic of Vietnam, dated June 28, 2002 ("Petition") and for which the Department was able to locate contact information. On August 9, 2002, the Department also sent the Government of Vietnam a letter requesting assistance locating all known Vietnamese producers/exporters of frozen fish fillets who exported certain frozen fish fillets to the United States during the market (April 1, 2001 through March 31, 2002) and non-market (October 1, 2001 through March 31, 2002) economy periods of investigation and quantity and value information for all exports to the United States of the merchandise under investigation during the period of investigation. On August 20, 2002, we received a letter from Grobest Industrial (Vietnam) Co., Ltd., ("Grobest"), which indicated that Grobest did not sell certain frozen fish fillets to the United States during the market or non-market economy periods. On August 22, 2002, the Department received a letter from Minh Hai Sea Products Import and

Export Corporation ("SEAPRIMEXCO"), which indicated that SEAPRIMEXCO did not sell certain frozen fish fillets to the United States during the market or non-market economy periods. Additionally, on August 23, 2002, we received thirteen responses to our Q&V information request. The following thirteen companies submitted quantity and value information: An Giang Agriculture and Food Import Export Company ("Afiex"), An Giang Fisheries Import Export Joint Stock Company ("Agifish"), Ben Tre Frozen Aquaproduct Export Company ("Ben Tre"), Can Tho Agricultural and Animal Products Import Export Company ("CATACO"), Can Tho Animal Fishery Products Processing Export Enterprise ("CAFATEX"), Da Nang Seaproducts Import-Export Corporation ("Da Nang"), Mekong Fish Company ("Mekonimex"), Nam Viet Company Limited ("Nam Viet"), QVD Food Company Limited ("QVD"), Tien Gang Seaproduct Company ("Tieng Gang"), Viet Hai Seafood Company Limited ("Viet Hai"), Vinh Hoan Company Limited ("Vinh Hoan") and Vinh Long Import-Export Company ("Vinh Long").

On August 27, 2002, the Department published a postponement of the preliminary antidumping duty determination on certain frozen fish fillets from Vietnam. See Notice of Postponement of the Preliminary Determination of the Certain Frozen Fish Fillets from the Socialist Republic of Vietnam Antidumping Duty Investigation (Notice of Prelim Postponement") 67 FR 55003 (August 27, 2002).

On August 30, 2002, the Department requested comments on surrogate country and factor valuation information in order to have sufficient time to consider them for the preliminary determination.

On September 4, 2002, the Department issued its respondent selection memorandum, selecting Agifish, Vinh Hoan, Nam Viet and CATACO, hereinafter referred to collectively as "the respondents," to be investigated. See Memorandum to the File from James C. Doyle, Program Manager to Edward C. Yang, Director, Office IX, Antidumping Duty Investigation of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Selection of Respondents ("Respondent Selection Memo"), dated September 4, 2002.

On September 4, 2002, the Department requested comments from parties regarding the appropriate physical characteristics of certain frozen fish fillets to be reported. On September 5, 2002, the petitioners requested a revision in the schedule for submission of surrogate country comments. On September 6, 2002 the respondents also requested an extension of time to submit surrogate country and factor value information. On September 9, 2002, the Department revised its schedule for submitting comments on the appropriate surrogate country.

On September 11, 2002, the petitioners and the respondents submitted comments regarding the appropriate physical characteristics of certain frozen fish fillets. On September 13, 2002, the respondents submitted rebuttal comments regarding the appropriate physical characteristics of certain frozen fish fillets. On September 16, 2002,

the Department sent the respondents Section A of the Department's market and non-market economy antidumping duty questionnaires. In addition, on September 16, 2002, we sent the Government of Vietnam Section A of the Department's market and non-market economy antidumping duty questionnaires.

On September 18, 2002, the petitioners submitted rebuttal comments addressing the respondents' comments and rebuttal comments regarding the appropriate physical characteristics of certain frozen fish fillets.

On September 23, 2002, the petitioners submitted a letter notifying the Department of increased shipments of subject merchandise to the United States in advance of the Department's preliminary determination in this proceeding, and accordingly, requested that the Department take action to collect information regarding entries of subject merchandise pursuant to section 732a(e) of the Act (19 U.S.C. 1673a(e)) and 19 CFR 351.206(g).

On September 23, 2002, the Department sent the respondents and the Government of Vietnam Sections B, C and E of the Department's market economy questionnaire and Sections C & D of the non-market economy questionnaire.

On October 2, 2002, the respondents requested a two-week extension to file their Section A market economy and non-market economy questionnaire responses. On October 3, 2002, the Department granted a partial extension for the respondents to submit their Section A market economy and non-market economy questionnaire responses.

On October 7, 2002, the petitioners requested an extension of time to submit a country-wide sales below cost allegation in the event the Department determines that Vietnam is to be treated as a market economy for antidumping duty purposes. On October 10, 2002, the respondents requested an additional extension to file Section A market and non-market economy questionnaire responses. On October 15, 2002, the petitioners withdrew their October 7, 2002 request for an extension of the deadline to submit a country-wide sales below cost allegation. On October 15, 2002, the Department extended the deadline for the respondents to submit Section A market and non-market economy questionnaire responses. On October 15, 2002, the respondents submitted their Section A market and non-market economy responses. The Government of Vietnam did not provide a response.

On October 23, 2002, the Department received Section A market and non-market economy responses from Afiex, Cafatex, Da Nang, Mekonimex, QVD, Viet Hai and Vinh Long, hereinafter referred to as "the voluntary Section A respondents." On October 24, 2002, the petitioners submitted comments on the market and non-market economy Section A questionnaire responses. On October 24, 2002, the respondents requested an extension for filing the respondents' and the voluntary Section A respondents' non-market economy

Sections C and D questionnaire responses. On October 25, 2002, the Department issued supplemental Section A market and non-market economy questionnaires to the respondents and the voluntary Section A respondents. On October 28, 2002, the respondents requested an extension of time to submit responses to the Department's market and non-market economy supplemental Section A questionnaires. On October 30, 2002, the Department granted the respondents' extension request for their responses to the market and non-market economy Sections C and D questionnaires.

