



A-552-801
Administrative Review
POR: 8/1/2021 – 7/31/2022
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August 31, 2023

MEMORANDUM TO: Lisa W. Wang
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of the
Antidumping Duty Administrative Review: Certain Frozen Fish
Fillets from the Socialist Republic of Vietnam; 2021-2022

I. SUMMARY

The U.S. Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on certain frozen fish fillets (fish fillets) from the Socialist Republic of Vietnam (Vietnam) for the period of review (POR) August 1, 2021, through July 31, 2022. This review covers 25 exporters, including the Vietnam-wide entity.¹ We selected two exporters, Can Tho Import Export Seafood Joint Stock Company (CASEAMEX) and Vinh Hoan Corporation (Vinh Hoan), as mandatory respondents.²

We preliminarily determine that Vinh Hoan did not sell subject merchandise at prices below normal value (NV), while CASEAMEX sold subject merchandise at prices below NV. In addition, we preliminarily determine that six companies, including Vinh Hoan and CASEAMEX, are eligible for separate rates, 10 companies had no shipments, and eight companies have no valid review requests.³ The remaining companies are part of the Vietnam-wide entity, because they did not demonstrate their eligibility for a separate rate. Additionally, we preliminarily based the rate for the non-individually examined entities, including the Vietnam-wide entity and its constituent companies, on the above *de minimis* rate calculated for CASEAMEX, consistent with sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Tariff Act of 1930, as amended (the Act).

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 87 FR 61278, 61281-84 (October 11, 2022) (*Initiation Notice*). The *Initiation Notice* listed 134 company/entity names. We treated 109 companies without an existing or preliminary separate rate as a part of the Vietnam-wide entity.

² See Memoranda, “Respondent Selection,” dated December 23, 2022 (Initial Respondent Selection Memorandum); and “Selection of Replacement Respondent for Individual Review,” dated February 3, 2023 (Replacement Respondent Selection Memorandum).

³ For further discussion related to these latter eight companies, see the “Standing” section below.



II. BACKGROUND

On August 12, 2003, Commerce published the AD order on fish fillets from Vietnam.⁴ On August 2, 2022, Commerce published in the *Federal Register* an opportunity to request an administrative review of the *Order* for the POR.⁵ On August 31, 2022, Commerce received review requests from various parties: the petitioners⁶ requested a review of certain exporters and the Vietnam wide entity⁷; numerous exporters self-requested an administrative review;⁸ and QMC Foods, Inc. (QMC)⁹ and Luscious Seafoods LLC (Luscious Seafoods)¹⁰ requested an administrative review of as wholesalers of domestic like product, pursuant to section 771(9)(C) of the Act. On October 11, 2022, Commerce initiated this administrative review with respect to 134 exporters.¹¹

In October and November 2022, eight Vietnamese exporters of fish fillets requested separate rate status.¹² Similarly, 16 companies (or company groups) filed no-shipment certifications. For a list of companies for which Commerce has made a preliminary no-shipment finding, *see*

⁴ See *Notice of Antidumping Duty Order: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 47909 (August 12, 2003) (*Order*).

⁵ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List*, 87 FR 47187 (August 2, 2022).

⁶ The petitioners are the Catfish Farmers of America and individual U.S. catfish processors America's Catch, Inc., Alabama Catfish, LLC d/b/a Harvest Select Catfish, Inc., Consolidated Catfish Companies, LLC d/b/a Country Select Catfish, Delta Pride Catfish, Inc., Guidry's Catfish, Inc., Heartland Catfish Company, Magnolia Processing, Inc. d/b/a Pride of the Pond, and Simmons Farm Raised Catfish, Inc.

⁷ See Petitioners' Letter, "Request for Administrative Review," dated August 31, 2022 (Petitioners Review Request).

⁸ See Bien Dong Seafood Company Ltd (Bien Dong)'s Letter, "Request for Administrative Review," dated August 31, 2022; NTSF Seafood Joint Stock Company (NTSF)'s Letter, "Request for Administrative Review," dated August 31, 2022; Loc Kim Chi Seafood Joint Stock Company (Loc Kim Chi)'s Letter, "Request for Administrative Review," dated August 31, 2022; Godaco Seafood Joint Stock Company, Golden Quality Seafood Corporation, Fatifish Company Limited, To Chou Joint Stock Company, QVD Food Co., Ltd, QVD Dong Thap Food Co. Ltd., Hoa Phat Seafood Import-Export and Processing J.S.C., and Cafatex Corporation (Cafatex)'s Letter, "Request for Administrative Review," dated August 31, 2022; I.D.I International Development and Investment Corporation (IDI)'s Letter, "Request for Administrative Review of Antidumping Duty Order," dated August 31, 2022; and Hung Vuong Corporation (HVC)'s Letter, "Hung Vuong Group Request for Administrative Review," dated August 31, 2022.

⁹ See QMC's Letter, "Request of Domestic U.S. Wholesaler QMC for Annual Administrative Reviews," dated August 31, 2022.

¹⁰ See Luscious Seafood's Letter, "Antidumping Duty Administrative Review Request," dated August 31, 2022.

¹¹ See *Initiation Notice*, 87 FR at 61281-84.

¹² The eight exporters are: CASEAMEX, Vinh Hoan, Loc Kim Chi, IDI, Cafatex, NTSF, Bien Dong, and HVC. See CASEAMEX's Letter, "Separate Rate Certification – Can Tho Import Export Seafood Joint Stock Company," dated October 14, 2022 (CASEAMEX SRC); Vinh Hoan's Letter, "Separate Rate Certification – Vinh Hoan Corporation," dated October 18, 2022 (Vinh Hoan SRC); Loc Kim Chi's Letter, "Separate Rate Application – Loc Kim Chi Seafood Joint Stock Company," dated October 31, 2022 (Loc Kim Chi SRA); Cafatex's Letter, "Separate Rate Certification – Cafatex Corporation," dated November 4, 2022 (Cafatex SRC); NTSF's Letter, "Separate Rate Certification," dated November 7, 2022; Bien Dong's Letter, "Separate Rate Certification," dated November 7, 2022; HVC's Letter, "Separate Rate Certification," dated November 10, 2022 (HVC SRC); and IDI's Letter, "I.D.I International Development and Investment Corporation Separate-Rate Application," dated November 16, 2022 (IDI SRA). As noted below, Commerce preliminarily determines that it is appropriate to rescind the review with respect to Bien Dong and NTSF, and, thus, we have not analyzed the separate rate claims of these companies.