On November 5, 2002, the petitioners submitted comments regarding the voluntary Section A respondents' market and non-market economy responses. On November 6, 2002, the respondents requested an extension of time to submit their market economy Sections B and C of the questionnaires. On November 8, 2002, the petitioners requested an extension of time to submit surrogate country comments and factor value information. Additionally, on November 8, 2002, the Department determined that Vietnam will be treated as a non-market economy country for the purposes of antidumping and countervailing duty proceedings. See Memorandum for Faryar Shirzad, Assistant Secretary, Import Administration from Shauna Lee-Alaia, George Smolik, Athanasios Mihalakas and Lawrence Norton, Office of Policy through Albert Hsu, Senior Economist, Office of Policy, Import Administration, Jeffrey May, Director, Office of Policy, Import Administration, Antidumping Duty Investigation of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Determination of Market Economy Status ("Market Status Memo"), dated November 8, 2002. For a more detailed discussion, please see the "Non-Market Economy Status" section below.

On November 12, 2002, the Department sent the respondents and the voluntary Section A respondents a letter informing them that because the Department determined that Vietnam is to be treated as a non-market economy, the respondents and the voluntary Section A respondents were no longer required to submit Sections B, C & E of the market economy antidumping duty questionnaire sent on September 23, 2002. In addition, we stated that the respondents and the voluntary Section A respondents were no longer required to submit the market economy Section A supplemental questionnaire sent on October 25, 2002. On November 13, 2002, the respondents submitted non-market economy Sections C & D questionnaire responses. All subsequent responses from the respondents and voluntary Section A respondents were responses to the non-market economy questionnaire.

On November 14, 2002, the respondents submitted a letter agreeing

to the extension of time request submitted by the petitioners on November 8, 2002 for purposes of submitting surrogate country comments and factor value information. On November 14, 2002, the Department granted an extension request for interested parties to submit surrogate country comments and factor value information.

On November 15, 2002, the petitioners filed a formal critical circumstances allegation in accordance with 19 CFR 351.206(c)(2)(iii). For a more detailed discussion, please see the "Critical Circumstances" section below. On November 15, 2002, the Department issued a supplemental questionnaire on the respondents' Section D responses. On November 15, 2002, the respondents submitted their responses to the Department's Section A supplemental questionnaire.

On November 18, 2002, the Department issued a Section A supplemental questionnaire to the voluntary Section A respondents. On November 22, 2002, the respondents submitted their responses to the Department's Section D supplemental questionnaire dated November 15, 2002. On November 25, 2002, Agifish and Vinh Hoan submitted a correction to their factors of production database. On November 25, 2002, the Department received an extension request to delay the submittal of the supplemental responses from the voluntary Section A respondents. Also on November 25, 2002, the Department requested that the respondents provide monthly shipment data for use in the critical circumstances determination.

On December 2, 2002, the petitioners submitted comments regarding the respondents' Sections C and D questionnaire responses dated November 13, 2002. On December 6, 2002, the respondents requested an extension of time regarding the Department's request for monthly shipment data. Additionally, the voluntary Section A respondents requested an extension of time to submit their supplemental questionnaire responses. Also on December 6, 2002, the Department issued a Sections C and D supplemental questionnaire to the respondents. On December 6, 2002, the Department granted a second extension of time to submit surrogate country and factor value information. On December 6, 2002, the Ministry of Trade of Vietnam submitted comments regarding the surrogate country. On December 9, 2002, the respondents and the petitioners submitted comments regarding surrogate country and factor value information. On December 9, 2002, the Department granted an extension of time to the voluntary Section A respondents to submit their supplemental responses and an extension of time for the respondents to submit monthly shipment data.

On December 10, 2002, the petitioners submitted comments regarding the respondents' supplemental Section A questionnaire responses. On December 10, 2002, the respondents submitted the monthly shipment data requested by the Department on November 25, 2002 and supplemental questionnaire responses from the voluntary Section A respondents. On December 12, 2002, the petitioners submitted an additional financial

statement to supplement the factor value information submitted on November 9, 2002.

On December 13, 2002, the Ministry of Fisheries of Vietnam submitted comments regarding the selection of the surrogate country. On December 13, 2002, the Department granted an extension of time to submit rebuttal comments regarding the surrogate country and the factor value information. On December 18, 2002, the respondents requested an extension of time to submit their supplemental Sections C and D questionnaire responses. On December 18, 2002, the petitioners submitted rebuttal comments regarding the surrogate country and factor value information submitted by the respondents on December 9, 2002.

On December 19, 2002, the respondents requested an extension of time to submit their supplemental Sections C and D questionnaire responses. On December 19, 2002, the Department granted the respondents an extension of time to submit their Section C and D supplemental questionnaire responses. Additionally, on December 19, 2002, the Department issued a second Section A supplemental questionnaire to the respondents. On December 20, 2002, the petitioners submitted comments regarding the voluntary Section A respondents' supplemental questionnaire responses. On December 27, 2002, the Department issued a second supplemental questionnaire to the voluntary Section A respondents. On December 31, 2002, the respondents and the voluntary Section A respondents requested an extension of time to submit their second supplemental questionnaire responses.

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On January 2, 2003, the Department granted an extension of time to the respondents and the voluntary Section A respondents to submit their second Section A questionnaire responses. On January 8, 2003, Agifish, one of the respondents, submitted a revised Sections C and D supplemental response. On January 10, 2003, the Department issued a section Sections C and D supplemental questionnaire to the respondents. On January 10, 2003, the respondents submitted an extension of time to submit their second Sections C and D supplemental questionnaire responses. On January 14, 2003, the Department granted an extension of time to the respondents to submit their second Sections C and D supplemental questionnaire responses. On January 16, 2003, the petitioners submitted comments relevant to the Department's preliminary determination. On January 17, 2003, the respondents submitted their responses to the second Sections C & D supplemental questionnaire. Also on January 17, 2003, the respondents submitted a letter requesting the Department to reject the petitioners' submission of January 16, 2003 as untimely. On January 21, 2003, the respondents submitted comments

requesting that the Department use their actual reported factors of production. On January 22, 2003, the petitioners submitted a letter requesting that the Department reject the respondents' January 16, 2003 submission on the grounds that it was untimely filed. On January 23, 2003, the respondents submitted a request that the Department not use the petitioners' recently filed submissions for the preliminary determination. Also on January 23, 2003, the respondents and the voluntary Section A respondents requested that the Department postpone the final determination until no later than 135 days after the date of publication of the preliminary determination.

Postponement of Final Determination

Section 735(a) of the Act provides that a final determination may be postponed until no later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for an extension of the provisional measures from a four-month period to not more than six months.

On January 23, 2003, the respondents and the voluntary Section A respondents requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the publication of the preliminary determination. The respondents and the voluntary Section A respondents also included a request to extend the provisional measures to not more than six months after the publication of the preliminary determination. Accordingly, since we have made an affirmative preliminary determination, and the requesting parties account for a significant proportion of the exports of the subject merchandise, we have postponed the final determination until no later than 135 days after the date of publication of the preliminary determination, and are extending the provisional measures accordingly.

Period of Investigation

The period of investigation ("POI") is October 1, 2001 through

March 31, 2002. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition (June 28, 2001). See 19 CFR 351.204(b)(1).

Scope of Investigation

For purposes of this investigation, the product covered is frozen fish fillets, including regular, shank, and strip fillets, whether or not breaded or marinated, of the species *Pangasius Bocourti*, *Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*), and *Pangasius Micronemus*. The subject merchandise will be hereinafter referred to as frozen "basa" and "tra" fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under tariff article codes 0304.20.60.30 (Frozen Catfish Fillets), 0304.20.60.96 (Frozen Fish Fillets, NESOI), 0304.20.60.43 (Frozen Freshwater Fish Fillets) and 0304.20.60.57 \1\ (Frozen Sole Fillets) of the Harmonized Tariff Schedule of the United States ("HTSUS"). This investigation covers all frozen fish fillets meeting the above specification, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

\1\ The petitioners have included this tariff classification code because they believe that the merchandise under investigation is entering the United States under this classification based on previous uses of the term "sole" to describe Vietnamese basa and tra.

On August 13, 2002, the respondents submitted comments regarding the scope of this investigation. On August 22, 2002, the petitioners also submitted comments regarding the scope language. Citing a report from Tyson Roberts at the California Academy of Sciences and Bhavalit Vidthayanon, National Inland Fisheries Institute, the respondents argued that *Pangasius Micronemus* is an outdated and inaccurate designation that has not been used by the scientific community since the early 1990s. The respondents argued that biologists who specialize in the freshwater fish of Southeast Asia now include the fish once thought to belong to the separate species *Pangasius Micronemus* as part of the species *Pangasius Hypophthalmus*, a correct scientific designation that is already included in the scope of the antidumping investigation.

Consequently, the respondents requested that the Department examined more closely the appropriateness of including Pangasius Micronemus in the scope of this antidumping investigation.

The petitioners argue that Pangasius Micronemus must remain within the scope of this antidumping investigation. According to the petitioners, Pangasius Micronemus is a designation that has been, and continues to be, used to describe the species of fish that are being filleted, frozen and exported to the United States, and which are intended to be covered by the scope of this investigation. Referencing the company websites from some of the mandatory and voluntary Section A respondents in this investigation, the petitioners note that Pangasius Micronemus continues to be used interchangeably with the Pangasius Hypophthalmus species appellation. In addition, the petitioners note that the U.S. Food and Drug Administration continues to recognize Pangasius Micronemus as a separate scientific description.

For this preliminary determination, we continue to include the species Pangasius Micronemus in the description of the scope. The evidence on the record clearly demonstrates that the producers/exporters of the merchandise under investigation continue to market the species designation Pangasius Micronemus. For example, Afiex's (a voluntary Section A respondent) product brochure identifies Pangasius Micronemus as the live fish species used to produce the subject merchandise. Furthermore, the petitioners submitted a news article regarding Agifish, one of the

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respondents, that mentions that it produces fish fillets from Pangasius Micronemus. Therefore, because the designation is clearly still in use commercially by the Vietnamese respondents, for purposes of this preliminary determination, we continue to include Pangasius Micronemus as part of the scope in this antidumping investigation.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject

merchandise, this provision permits the Department to investigate either: (1) A sample of exporters, producers, or types of products that is statistically valid based on the information available to the Department at the time of selection; or (2) exporters/producers accounting for the largest volume of the merchandise under investigation that can reasonably be examined. After consideration of the complexities expected to arise in this proceeding and the resources available to the Department, we determined that it was not practicable in this investigation to examine all known producers/exporters of subject merchandise. Instead, we limited our examination to the four exporters and producers accounting for the largest volume of the subject merchandise pursuant to section 777A(c)(2)(B) of the Act. The four Vietnamese producers/exporters, Agifish, Vinh Hoan, Nam Viet and CATACO, accounted for a significant percentage of all exports of the subject merchandise from the Vietnam during the POI, and were therefore selected as mandatory respondents. See Respondent Selection Memo at 4.

Nonmarket Economy Country Status

For purposes of initiation, the petitioners submitted LTFV analyses for Vietnam as a non-market economy and a market economy. See Notice of Initiation, at 48438. Because the petitioners alleged that Vietnam has a nonmarket economy, the Department invited parties to comment on Vietnam's economy with regards to the factors listed in section 771(18)(B) of the Act, which the Department must take into account when making a non-market economy status determination. See Opportunity to Comment on Petitioner's Allegation that Vietnam Has a Non-Market Economy: Investigation of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam ("Notice of Request for Comment"), 67 FR 52942 (August 14, 2002). Consequently, on November 8, 2002, the Department determined, after analyzing comments from interested parties, that based on the preponderance of evidence related to economic reforms in Vietnam to date, analyzed as required under section 771(18)(B) of the Act, that Vietnam will be treated as a non-market economy country for the purposes of antidumping and countervailing duty proceedings, effective July 1, 2001. See Market Status Memo at 44.

A designation as a non-market economy remains in effect until it is revoked by the Department (see section 771(18)(C) of the Act). When the Department is investigating imports from a non-market economy, section 773(c)(1) of the Act directs us to base the normal value on the non-market economy producer's factors of production, valued in an economically comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the "Factor Valuations" section, below.