Appendix II. For further discussion, *see* the “Preliminary Determination of No Shipments” section, below.

On October 14, 2022, we sent questionnaires to QMC and Luscious Seafood regarding their status as wholesalers of domestic like product.¹³ We received a response from Luscious Seafood on October 25, 2022,¹⁴ and a response from QMC on October 26, 2022.¹⁵ Based on the responses to this questionnaire, we issued a supplemental questionnaire to Luscious Seafoods,¹⁶ and it timely submitted a response.¹⁷

On December 7, 2022, we provided U.S. Customs and Border Protection (CBP) entry data under administrative protective order (APO) to all interested parties having APO access,¹⁸ and on December 14, 2022, we received comments from interested parties on the CBP data.¹⁹ On December 23, 2022, we selected Bien Dong and Vinh Hoan, as mandatory respondents.²⁰

In January 2023, various parties withdrew their review requests, in whole or in part,²¹ and we also preliminarily found that Luscious Seafood did not have interested party status as a wholesaler of domestic like product during the POR.²² Because all interested parties withdrew their review requests relating to Bien Dong, we selected CASEAMEX as a replacement respondent.²³

¹³ See Commerce’s Letters, “Questionnaire for QMC Foods,” and “Questionnaire for Luscious Seafoods,” both dated October 14, 2022 (Wholesaler Questionnaires).

¹⁴ See Luscious Seafood’s Letter, “Wholesaler Questionnaire Response,” dated October 25, 2022 (Luscious Seafoods October 25, 2022 QR).

¹⁵ See QMC’s Letter, “QMC Response to Wholesaler Standing Questionnaire,” dated October 26, 2022 (QMC October 26, 2022 QR).

¹⁶ See Commerce’s Letter, “Supplemental Questionnaire for Luscious Seafood,” dated December 13, 2022.

¹⁷ See Luscious Seafoods’ Letter, “Supplemental Questionnaire Response,” dated December 30, 2022 (Luscious Seafoods December 30, 2022 QR).

¹⁸ See Memorandum, “U.S. Customs and Border Protection Data Query,” dated December 7, 2022.

¹⁹ See NAVICO’s Letter, “Response CBP Data Release – NAVICO Corporation,” dated December 14, 2022; Vinh Hoan’s Letter, “Comments on CBP Data – Vinh Hoan Corporation,” dated December 14, 2022; QMC’s Letter, “QMC Comments on Respondent Selection Regarding Vinh Hoan,” dated December 14, 2022; and Petitioners’ Letter, “Comments and Factual Information regarding Respondent Selection and CBP Data,” dated December 14, 2022.

²⁰ See Initial Respondent Selection Memorandum.

²¹ See QMC’s Letters, “QMC Foods, Inc. Withdrawal of Request for Administrative Review for NTSF Seafoods,” dated January 6, 2023; and “QMC Foods, Inc. Withdrawal of Request for Administrative Review for Bien Dong,” dated January 9, 2023; *see also* NTSF’s Letter, “Withdrawal of Request for Administrative Review,” dated January 6, 2022; Bien Dong’s Letter, “Withdrawal of Request for Administrative Review,” dated January 9, 2023; and Petitioners’ Letters, “Partial Withdrawal of Request for Administrative Review of Antidumping Duty Order,” dated January 9, 2023 (Petitioners Partial Withdrawal Request).

²² See Memorandum, “Luscious Seafoods Standing to Request Review,” dated January 27, 2023 (Standing Memorandum).

²³ See Replacement Respondent Selection Memorandum.

From January through April 2023, Vinh Hoan and CASEAMEX responded to Commerce's initial AD questionnaire,²⁴ and from April to August 2023, Vinh Hoan and CASEAMEX responded to supplemental questionnaires.²⁵

On April 19, 2023, Commerce extended the deadline for these preliminary results by 120 days, to August 31, 2023.²⁶

From April to August 2023, we received comments from the petitioners,²⁷ Vinh Hoan, CASEAMEX, and the Vietnam Association of Seafood Exporters and Producers (VASEP),²⁸ regarding the selection of the appropriate surrogate country and surrogate values (SVs) for use in valuing the respondents' factors of production (FOPs) in this administrative review.

On August 15, 2023, the petitioners,²⁹ Vinh Hoan, and CASEAMEX submitted comments on the reported data. Because these comments were received too late for consideration in these preliminary results, we will consider them for the final results if included in parties' case briefs.

²⁴ See Vinh Hoan's Letters, "Section A Questionnaire Response – Vinh Hoan Corporation," dated January 13, 2023; "Vinh Hoan Section C Questionnaire Response," dated February 13, 2023 (Vinh Hoan February 13, 2023 CQR); and "Vinh Hoan Corporation - Section D Questionnaire Response," dated February 21, 2023 (Vinh Hoan February 21, 2023 DQR); *see also* CASEAMEX's Letters, "Section A Questionnaire Response – Can Tho Import Export Seafood Joint Stock Company," dated February 24, 2023 (CASEAMEX February 24, 2023 AQR); "Section C Questionnaire Response – Can Tho Import Export Seafood Joint Stock Company," dated March 21, 2023 (CASEAMEX March 21, 2023 CQR); and "Can Tho Import Export Seafood Joint Stock Company - Section D Questionnaire Response," dated April 3, 2023 (CASEAMEX April 3, 2023 DQR).

²⁵ See Vinh Hoan's Letters, "Supplemental Section A Questionnaire Response – Vinh Hoan," dated April 13, 2023; "Supplemental Section C Questionnaire Response – Vinh Hoan," dated May 12, 2023; "Vinh Hoan Corporation - Supplemental Section D Questionnaire Response," dated July 20, 2023; "Vinh Hoan Corporation - Supplemental Section D Questionnaire Response for Questions 34, 39, 40, 41 and 43," dated July 27, 2023; *see also* CASEAMEX's Letters, "Supplemental Section A & C Questionnaire Response - Can Tho Import Export Seafood Joint Stock Company," dated April 19, 2023; "Supplemental Section C & D Questionnaire Response - Part 1," dated May 16, 2023; "Supplemental Section C & D Questionnaire Response - Part 2," dated May 23, 2023; "Third Supplemental Questionnaire Response," dated July 20, 2023; "Third Supplemental Questionnaire Response, Question 16," dated July 28, 2023; "Fourth Supplemental Questionnaire Response," dated August 4, 2023; and "Fifth Supplemental Questionnaire Response," dated August 21, 2023.