Separate Rates

In proceedings involving non-market economy countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in a non-market economy country this single rate, unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. The four companies that the Department selected to investigate (i.e., Agifish, Vinh Hoan, Nam Viet and CATACO), and the Vietnamese producers/exporters that were not selected as mandatory respondents by the Department for this investigation, but which have submitted separate rates responses and had exports sales to the United States during the POI (i.e. Afiex, CAFATEX, Da Nang, Mekonimex, QVD, and Viet Hai) have provided company-specific separate rates information and have each stated that they met the standards for the assignment of separate rates.

We considered whether each Vietnamese company is eligible for a separate rate. The Department's separate rate test to determine whether the exporters are independent from government control does not consider, in general, macroeconomic/border-type controls, e.g., export licenses, quotas, and minimum export prices ("EP"), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. See *Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61757 (November 19, 1997) and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising out of the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("Sparklers"), as amplified by *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"). In accordance with the separate rates criteria, the Department assigns separate rates in non-market economy cases only if respondents can demonstrate the absence of both de jure and de facto governmental control over export activities.

1. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. See Sparklers at 20589.

Our analysis shows that the evidence on the record supports a preliminary finding of de jure absence of governmental control based on: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) the applicable legislative enactments decentralizing control of the companies;

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and (3) any other formal measures by the government decentralizing control of companies. See Memorandum to Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, Enforcement Group III from Joseph Welton, Lisa Shishido and Paul Walker, Case Analysts through James C. Doyle, Program Manager, Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Separate Rates for Producers/Exporters that Submitted Questionnaire Responses ("Separate Rates Memo"), dated January 24, 2003.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to de facto governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental 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 disposition of profits or financing of losses. See, *Silicon Carbide*, 59 FR at 22586-87; see, also *Notice of Final Determination of Sales at Less Than Fair Value*:

Furfuryl Alcohol From the People's Republic of China, 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

We determine that the evidence on the record supports a preliminary finding of de facto absence of governmental control based on record statements and supporting documentation showing that: (1) Each exporter sets its own export prices independent of the government and without the approval of a government authority; (2) each exporter retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) each exporter has the authority to negotiate and sign contracts and other agreements; and (4) each exporter has autonomy from the government regarding the selection of management.

Therefore, the evidence placed on the record of this investigation by Agifish, Vinh Hoan, Nam Viet, CATACO, Afiex, CAFATEX, Da Nang, Mekonimex, QVD and Viet Hai demonstrates an absence of government control, both in law and in fact, with respect to each of the exporter's exports of the merchandise under investigation, in accordance with the criteria identified in Sparklers and Silicon Carbide. As a result, for the purposes of this preliminary determination, we are granting separate, company-specific rates to each of the ten responding exporters which shipped certain frozen fish fillets to the United States during the POI. For a full discussion of this issue, please see the Separate Rates Memo.

Vietnam-Wide Rate

The Department's review of import data from the United States Customs Service shows that imports of certain frozen fish fillets from Vietnam during the POI are higher than the volume and value of U.S. sales reported by exporters that responded to our request for this information. See Respondent Selection Memo, at Attachment I. Therefore, the Department preliminarily determines that there were exports of the merchandise under investigation from other Vietnamese producers/exporters, which are treated as part of the countrywide entity. All exporters were given an opportunity to provide information showing they qualify for separate rates. However, none of these other exporters provided a response to the Department's Section A questionnaire.

Section 776(a)(2) of the Act provides that if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the

Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. In this case, the government of Vietnam did not respond to the Department's questionnaire, thereby necessitating the use of facts available to determine their rate.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may employ adverse inferences if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. See also "Statement of Administrative Action" accompanying the URAA, H.R. Rep. No. 103-316, 870 (1994) ("SAA"). The Department finds that because the Vietnam-wide entity did not respond at all to our request for information, it has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate. Consistent with Department practice in cases where a respondent is considered uncooperative, as adverse facts available, we have applied a rate of 63.88 percent, the highest rate calculated in the initiation stage of the investigation from information provided in the petition (as adjusted by the Department). See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Germany, 63 FR 10847 (March 5, 1998).

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described in the SAA as "information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise." See SAA at 870. The SAA provides that to "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. See *id.* The SAA also states that independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *Id.* As noted in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996) ("TRB Notice"), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information

used.

In order to determine the probative value of the initiation margin for use as facts otherwise available for the purposes of this determination, we examined evidence supporting the initiation calculations. We have now corroborated the information in the

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petition, with some small changes. See Memorandum to Edward C. Yang, Director, Office IX from Alex Villanueva, Case Analyst through James C. Doyle, Program Manager, Preliminary Determination in the Investigation of Certain Frozen Fish Fillets from Vietnam, Corroboration Memorandum ("Corroboration Memo"), dated January 24, 2003.

Consequently, we are applying a single antidumping rate--the Vietnam wide rate--to producers/exporters that failed to respond to the Q&V questionnaire and demonstrate entitlement to a separate rate. See, e.g., Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China, 65 FR 25706, 25707 (May 3, 2000). The Vietnam-wide rate applies to all entries of the merchandise under investigation except for entries from Agifish, Vinh Hoan, Nam Viet, CATACO, Afiex, CAFATEX, Da Nang, Mekonimex, QVD and Viet Hai.

Because this is a preliminary margin, the Department will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate final Vietnam-wide margin. See Notice of Preliminary Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China ("Saccharin from China"), 67 FR 79049, 79054 (December 27, 2002).

Margins for Cooperative Exporters Not Selected

The exporters who responded to Section A of the Department's antidumping questionnaire and had sales of the merchandise under investigation to the United States, but were not selected as mandatory respondents in this investigation (Afiex, CAFATEX, Da Nang, Mekonimex, QVD and Viet Hai) have applied for separate rates, and provided information for the Department to consider for this purpose. Although the Department is unable, due to administrative constraints (see Respondent Selection Memo), to calculate for each of these voluntary Section A respondents who are exporters a rate based on their own data, these companies cooperated in providing all the information that the Department requested of them. Therefore, for Afiex, CAFATEX, Da Nang, Mekonimex, QVD and Viet Hai, we have calculated a weighted-average

margin based on the rates calculated for those exporters that were selected to respond in this investigation, excluding any rates that are zero, de minimis or based entirely on adverse facts available. Companies receiving this rate are identified by name in the "Suspension of Liquidation" section of this notice. See Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China, 64 FR 24101 (May 11, 2001).

In addition, several companies indicated that during the POI, they had no sales of the merchandise under investigation to the United States. Specifically, Grobest, SEAPRIMEXCO, Tieng Gang and Ben Tre reported that they did not have sales of the merchandise under investigation to the United States during the POI. We note, moreover, that Vinh Long provided extensive separate rates information to the Department, but because the date of sale used in this investigation is the invoice date and because Vinh Long's only sale of the merchandise under investigation to the United States has a commercial invoice date outside the POI, Vinh Long did not make a sale of the merchandise under investigation to the United States during the POI. Consequently, Vinh Long is not eligible to receive a separate rate at this time. Likewise, because Grobest, SEAPRIMEXCO, Tieng Gang, Ben Tre and Vinh Long made no sales of the merchandise under investigation to the United States during the POI, these companies are not eligible to receive a separate rate.

Surrogate Country

When the Department is investigating imports from a non-market economy country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the non-market economy producer's factors of production, valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, the Department, in valuing the factors of production, shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that: (1) Are at a level of economic development comparable to that of the non-market economy country; and (2) are significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the NV section below.

The Department determined that India, Bangladesh, Kenya, Pakistan, and Guinea are countries comparable to Vietnam in terms of economic development. See Memorandum from Jeffrey May to James Doyle: Antidumping Duty Investigation on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, dated August 23, 2002. Customarily, we select an appropriate surrogate country based on the availability and

reliability of data from the countries. In this case, we have found that Bangladesh is a significant producer of comparable merchandise, Pangasius fish, and is at a similar level of economic development pursuant to 733(c)(4) of the Act. See Memorandum to Edward C. Yang, Director, Office IX, from Alex Villanueva and Paul Walker, Case Analyst, through James C. Doyle, Program Manager: Antidumping Duty Investigation on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Selection of a Surrogate Country ("Surrogate Country Memorandum"), dated January 24, 2003.

Therefore, we used Bangladesh as the primary surrogate country and, accordingly, we have calculated NV using Bangladeshi prices to value the respondents' factors of production, when available and appropriate. Where Bangladeshi values were not available or were impracticable to use, we relied upon data from India, as adequate valuation data for each of the factors of production is available on the record from Indian sources. We have obtained and relied upon publicly available information wherever possible. See Memorandum to the File from Alex Villanueva, Lisa Shishido, Joseph Welton and Paul Walker, Case Analysts, through James C. Doyle, Program Manager and Edward C. Yang, Director, Office IX, Factors Valuation for An Giang Fisheries Import and Export Joint Stock Company, Can Tho Agricultural and Animal Products Import Export Company, Nam Viet Company Limited, and Vinh Hoan Company Limited ("Factor Valuation Memo"), dated January 24, 2003.

In accordance with section 351.301(c)(3)(i) of the Department's regulations, for the final determination in an antidumping investigation, interested parties may submit publicly available information to value factors of production within 40 days after the date of publication of this preliminary determination.

Date of Sale

Section 351.401(i) of the Department's regulations state that "in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business." After examining the sales documentation placed on the record by the respondents, we preliminarily determine that invoice date is the most appropriate date of sale for all

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respondents. We made this determination because, at this time, there is

not enough evidence on the record to determine whether the contracts used by the respondents establish the material terms of sale to the extent required by our regulations in order to rebut the presumption that invoice date is the proper date of sale. See Saccharin from China at 67 FR 79054.

Fair Value Comparisons

To determine whether sales of certain frozen fish fillets to the United States by Agifish, Vinh Hoan, Nam Viet and CATACO were made at less than fair value, we compared EP to NV, as described in the "Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs.

Export Price

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c).

We calculated EP for Agifish, Vinh Hoan, Nam Viet and CATACO based on delivered prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included foreign inland freight from the plant to the port of exportation, ocean freight and brokerage and handling, where appropriate.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if: (1) The merchandise is exported from a non-market economy country; and (2) 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.

As the basis for normal value, the respondents in this investigation provided integrated factors of production data from the

fingerling stage to the frozen fish fillet processing stage. In response to a supplemental questionnaire, the respondents also provided factors of production information used in each of the production stages, including the frozen fish fillet processing stage, separately. Although the respondents reported the inputs used to produce the main input to the processing stage (live fish), for the purposes of this preliminary determination, we are not valuing those inputs when calculating the normal value. Rather, our normal value calculation begins with a valuation of the fish input (live fish) used to produce the merchandise under investigation for the following reasons.

Our general policy, consistent with section 773(c)(1)(B) of the Act, is to value the factors of production that a respondent uses to produce the subject merchandise. If the NME respondent is an integrated producer, we take into account the factors utilized in each stage of the production process. For example, in the case of preserved canned mushrooms produced by a fully integrated firm, the Department valued the factors used to grow the mushrooms, the factors used to further process and preserve the mushrooms, and any additional factors used to can and package the mushrooms, including any used to manufacture the cans (if produced in-house). If, on the other hand, the firm was not integrated, but simply a processor that bought fresh mushrooms to preserve and can, the Department valued the purchased mushrooms and not the factors used to grow them. See final results valuation memorandum for Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China; 66 FR 31204 (June 11, 2001) (Final Results Valuation Memorandum). This policy has been applied to both agricultural and industrial products. See, e.g., Persulfates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Partial Recission; 67 FR 50866 (August 6, 2002) (unchanged in final) and Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China; 62 FR 9160 (February 28, 1997). Accordingly, our standard NME questionnaire asks respondents to report the factors used in the various stages of production.

There are, however, two limited exceptions to this general rule. First, in some cases a respondent may report factors used to produce an intermediate input that accounts for a small or insignificant share of total output. The Department recognizes that, in those cases, the increased accuracy in our overall calculations that would result from valuing (separately) each of those factors may be so small so as to not justify the burden of doing so. Therefore, in those situations, the Department would value the intermediate input directly.