²⁶ See Memorandum, "Extension of Deadline for Preliminary Results of the 2021-2022 Antidumping Duty Administrative Review," dated April 19, 2023.

²⁷ See Petitioners' Letters, "Surrogate Country Selection Comments," dated March 21, 2023 (Petitioners Surrogate Country Comments); "Rebuttal Surrogate Country Selection Comments and Factual Information," dated March 28, 2023; "Submission of Proposed Surrogate Factor Values," dated April 21, 2023 (Petitioners April 21, 2023 Surrogate Values); "Rebuttal Surrogate Factor Value Information," dated May 15, 2023; and "Pre-Preliminary Submission of Proposed Surrogate Factor Values," dated August 1, 2023 (Petitioners August 1, 2023 Surrogate Values).

²⁸ See Vinh Hoan/CASEAMEX/VASEP's Letters, "Data Relevant to Surrogate Country Selection," dated March 21, 2023; "Surrogate Values," dated April 21, 2023 (Respondents April 21, 2023 Surrogate Values); "Rebuttal Comments on Surrogate Values," dated May 15, 2023; and "Final Direct Surrogate Values," dated August 1, 2023 (Respondents August 1, 2023 Surrogate Values).

²⁹ See Petitioners' Letter, "Pre-Preliminary Determination Comments," dated April 15, 2023; and Vinh Hoan and CASEAMEX's Letter, "Pre-Preliminary Determination Comments," dated April 15, 2023.

III. SCOPE OF THE *ORDER*

The product covered by the *Order* is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius bocourti*, *Pangasius hypophthalmus* (also known as *Pangasius pangasius*) and *Pangasius micronemus*.

Frozen fish fillets are lengthwise cuts of whole fish. The fillet products covered by the scope include boneless fillets with the belly flap intact “regular fillets,” boneless fillets with the belly flap removed “shank fillets,” and boneless shank fillets cut into strips (fillet strips/finger), which include fillets cut into strips, chunks, blocks, skewers, or any other shape.

Specifically excluded from the scope are frozen whole fish (whether or not dressed), frozen steaks, and frozen belly-flap nuggets. Frozen, whole, dressed fish are deheaded, skinned, and eviscerated. Steaks are bone-in, cross-section cuts of dressed fish. Nuggets are the belly flaps.

The subject merchandise will be hereinafter referred to as frozen “basa” and “tra” fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under subheading 0304.62.0020 (Frozen Fish Fillets of the species *Pangasius*, including basa and tra), and may enter under subheadings 0305.59.0000, 1604.19.2100, 1604.19.3100, 1604.19.4100, 1604.19.5100, 1604.19.6100 and 1604.19.8100 of the Harmonized Tariff Schedule of the United States (HTSUS).

The *Order* covers all frozen fish fillets meeting the above specifications, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and CBP purposes, the written description of the scope of the *Order* is dispositive.

IV. STANDING

As noted above, QMC and Luscious Seafoods claimed standing to request administrative reviews as U.S.-based wholesalers of domestic like product, pursuant to section 771(9)(C) of the Act. Consistent with our approach in prior segments, we solicited information regarding the companies’ activities.³⁰ QMC submitted a timely response to the questionnaire,³¹ and we find that record evidence supports a determination that QMC has standing to request a review as a U.S.-based wholesaler of domestic like product. Specifically, QMC’s questionnaire responses indicate that its business practices reflect characteristics of wholesalers with ongoing *bona fide* operations; thus, we continue to find that QMC sells or arranges for the purchase or resale of goods as a wholesaler of domestic like product.³² This finding is consistent with our analysis of the company in prior segments of this proceeding.³³

³⁰ See, generally, Wholesaler Questionnaires.

³¹ See QMC October 26, 2022 QR.

³² *Id.*

³³ See, e.g., *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results of the Antidumping Duty Administrative Review, Preliminary Determination of no Shipments, and Partial Rescission of the Antidumping Duty Administrative Review; 2018-2019*, 85 FR 84300 (December 28, 2020), and accompanying Preliminary Decision Memorandum (PDM), unchanged in *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments*;

Commerce also issued a wholesaler questionnaire to Luscious Seafoods,³⁴ as well as a supplemental questionnaire. Luscious Seafood submitted a timely response to these questionnaires.³⁵ After analyzing Luscious Seafood's submissions, on January 27, 2023, Commerce preliminarily found that the record did not demonstrate that Luscious Seafoods was a *bona fide* wholesaler of domestic like product during the POR, and we declined to find that the company established its status as a domestic interested party pursuant to section 771(9)(C) of the Act.³⁶

V. INTENT TO RESCIND THE REVIEW, IN PART

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation. Commerce initiated this administrative review on October 11, 2023.³⁷ In January 2023, the petitioners, QMC, and certain exporters timely withdrew their review requests for certain companies. A list of these companies is provided in Appendix I.³⁸

Luscious Seafoods also requested a review of these companies, and it did not withdraw its request. However, as noted above, Commerce preliminarily found that Luscious Seafoods does not have standing as a domestic wholesaler in this review, and, thus, we preliminarily find that these review requests are not valid. Because this decision is not yet final, we will determine in the final results whether it is appropriate to rescind this review with respect to the companies in Appendix I.

VI. PRELIMINARY DETERMINATION OF NO SHIPMENTS

Between October 2022 and November 2022, Commerce received certifications of no shipments from 16 companies, indicating that they did not export subject merchandise to the United States during the POR. Commerce sent supplemental questionnaires regarding these certifications to GODACO, NAVICO, GF Seafood, and Green Farms, to which the companies responded.