Second, in certain circumstances, it is clear that attempting to value the factors used in a production process yielding an intermediate product would lead to an inaccurate result because a significant

element of cost would not be adequately accounted for in the overall factors buildup. For example, in a recent case, we addressed whether we should value the respondent's factors used in extracting iron ore--an input to its wire rod factory. The Department determined that, if it were to use those factors, it would not sufficiently account for the capital costs associated with the iron ore mining operation given that the surrogate used for valuing production overhead did not have mining operations. Therefore, because ignoring this important cost element would distort the calculation, the Department declined to value the inputs used in mining iron ore and valued the iron ore instead. See Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Ukraine; 67 FR 55785 (August 30, 2002); Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China; 66 FR 49632 (September 28, 2001); Final Determination of Sales at Less Than Fair Value; Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China; 62 FR 61964 (November 20, 1997); and Notice of Final Determination of Sales at Less Than Fair Value; Furfuryl Alcohol From the People's Republic of China; 60 FR 22544 (May 8, 1995).

In this investigation, we have determined at this time that the exceptions described above do not apply. However, we have carefully reviewed and analyzed the information submitted by each respondent and find that the data pertaining to the fish farming stage of production cannot be used for purposes of the preliminary determination. The respondents' integrated production is a multifaceted process that poses unique issues, particularly as the fish growth portion of the process occurs in an uncontrolled, river environment. Despite respondents' cooperation in providing significant information, certain critical questions regarding the data remain. These questions relate to the seasonality of the production of fish, the narrowness of the six-month period of investigation in relation to the growth cycle of the fish,

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and the possible impact of the yield ratios at various stages of production. The Department's ability to analyze these issues was particularly constrained given the large number of supplemental questionnaires issued in this case and the lack of sufficient time to fully evaluate the responses to those questionnaires and issue any follow-up requests for information.

In light of these concerns, we have not used the multi-stage factor data for the preliminary determination and have incorporated, instead, the value of the whole fish used at the filleting/processing stage of

production. Subsequent to the preliminary determination, we will make every attempt to clarify the factors data for the fish farming stage of production that respondents have reported. If the questions raised can be addressed, we intend to revert to our standard methodology and use the factor information for the various stages. In that case, before the final determination, we will release to interested parties for comment a preliminary calculation sheet and analysis memorandum using that methodology.

The factors of production for the frozen fish fillet processing stage included: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We calculated NV based on factors of production, reported by each respondent, for materials, energy, labor, and packing. Where applicable, we deducted from each respondent's normal value the value of by-products sold during the POI. For a further discussion, see the analysis memorandum for each respondent. We valued the majority of input factors using publicly available published information as discussed in the "Surrogate Country" and "Factor Valuations" sections of this notice.

Factor Valuations

The Department will normally use publicly available information to value factors of production. However, in accordance with 19 CFR 351.408(c)(1), the Department's regulations also provide that where a producer sources an input from a market economy and pays for it in market economy currency, the Department employs the actual price paid for the input to calculate the factors-based NV. See *Lasko Metal Products v. United States*, 43 F. 3d 1442, 1445-1446 (Fed. Cir. 1994) ("Lasko").

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by respondents for the POI. To calculate NV, the reported per-unit factor quantities were multiplied by publicly available Bangladeshi surrogate values (except as noted below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added surrogate freight costs to surrogate values using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401 (Fed. Cir. 1997). For a detailed description of all surrogate values used for respondents, see Factor

Valuation Memo.

Certain raw material surrogate values were calculated using data from the 2000 Statistical Yearbook of Bangladesh ("Bangladesh government statistics"), published by the Bangladesh Bureau of Statistics, Planning Division, Ministry of Planning. The information represents cumulative values for the period of 2000, for inputs classified according to the Harmonized Commodity Description and Coding System ("HS"). Unit values were initially calculated in takas. Since the values were not contemporaneous with the POI, we adjusted the values for inflation and converted them to U.S. dollars using the Department's exchange rate for Bangladesh.

Where Bangladeshi values were not available or were impracticable to use for raw materials inputs, we relied upon data from India, as adequate valuation data for each of these factors of production is available on the record from Indian sources. We also valued certain raw material inputs using weighted-average unit import values derived from the Monthly Trade Statistics of Foreign Trade of India--Volume II--Imports ("Indian Import Statistics") for the time period April 2001-March 2002. As appropriate, we adjusted rupee-denominated values for inflation using wholesale price indices published in the International Monetary Fund's International Financial Statistics and excluded taxes.

The Department decided to value live fish using data from the financial statement of a Bangladeshi company that produces Pangasius fish, Gachihata Aquaculture Farms Limited ("Gachihata"). The data from Gachihata was specific to the price for sales of Pangasius fish, the input in question. In addition, while the financial report was not contemporaneous with the POI, it was for the fiscal year ending June 30, 2001, which is reasonably close to the POI. To calculate the surrogate value for live fish, the Department adjusted Gachihata's value for Pangasius fish in takas for inflation and converted the value to U.S. dollars, to arrive at a value of \$1.23 USD/kg. See Factor Valuation Memo Exhibit 1 for CPI data, Exhibit 2 for exchange rate, and Exhibit 3 for the live fish calculation. See petitioners' December 18, 2002 submission, Exhibit 2, for Gachihata's complete financial statement.

In valuing live fish, the Department did not use the data from the financial statements of another Bangladeshi company, Dhaka Fisheries Ltd. ("Dhaka"), because although it appeared to produce Pangasius fish as its main fish product, the data represented the company's valuation of its fish inventory. As the Department prefers the use of actual sales data rather than inventory data, use of this source is less than ideal. See petitioners' December 18, 2002 submission, Exhibit 4, for Dhaka's complete financial statement.

The Department also did not use a proposed value for live fish in Bangladesh based on the financial statement of another Bangladeshi company submitted by the respondents, Beximco Fisheries Limited

("Beximco"), because it represented the company's valuation of its fish inventory, and it was not specific to the input in question. The data submitted by the respondents was listed as a value for "fish" in the financial report, without specifying the species. See respondents' December 9, 2002 submission, Exhibit 7. In response to a supplemental questionnaire, respondents stated that "there is insufficient information on Beximco's financial statement to determine precisely whether or not the values for "fish" and "fish feed" are specific to the production of Pangasius fish." See respondents' January 7, 2002 submission, page 12.

To value electricity, we used data from Bangladesh government statistics. The unit value was initially calculated in takas. Since the value was not contemporaneous with the POI, we adjusted the rate for inflation and converted the rate to U.S. dollars using the Department's exchange rate for Bangladesh. See Factor Valuation Memorandum at page 6.

As Bangladeshi values were not available or were impracticable for use to value water, we relied upon data from India as adequate valuation data for this factor of production is available on the record from Indian sources. To value water, we used data reported as the average water tariff rate for four cities in

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India as reported in the Asian Development Bank's Second Water Utilities Data Book: Asian and Pacific Region published in 1997. Because the data from this source was not contemporaneous with the POI, we adjusted the rate for inflation. See Factor Valuation Memorandum at page 6.

For domestic inland freight (truck), we used data from Bangladesh government statistics. The unit value was initially calculated in takas. Since the value was not contemporaneous with the POI, we adjusted the rate for inflation and converted the rate to U.S. dollars using the Department's exchange rate for Bangladesh.

Our treatment of by-products is in accordance with the Department's practice. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Steel Flat Products from the Peoples' Republic of China and accompanying Issues and Decision Memorandum, 66 FR 49632 (September 28, 2001) at Comment 3. ("In the case of Angang and Benxi, we allowed recovery/by-product credits where the company provided information demonstrating that the recoveries/by-products were sold and/or reused in the production process.") Where a respondent provided evidence that the by-product generated during the frozen fish fillet processing stage of the production was sold, we valued that by-

product using a surrogate value. If a respondent claimed that it sold a by-product generated during the frozen fish fillet processing stage, but did not provide evidence that the by-product generated was sold, we could not include the by-product offset in the calculation. Several of the respondents reported that certain by-products were reintroduced into the production process. If the by-product was reintroduced into the production process at any stage, we granted the by-product offset in an amount no greater than the volume actually re-introduced into the production process during the POI. See Factor Valuation Memo at 7.

To value factory overhead, selling, general and administrative expenses ("SG&A"), and profit, we calculated surrogate financial ratios based on the financial information from Apex Foods, Limited, a Bangladeshi seafood processor. See Factor Valuation Memorandum at page 7.

For labor, consistent with section 351.408(c)(3) of the Department's regulations, we used the Vietnam regression-based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2002 (see <http://ia.ita.doc.gov/wages/index.html>). The source of the wage rate data on the Import Administration's Web site can be found in the Yearbook of Labour Statistics 2000, International Labor Office (Geneva: 2000), Chapter 5B: Wages in Manufacturing.

Critical Circumstances

On November 15, 2002, petitioners alleged that there is a reasonable basis to believe or suspect critical circumstances exist with respect to the antidumping investigations of certain frozen fish fillets from Vietnam. In accordance with 19 CFR 351.206(c)(2)(i), because petitioners submitted critical circumstances allegations more than 20 days before the scheduled date of the preliminary determination, the Department must issue preliminary critical circumstances determinations not later than the date of the preliminary determination.

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and, (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides

that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports of 15 percent during the "relatively short period" of time may be considered "massive." Section 351.206(i) of the Department's regulations defines "relatively short period" as normally being the period beginning on the date the proceeding begins (i.e., the date the petition is filed) and ending at least three months later. The regulations also provide, however, that if the Department finds importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.

In determining whether the relevant statutory criteria have been satisfied, we considered: (i) The evidence presented by petitioners in their November 15, 2002 letter; (ii) new evidence obtained since the initiation of the less-than-fair-value ("LTFV") investigation (i.e., additional import statistics released by the U.S. Census Bureau); and (iii) the ITC's preliminary threat of injury determination.

To determine whether there is a history of injurious dumping of the merchandise under investigation, in accordance with section 733(e)(1)(A)(i) of the Act, the Department normally considers evidence of an existing antidumping duty order on the subject merchandise in the United States or elsewhere to be sufficient. See Preliminary Determination of Critical Circumstances: Steel Concrete Reinforcing Bars From Ukraine and Moldova, 65 FR 70696 (November 27, 2000). With regard to imports of certain frozen fish fillets from Vietnam, petitioners make no specific mention of a history of dumping for Vietnam. We are not aware of any antidumping order in the United States or in any country on certain frozen fish fillets from Vietnam. For this reason, the Department does not find a history of injurious dumping of the subject merchandise from Vietnam pursuant to section 733(e)(1)(A)(i) of the Act.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known the exporter was selling certain frozen fish fillets at less than fair value, the Department normally considers margins of 25 percent or more for export price sales or 15 percent or more for constructed export price transactions sufficient to impute knowledge of dumping. See, e.g., Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China, 62 FR 31972, 31978 (October 19, 2001). The Department normally bases its preliminary decision with respect to knowledge on the margins calculated in the preliminary determination. Because the preliminary

dumping margins for all exporters are greater than 25 percent, we find there is a reasonable basis to impute to importer knowledge of dumping with respect to all imports from Vietnam.

In determining whether there is a reasonable basis to believe or suspect an importer knew or should have known there was likely to be material injury by reason of dumped imports, the Department normally will look to the

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preliminary injury determination of the Commission. If the Commission finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will normally determine a reasonable basis exists to impute importer knowledge that there was likely to be material injury by reason of dumped imports. See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China, 62 FR 61967 (November 20, 1997). If, as in this case, the Commission preliminarily finds threat of material injury, the Department will also consider: (1) The extent of the increase in the volume of imports of the subject merchandise during the critical circumstances period and (2) the magnitude of the margins in determining whether a reasonable basis exists to impute knowledge that material injury was likely. (See Preliminary Determination of Sales at Less Than Fair Value; Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China, 62 FR 31972 (June 11, 1997); Preliminary Determination of Sales at Less Than Fair Value, Certain Cut-to-Length Carbon Steel Plate from the Russian Federation, 62 FR 31967 (June 11, 1997); Preliminary Determination of Sales at Less Than Fair Value, Certain Cut-To-Length Carbon Steel Plate from Ukraine, 62 FR 31958 (June 11, 1997).