Commerce confirmed, through the aforementioned supplemental questionnaire responses and by examining CBP data, that 10 of the companies in question had no entries of subject merchandise during the POR. In addition, on May 5, 2023, Commerce sent inquiries to CBP with regard to

2018-2019, 86 FR 36102 (July 8, 2021); and *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, and Partial Rescission of Antidumping Duty Administrative Review; 2020-2021*, 87 FR 29113 (May 12, 2022), unchanged in *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review; Final Determination of No Shipments; 2020-2021*, 87 FR 55996 (September 13, 2022).

³⁴ See Commerce's Letter, "Questionnaire for Luscious Seafoods," dated October 14, 2022.

³⁵ See Luscious Seafoods October 25, 2022 QR, and Luscious Seafoods December 30, 2022 QR.

³⁶ See Standing Memorandum.

³⁷ See *Initiation Notice*, 87 FR at 61281-84.

³⁸ We note that these parties withdrew their review requests for additional companies; however, because: (1) these companies have not established that they are separate from the Vietnam-wide entity; and (2) the Vietnam-wide entity remains under review, we preliminarily find that it is not appropriate to rescind the review for those exporters.

these companies, and CBP responded with information on May 11, 2023, that supported the no-shipment claims.³⁹

Consistent with our practice, we find that it is not appropriate to rescind this review with respect to these 10 companies; instead, we will complete the review with respect to them and issue appropriate instructions to CBP based on the final results of the review.⁴⁰ Should evidence contrary to these companies' no-shipment claims arise, we will revisit the issue in the final results.

Six additional exporters also certified that they had no shipments during the POR. However, because certain of these exporters have not established their eligibility for a separate rate, we preliminarily consider them to be part of the Vietnam-wide entity. Additionally, the remaining companies that filed no shipment statements are among the companies for which we have announced our intent to rescind this review, in Appendix I. Thus, we preliminarily find that it would be inappropriate to make an individual no-shipment determination with respect to these six exporters.

VII. DISCUSSION OF THE METHODOLOGY

A. Non-Market Economy Country

Commerce considers Vietnam to be a Non-Market Economy (NME) country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat Vietnam as an NME country for purposes of these preliminary results.

B. Separate Rates

In proceedings involving NME countries, Commerce maintains a rebuttable presumption that all companies within the NME country are subject to government control and, therefore, should be assigned a single AD margin. In the *Initiation Notice*, Commerce notified parties of the application process by which exporters may obtain separate rate status in NME proceedings.⁴¹ It is Commerce's policy to assign all exporters of the subject merchandise from an NME country a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its exports.⁴² To establish whether a company is sufficiently independent to be eligible for a separate, company-specific rate, Commerce analyzes each exporting entity in an NME country under the test established in

³⁹ See Memorandum, "No shipment inquiry with respect to the companies listed below during the period 08/01/2021 through 07/31/2022," dated June 9, 2023.

⁴⁰ For a list of the companies which we preliminarily determine have no shipments, see Appendix II.

⁴¹ See *Initiation Notice*, 87 FR at 61279.

⁴² See *Certain Tool Chests and Cabinets from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 15365 (April 10, 2018), and accompanying Issues and Decision Memorandum (IDM) at 3.

*Sparklers*⁴³ as developed further in *Silicon Carbide*.⁴⁴ However, if Commerce determines that a company is wholly foreign-owned or located in a market economy (ME) country, 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 rate analysis in light of the diamond sawblades from China AD proceeding and determinations therein.⁴⁵ In particular, in litigation involving that proceeding, the U.S. Court of International Trade (CIT) found Commerce's existing separate rate analysis deficient in the circumstances of the case, in which a government-owned and controlled entity had significant ownership in the respondent exporter.⁴⁶ Following the CIT's reasoning, in recent proceedings, we have concluded that, where a government entity holds a majority ownership share, either directly or indirectly, in the respondent exporters, the majority ownership holding in and of itself means that the government exercises, or has the potential to exercise, control over the company's key operations generally.⁴⁷ 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 have an interest in controlling, the operations of the company, including the selection of management and the profit distribution of the company.

⁴³ See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*).

⁴⁴ See *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

⁴⁵ See *Diamond Sawblades and Parts Thereof from the People's Republic of China: Notice of Court Decision Not in Harmony With Final Determination of Sales at Less Than Fair Value and Notice of Amended Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision*, 78 FR 65289 (October 31, 2013); *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013) (*Advanced Technology I*), *aff'd* *Advanced Technology & Materials Co., Ltd., et al. v. United States*, Case No. 2014-1154 (Fed. Cir. 2014); see also *Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098 (December 20, 2013), and accompanying PDM at 7, unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014), and accompanying IDM at Comment 1.

⁴⁶ See, e.g., *Advanced Technology I*, 885 F. Supp. 2d at 1349 ("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'"); and *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).

⁴⁷ See *Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169 (September 8, 2014), and accompanying PDM at 5-9.

In order to demonstrate separate rate status eligibility, Commerce normally requires entities for which a review was requested, and which were assigned a separate rate in the previous segment of the proceeding, to submit a separate rate certification (SRC) to demonstrate continued separate rate eligibility.⁴⁸ For entities that were not assigned a separate rate in a previous segment of the proceeding, Commerce requires a separate rate application (SRA) to demonstrate separate rate eligibility.⁴⁹

Commerce received SRAs from IDI and Loc Kim Chi, and SRCs from four companies for which there remains a valid review request.⁵⁰ Cafatex, HVC, and the two mandatory respondents, CASEAMEX and Vinh Hoan.⁵¹ In accordance with our practice, we analyzed whether these companies demonstrated the absence of *de jure* and *de facto* governmental control over their export activities.

1. Absence of *De Jure* Control

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) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.⁵² The evidence submitted by Cafatex, CASEAMEX, HVC, IDI, and Loc Kim Chi Vinh Hoan supports a preliminary finding of *de jure* absence of government control based on the following: (1) an absence of restrictive stipulations associated with the individual exporter's business and export license; (2) applicable legislative enactments decentralizing control of the companies; and (3) formal measures by the government decentralizing control of companies.⁵³

2. Absence of *De Facto* Control

Typically, Commerce considers four factors in evaluating whether a company 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 company has authority to negotiate and sign contracts and other agreements; (3) whether the company has autonomy from the government in making decisions regarding the selection of management; and (4) whether the company retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.⁵⁴ Commerce determines that an analysis of *de facto*

⁴⁸ See *Initiation Notice*, 87 FR at 61279.