In determining whether there are "massive imports" over a "relatively short period," pursuant to section 733(e)(1)(B) of the Act, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (i.e., the "base period") to a comparable period of at least three months following the filing of the petition (i.e., the "comparison period"). However, as stated in section 351.206(i) of the Department's regulations, if the Secretary finds importers, exporters, or producers had reason to believe at some time prior to the beginning of the proceeding that a proceeding was likely, then the Secretary may consider a time period of not less than three months from that earlier time. Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

For the reasons set forth in the Critical Circumstances Memorandum, we find sufficient bases exist for finding importers, or exporters, or producers knew or should have known antidumping cases were pending on certain frozen fish fillet imports from Vietnam by May 2002 at the latest. Accordingly, we determined December 2001 through April 2002 should serve as the "base period," while May 2002 through September 2002 should serve as the "comparison period" in determining whether or not imports have been massive in the comparison period.

In this case, the volume of imports of certain frozen fish fillets from Vietnam increased 72.91 percent from the critical circumstances base period (May 2002 to September 2002) to the critical circumstances comparison period (December 2001 to April 2002), nearly five times the level of increase needed to find "massive imports." Furthermore, the preliminary dumping margins range from 37.94 to 61.88 percent for the mandatory respondents.

Based on the Commission's preliminary determination of threat of injury, the increase in the volume of imports of subject merchandise noted above, and the high margins from the preliminary dumping margins, the Department preliminarily finds that there is a reasonable basis to believe or suspect that the importer knew or should have known that there was likely to be material injury by means of sales at less than fair value of certain frozen fish fillets from Vietnam.

Pursuant to 19 CFR 351.206(h), we found imports increased by more than 15 percent for the respondent Nam Viet and for the Vietnam-wide entity as a whole, but did not increase by more than 15 percent for the respondents Agifish, Vinh Hoan, and CATACO. We therefore, find that imports of subject merchandise were massive in the comparison period for Nam Viet, but not for Agifish, Vinh Hoan, or CATACO.

The Department does not have the individual monthly shipment data necessary to determine if there were massive imports from the six non-selected respondents at this time. While the Department has, in the past, utilized the experience of the mandatory respondents to inform its judgement regarding the non-selected respondents, in this case, there are mixed results among the mandatory respondents. Moreover, the results for the majority of the mandatory respondents are at odds with the broader Customs data available to the Department. Consequently, the Department has determined that the most appropriate action would be to obtain producer-specific shipment data from the non-selected respondents to form the basis of its analysis.

In addition, we find that imports of subject merchandise were massive in the comparison period for the Vietnam-wide entity. See the Critical Circumstances Memorandum for more detailed information.

In summary, we find there is a reasonable basis to believe or suspect importers had knowledge of dumping and the likelihood of material injury with respect to imports of certain frozen fish fillets from Vietnam. We further find there have been massive imports of

certain frozen fish fillets over a relatively short period from respondent Nam Viet. However, such imports have been found to be not massive over a relatively short period from Agifish, Vinh Hoan and CATACO. In addition, we find that imports of certain frozen fish fillets have been massive over a relatively short period from the Vietnam-wide entity.

Given the analysis summarized above, and described in more detail in the Critical Circumstances Memorandum, we preliminarily determine critical circumstances exist for imports of certain frozen fish fillets from Nam Viet and the Vietnam-wide entity. We will publish our preliminary critical circumstances decision with respect to Afiex, Cafatex, Da Nang, Mekonimex, QVD, and Viet Hai as soon as we have obtained the additional data.

In accordance with section 733(e)(2) of the Act, upon issuance of an affirmative preliminary determination of sales at less than fair value in the investigation with respect to imports of certain frozen fish fillets from Vietnam, the Department will direct the U.S. Customs Service (Customs) to suspend liquidation of all entries of certain frozen fish fillets from Vietnam (excluding entries from Agifish, Vinh Hoan, CATACO, Afiex, Cafatex, Da Nang, Mekonimex, QVD, and Viet Hai) that are entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication in the Federal Register of our preliminary determinations in these investigations. Customs shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins reflected in the preliminary determinations published in the Federal Register. The suspension of liquidation to be issued after our preliminary determination will remain in effect until further notice.

We will make a final determination concerning critical circumstances for all producers and exporters of subject merchandise from Vietnam when we make our final dumping determinations in this investigation, which will be 135 days after issuance of the preliminary dumping determination.

The weighted-average dumping margins are as follows:

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Certain Frozen Fish Fillets From Vietnam

Weighted-

Producer/manufacturer/exporter	average (percent)	margin
Agifish.....	61.88	
Vinh Hoan.....	37.94	
Nam Viet.....	53.96	
CATACO.....	41.06	
Afiex.....	49.16	
CAFATEX.....	49.16	
Da Nang.....	49.16	
Mekonimex.....	49.16	
QVD.....	49.16	
Viet Hai.....	49.16	
Vietnam Wide Rate.....	63.88	

Verification

As provided in section 782(I)(1) of the Act, we intend to verify all company information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all imports of subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register with respect to Agifish, Vinh Hoan, CATACO, Afiex, Cafatex, Da Nang, Mekonimex, QVD and Viet Hai. We will instruct U.S. Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds EP, as indicated above. With respect to Nam Viet and all other Vietnam exporters, the Department will direct the U.S. Customs Service to suspend liquidation of all entries of certain frozen fish fillets from Vietnam that are entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication in the Federal Register of our preliminary determinations in these investigations. Customs shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins reflected in the preliminary determinations published in the Federal Register. The suspension of liquidation to be issued after our preliminary determination will remain in effect until further notice.

These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination of sales at less than fair value. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of certain frozen fish fillets, or sales (or the likelihood of sales) for importation, of the subject merchandise.

Public Comment

In accordance with 19 CFR 351.301(c)(3), interested parties may submit publicly available information to value the factors of production for purposes of the final determination within 40 days after the date of publication of this preliminary determination. Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, whose content is limited to issues raised in case briefs, no later than fifty-five days after the date of publication of this preliminary determination. See 19 CFR 351.309(c)(1)(i); 19 CFR 351.309(d)(1). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we will tentatively hold the hearing two days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room

1870, within 30 days of the date of publication of this notice. See 19 CFR 351.310(c). Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: January 24, 2003.
Faryar Shirzad,
Assistant Secretary for Import Administration.
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