⁴⁹ *Id.*

⁵⁰ As noted above, with regard to Bien Dong and NTSF, the sole remaining review request for each company was made by Luscious Seafoods. For the reasons explained in the Standing Memorandum, Commerce preliminarily finds that the review request is not valid, and we have not performed a separate rate analysis for Bien Dong and NTSF.

⁵¹ In addition, 109 additional companies for which a review was requested did not file an SRA or SRC and, thus, have not established eligibility to be assigned a separate rate in this proceeding.

⁵² See *Sparklers*, 56 FR at 20589.

⁵³ See Cafatex SRC, CASEAMEX SRC, HVC SRC, IDI SRA, Loc Kim Chi SRA and Vinh Hoan SRC.

⁵⁴ 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) (*Furfuryl Alcohol*).

control is critical in determining whether companies are, in fact, subject to a degree of government control which would preclude Commerce from assigning separate rates.⁵⁵

The evidence provided by Cafatex, CASEAMEX, HVC, IDI, Loc Kim Chi, and Vinh Hoan supports a preliminary finding of the absence of *de facto* government control based on the following: (1) the companies set their own export prices independent of the government and without the approval of a government authority; (2) the companies have authority to negotiate and sign contracts and other agreements; (3) the companies have autonomy from the government in making decisions regarding the selection of management; and (4) there is no restriction on the companies' use of export revenue.⁵⁶

Therefore, Commerce preliminarily finds that Cafatex, CASEAMEX, HVC, IDI, Loc Kim Chi, and Vinh Hoan qualify for separate rates under the criteria established by the diamond sawblades from China proceeding, as well as *Silicon Carbide* and *Sparklers*.

3. Dumping Margin for Cafatex, HVC, Loc Kim Chi and IDI

The Act and Commerce's regulations do not directly address the establishment of a rate to be applied to companies not selected for individual examination where Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Commerce's practice in cases involving limiting selection based on exporters accounting for the largest volumes of trade has been to look at section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation.

Commerce will normally 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. Section 735(c)(5)(B) of the Act also provides that, where all rates are zero, *de minimis*, or based entirely on facts available, we may use "any reasonable method" for assigning the rate to all other respondents, including "averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated."⁵⁷

Here, given that Vinh Hoan's dumping margin is zero, and CASEAMEX's dumping margin is \$0.14 per kilogram, we preliminarily assigned a dumping margin equal to CASEAMEX's dumping margin to Cafatex, HVC, IDI, and Loc Kim Chi, pursuant to section 735(c)(5)(A) of the Act.

⁵⁵ See *Furfuryl Alcohol*, 60 FR at 22544.

⁵⁶ See Cafatex SRC, CASEAMEX SRC; HVC SRC; IDI SRA; Loc Kim Chi SRA, and Vinh Hoan SRC.⁵⁶

⁵⁷ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. I (1994) at 837.

C. Vietnam-Wide Entity

In accordance with Commerce policy, the Vietnam-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity.⁵⁸ The petitioners requested a review of the entity,⁵⁹ and did not withdraw their request.⁶⁰ Therefore, as a non-examined entity, the Vietnam-wide entity, and all the companies that comprise it, will preliminarily be assigned the rate of \$0.14 per kilogram pursuant to section 735(c)(5)(A) of the Act.

D. Surrogate Country

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 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 FOPs, Commerce shall utilize, to the extent practicable, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.⁶¹

As a general rule, Commerce selects a surrogate country that is at the same level of economic development as the NME country unless it is determined that none of the countries are viable options because: (a) they are either not significant producers of comparable merchandise; (b) do not provide sufficient, reliable sources of publicly available SV data; or (c) are not suitable for use based on other reasons.⁶² 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 development.⁶³ 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.⁶⁴ Further, it is our practice to value inputs using data from a secondary surrogate country only if data from the primary surrogate

⁵⁸ See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013)

⁵⁹ See Petitioners Review Request.

⁶⁰ See Petitioners Partial Withdrawal Request.

⁶¹ See Enforcement and Compliance's Policy Bulletin No. 04.1, regarding "Non-Market Economy Surrogate Country Selection Process," (March 1, 2004) (Policy Bulletin 04.1), available on Commerce's website at <https://access.trade.gov/Resources/policy/bull04-1.html>.

⁶² *Id.*

⁶³ See Commerce's Letter, "Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated March 3, 2023 (SC Comment Letter) (containing at Attachment I, Memorandum, "List of Surrogate Countries for Antidumping Investigations and Reviews from the Socialist Republic of Vietnam," dated August 19, 2022 (Surrogate Country List)).

⁶⁴ *Id.*

country are unavailable or unreliable.⁶⁵ The sources of the SVs we used in this review are discussed under the “Normal Value” section, below.

On August 19, 2022, Commerce identified Indonesia, Sri Lanka, the Philippines, Egypt, Bolivia, and Morocco as countries that are at the same level of economic development as Vietnam based on per capita 2021 GNI data.⁶⁶ On March 3, 2023, we solicited comments on the list of potential surrogate countries and selection of the primary surrogate country, and provided deadlines for the submission of SV information for consideration in the preliminary results.⁶⁷

As noted above, we received comments from interested parties. The petitioners assert that Commerce should rely on values from Indonesia and provided SV information for Indonesia.⁶⁸ CASEAMEX, Vinh Hoan, and VASEP also provided Indonesian SV data.⁶⁹

1. Economic Comparability

As explained in the SC Comment Letter, Commerce considers Indonesia, Sri Lanka, the Philippines, Egypt, Bolivia, and Morocco to be at the same level of economic development as Vietnam. Therefore, we consider all six countries to have satisfied this prong of the surrogate country selection criteria under section 773(c)(4)(A) of the Act.

2. Significant Producer of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires Commerce, to the extent possible, to value FOPs in a surrogate country that is a significant producer of comparable merchandise. However, neither the Act nor Commerce’s regulations define “significant” or “comparable.” Given the absence of any definition in the Act or regulations, Commerce looks to other sources, such as Policy Bulletin 04.1, for guidance.

Commerce’s practice is to evaluate whether production is significant based on characteristics of world production of, and trade in, comparable merchandise (subject to availability of data in these characteristics) and to determine whether merchandise is comparable on a case-by-case basis.⁷⁰ 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

⁶⁵ See 19 CFR 351.408(c)(2); see also, e.g., *Certain Activated Carbon from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 61172 (October 9, 2015), and accompanying IDM at Comments 2 and 5.

⁶⁶ See Surrogate Country List.

⁶⁷ See SC Comment Letter.

⁶⁸ See, e.g., Petitioners August 1, 2023 Surrogate Values.

⁶⁹ See, e.g., Respondents August 1, 2023 Surrogate Values.

⁷⁰ See, e.g., *Xanthan Gum from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 2252 (January 10, 2013), and accompanying PDM at 7-8, unchanged in *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013) (*Xanthan Gum*).

additional or alternative metrics.⁷¹ Where there is no production information, Commerce has relied upon export data from potential surrogate countries.⁷²

With respect to comparability of merchandise, Policy Bulletin 04.1 states that “in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise.”⁷³ Where there is no evidence of production of identical merchandise in a potential surrogate country, Commerce has determined whether merchandise is comparable to the subject merchandise on the basis of similarities in physical form and the extent of processing or on the basis of production factors (physical and non-physical) and factor intensities.⁷⁴ Because these characteristics are specific to the merchandise in question, the standard for “significant producer” will vary from case to case.⁷⁵ Based on the information placed on the record of this administrative proceeding by interested parties, Commerce determines that Indonesia was a significant producer during the POR of comparable merchandise.⁷⁶

3. Data Availability

If more than one potential surrogate country satisfies the statutory requirements for selection as a surrogate country, Commerce selects the primary surrogate country based on data availability and reliability.⁷⁷ When evaluating SV data, Commerce considers several factors, including whether the SVs are publicly available, contemporaneous with the POR, representative of a broad-market average, tax- and duty-exclusive, and specific to the inputs being valued.⁷⁸ There is no hierarchy among these criteria.⁷⁹ Commerce’s preference is to satisfy the breadth of the aforementioned selection criteria. Moreover, it is Commerce’s practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the FOPs.⁸⁰ Commerce must weigh the available information with respect to each input value and make a product-specific and case-specific decision as to what constitutes the best available SV for each input. Moreover, pursuant to 19 CFR 351.408(c)(2), Commerce has a preference for valuing all FOPs in a single surrogate country, to the extent possible.

⁷¹ See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576 (1988) at 590.

⁷² See, e.g., *Pentafluoroethane (R-125) from the People’s Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, Postponement of Final Determination, and Extension of Provision Measures*, 86 FR 45959 (August 17, 2021), and accompanying PDM at 8, unchanged in *Pentafluoroethane (R-125) from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 87 FR 1117 (January 10, 2022).

⁷³ See Policy Bulletin 04.1 at 3.

⁷⁴ *Id.*

⁷⁵ *Id.* at 1-2.

⁷⁶ See Petitioners Surrogate Country Comments.

⁷⁷ See Policy Bulletin 04.1 at 1-2.

⁷⁸ *Id.*

⁷⁹ See, e.g., *Certain Preserved Mushrooms from the People’s Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) (*Mushrooms from China*), and accompanying IDM at Comment 1.

⁸⁰ See, e.g., *Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures*, 84 FR 56420 (Oct. 22, 2019), and accompanying PDM at 12.

4. Conclusion

Commerce preliminarily determines, pursuant to section 773(c)(4) of the Act, that it is appropriate to use Indonesia as the primary surrogate country because it: (1) is at the same level of economic development as Vietnam; (2) is a significant producer of merchandise comparable to subject merchandise; and (3) provides useable and reliable data to value FOPs. Therefore, Commerce has calculated NV using Indonesian SV data to value CASEAMEX's and Vinh Hoan's FOPs.

E. Date of Sale

Pursuant to 19 CFR 351.401(i), Commerce normally will use invoice date as correct date of sale unless record evidence indicates that the material terms of sale, such as price and quantity, are established on another date. Furthermore, we have a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.⁸¹

Vinh Hoan

For Vinh Hoan's U.S. sales, we applied Commerce's long-standing practice of basing the date of sale on the earlier of the shipment date or invoice date, because it is at this time that the material terms of sale are fixed.⁸²

CASEAMEX

For CASEAMEX's U.S. sales, the date of sale is the invoice date to the first unaffiliated buyer in the United States.⁸³ The shipment date never preceded the invoice date and, accordingly, reliance on invoice date is consistent with Commerce's practice.

F. Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether CASEAMEX and Vinh Hoan sold subject merchandise to the United States at less than NV, Commerce compared the constructed export price (CEP) or EP of CASEAMEX's U.S. sales, and the CEP of Vinh Hoan's U.S. sales, to the NV, as described below.

1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates a weighted-average dumping margin by comparing weighted-average NVs to weighted-average EPs or CEPs (*i.e.*, the average-to-average

⁸¹ 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 IDM at Comment 10; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying IDM at Comment 2.

⁸² See Vinh Hoan February 13, 2023 CQR at 15.

⁸³ See CASEAMEX February 24, 2023 AQR at 16

method) unless Commerce determines that another method is appropriate in a particular situation. In less-than-fair-value (LTFV) 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 strictly govern Commerce's examination of this question in the context of administrative reviews, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in LTFV investigations.⁸⁴

In numerous investigations and administrative reviews, Commerce has applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation consistent with 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.⁸⁵ Commerce finds that the differential pricing analysis is instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to evaluate its approach in this area based on comments received in this review and the application of the differential pricing analysis on a case-by-case basis, 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 examines whether there exists a pattern of prices 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 consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, ZIP code) 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 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.

⁸⁴ 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), and accompanying IDM at Comment 1; see also *JBF RAK LLC v. United States*, 790 F. 3d 1358, 1363-65 (Fed. Cir. 2015) ("The fact that the statute is silent with regard to administrative reviews does not preclude Commerce from filling gaps in the statute to properly calculate and assign antidumping duties.") (citations omitted); and *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014).

⁸⁵ See, *e.g.*, *Xanthan Gum*; see also *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

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 prices to the particular purchaser, region, or time period differ significantly from the 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.

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.

2. Results of Differential Pricing Analysis

Vinh Hoan

For Vinh Hoan, based on the results of the differential pricing analysis, Commerce preliminary finds that 64.40 percent of the value of U.S. sales pass the Cohen's *d* test⁸⁶ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. However, 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, Commerce preliminarily determines to apply the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Vinh Hoan.

CASEAMEX

For CASEAMEX, based on the results of the differential pricing analysis, Commerce preliminary finds that 69.40 percent of the value of U.S. sales pass the Cohen's *d* test⁸⁷ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that the average-to-average method cannot account for such differences because the weighted-average dumping margin crosses the *de minimis* threshold when calculated using an alternative comparison method based on applying the average-to-transaction method to all sales. Accordingly, Commerce preliminarily determines to apply the average-to-transaction method for all U.S. sales to calculate the weighted-average dumping margin for CASEAMEX.

G. U.S. Price

1. Export Price

Section 772(a) of the Act defines EP as “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 772(c) of the Act. In accordance with section 772(a) of the Act, we used the EP methodology for certain of CASEAMEX's U.S. sales because the first sale to an unaffiliated party was made

⁸⁶ See Memorandum, “Preliminary Results Analysis Memorandum for the Vinh Hoan Corporation,” dated concurrently with this memorandum (Vinh Hoan Preliminary Analysis Memorandum).

⁸⁷ See Memorandum, “Preliminary Results Analysis Memorandum for Can Tho Import Export Seafood Joint Stock Company,” dated concurrently with this memorandum (CASEAMEX Preliminary Analysis Memorandum).

before the date of importation and CEP methodology was not otherwise warranted based on the facts of the record.⁸⁸

For CASEAMEX's EP sales, we calculated EP based on packed prices to unaffiliated customers in the United States. We made adjustments to the starting price, where appropriate, for billing adjustments in accordance with 19 CFR 351.401(c). We also made deductions from the starting price for foreign inland freight, international freight, marine insurance, brokerage and handling, U.S. customs duties, terminal fees, and warehousing expenses, in accordance with section 772(c)(2)(A) of the Act. For expenses that were incurred for services that were either provided by an NME vendor or paid for using an NME currency, Commerce used SVs. For a detailed description of the adjustments made to U.S. price, *see* CASEAMEX Preliminary Analysis Memorandum.

2. Constructed Export Price

Pursuant to section 772(b) of the Act, the CEP is "the price at which subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter," as adjusted under section 772(c) and (d) of the Act. We based the U.S. price on CEP for all of Vinh Hoan's sales and some of CASEAMEX's U.S. sales, in accordance with section 772(b) of the Act, because those sales were made by a U.S. affiliate to unaffiliated purchasers in the United States.

Vinh Hoan

For Vinh Hoan, we calculated CEP based on packed prices to unaffiliated purchasers in the United States. We made adjustments, where appropriate, from the starting price for billing adjustments, discounts, and rebates, in accordance with 19 CFR 351.401(c). We also made deductions from the starting price for foreign movement expenses, international movement expenses, U.S. movement and warehousing expenses, and certain other transportation-related charges, in accordance with section 772(c)(2)(A) of the Act. For expenses that were incurred for services that were either provided by an NME vendor or paid for using an NME currency, we used SVs.

In accordance with section 772(d)(1) of the Act, we also deducted from the U.S. price selling expenses associated with economic activities occurring in the United States. These included, where appropriate, commissions paid to unaffiliated selling agents, credit expenses, other direct selling expenses, inventory carrying costs, and U.S. indirect selling expenses. In addition, we deducted CEP profit, in accordance with sections 772(d)(3) and 772(f) of the Act. For a detailed description of all adjustments made to U.S. price, *see* Vinh Hoan Preliminary Analysis Memorandum.

⁸⁸ *See* CASEAMEX March 21, 2023 CQR at Exhibit C-2.

CASEAMEX

For CASEAMEX's CEP sales, we calculated CEP based on packed prices to unaffiliated purchasers in the United States. We made adjustments, where appropriate, for billing adjustments, in accordance with 19 CFR 351.401(c). We also made deductions from the starting price for foreign movement expenses, international movement expenses, and U.S. movement expenses, in accordance with section 772(c)(2)(A) of the Act. For expenses that were incurred for services that were either provided by an NME vendor or paid for using an NME currency, we used SVs.

In accordance with section 772(d)(1) of the Act, we also deducted from the U.S. price selling expenses associated with economic activities occurring in the United States. These included, where appropriate, credit expenses, other direct selling expenses, inventory carrying costs, and other U.S. indirect selling expenses. In addition, we deducted CEP profit, in accordance with sections 772(d)(3) and 772(f) of the Act. For a detailed description of the adjustments made to U.S. price, *see* CASEAMEX Preliminary Analysis Memorandum.

H. Normal Value

Section 773(c)(1) of the Act provides that Commerce shall determine NV using FOP methodology if: (1) the merchandise is exported from an NME 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(e) of the Act. When determining NV in an NME context, Commerce will base NV on FOPs because the presence of government controls on various aspects of NME economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Therefore, we calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). 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) amount of energy and other utilities consumed; and (4) representative capital costs.

1. Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV based on the FOPs reported by CASEAMEX and Vinh Hoan for the POR. Commerce used Indonesian import data and other publicly available Indonesian sources in order to calculate the relevant SVs. To calculate NV, we multiplied the per-unit FOP consumption rates by publicly available SVs. Commerce's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.⁸⁹

As appropriate, we adjusted the input prices by including freight costs to render them delivered prices. Specifically, we added to Indonesian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the

⁸⁹ 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 IDM at Comment 2.

nearest seaport to the factory.⁹⁰ Additionally, where necessary, Commerce adjusted the SVs for inflation and converted all applicable FOPs to a per-kilogram basis. An overview of the SVs used to calculate the weighted-average dumping margin for CASEAMEX and Vinh Hoan is contained below; a detailed description of all SVs Commerce used in the margin analysis is in the Preliminary SV Memorandum.⁹¹

(i) *Direct and Packing Materials, and By-Products*

Regarding whole live fish, fingerlings, and fish feed, we relied on *Undercurrent News* data.⁹² *Undercurrent News* data satisfied all the SV selection criteria: these data are publicly available, contemporaneous with the POR, representative of a broad-market average, tax- and duty-exclusive, and specific to the inputs being valued, *i.e.*, whole live fish, fingerlings, and fish feed.

We note that parties also submitted alternate data to value whole live fish, fingerlings, and fish feed, which consist of affidavits, price quotes, and certain data from the Indonesian Agriculture Statistics office.⁹³ However, Commerce has not relied on these sources for various reasons. Regarding the alternate whole live fish data, we note that the Indonesian Agriculture Statistics office records data on the Patin (*Pangasius*), *i.e.*, genus, level, and not to the specific species used by CASEAMEX and Vinh Hoan. Thus, the *Undercurrent News* data better meet the SV selection criteria. Regarding the alternate fingerling and fish feed data, given the reliability and public availability of the *Undercurrent News* data, we decline to rely on the affidavits with price quotes. Given the above, we preliminarily used *Undercurrent News* data to value CASEAMEX's and Vinh Hoan's whole live fish, fingerlings, and fish feed FOPs.

To value certain other materials, including processing/farming inputs, by-products (including frozen by-products and processed by-products/co-products), and packing material inputs that CASEAMEX or Vinh Hoan used or generated during the production of the subject merchandise during the POR, we used Indonesian import statistics from the Global Trade Atlas (GTA). However, we used the price quotes submitted by the petitioners to value fresh byproducts, given the limited information available.⁹⁴

Specifically, pursuant to section 773(c)(5) of the Act and Commerce's long-standing practice, we disregarded certain import values for which there was a reason to believe or suspect the source data may comprise subsidized prices.⁹⁵ In this regard, Commerce previously found that it is appropriate to disregard certain prices from India, South Korea, and Thailand because Commerce determined that these countries maintain broadly available, non-industry specific export

⁹⁰ See *Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997).

⁹¹ See Memorandum, "Surrogate Values for the Preliminary Results," dated concurrently with this memorandum (Preliminary SV Memorandum).

⁹² See Respondents August 1, 2023 Surrogate Values at Exhibit 6a.

⁹³ See Petitioners April 21, 2023 Surrogate Values at Exhibits SV-2, SV-2A-F, SV-6, SV-6A-E; and Respondents April 21, 2023 Surrogate Values at Exhibits SV-4, SV-5, and SV-6.

⁹⁴ See Petitioners April 21, 2023 Surrogate Values at Exhibit SV-10, SV-10A, and SV-10B; see also Respondents August 1, 2023 Surrogate Values at Exhibit 4.

⁹⁵ See section 773(c)(5) of the Act (permitting Commerce to disregard prices or costs without further investigation if it determines that certain subsidies exist with respect to those values).

subsidies.⁹⁶ Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, we find that it is reasonable to infer that exporters from India, South Korea, and Thailand may have benefitted from these subsidies. Therefore, we have not used prices from these countries in calculating the Indonesian import-based SVs. Additionally, consistent with our practice, we disregarded prices from NME countries and excluded imports originating from an “unspecified” country, because Commerce could not be certain that they were not from either an NME country or a country with generally-available export subsidies.⁹⁷

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an 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 greater), in accordance with 19 CFR 351.408(c)(1), Commerce uses the actual purchase prices to value the inputs. CASEAMEX had ME purchases of two inputs (STPP analogs) which were 85 percent or more of its total purchases of that input.⁹⁸ Thus, we used the actual prices paid for these ME inputs. Although Vinh Hoan had ME purchases of an input (STPP), these were not 85 percent or more of total purchases of that input.⁹⁹ Thus, Commerce weight averaged the actual prices paid for the market economy portion and the SV for the NME portion by their respective quantities.¹⁰⁰

(ii) *Energy and Water*

We valued electricity using the rates charged by the Indonesian utility company PT PLN (Persero).¹⁰¹ We valued diesel using Indonesian GTA. This value was expressed by GTA in kilograms. However, as both respondents reported their diesel consumption in liters, we converted the value to liters by using the specific gravity of diesel oil.¹⁰²

We valued water using prices from the Government of Jakarta Regulation Number 57, which was in effect during the POR, and from the PAM Jaya water company, using the company’s

⁹⁶ See, e.g., *Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination; 2011-2012*, 78 FR 42492 (July 16, 2013), and accompanying IDM at 7-19; see also *Certain Lined Paper Products from Indonesia: Final Results of the Expedited Sunset Review of the Countervailing Duty Order*, 76 FR 73592 (November 29, 2011), and accompanying IDM at 1.

⁹⁷ See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates from the People’s Republic of China*, 69 FR 75294, 75301 (December 16, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People’s Republic of China*, 70 FR 24502 (May 10, 2005).

⁹⁸ See CASEAMEX April 3, 2023 DQR at Exhibit 9.

⁹⁹ See Vinh Hoan February 21, 2023 DQR at Exhibit 10

¹⁰⁰ See *Use of Market Economy Input Prices in Nonmarket Economy Proceedings*, 78 FR 46799, 46800 (August 2, 2013); see also Vinh Hoan Preliminary Analysis Memorandum.

¹⁰¹ See Petitioners April 21, 2023 Surrogate Values at Exhibit SV-8; and Respondents April 21, 2023 Surrogate Values at Exhibit SV-9.

¹⁰² We used the specific gravity of diesel at 16 degrees Celsius as .841.

annual report for 2021 and the average per-cubic-meter pricing of water for industrial food processing customers.¹⁰³

(iii) *Movement Services*

We valued brokerage and handling expenses using a price list of export procedures necessary to export a standardized container of goods in Indonesia. The price list is based on surveys relating to ocean transport in Indonesia and is published in *Doing Business in Indonesia* by the World Bank.¹⁰⁴

We used Indonesian transport information to value to truck freight costs for the raw materials, based on *Doing Business in Indonesia*.¹⁰⁵ We calculated the per-unit truck inland freight costs using the distance from Jakarta and Surabaya to the nearest seaport on a per-kilogram, per-kilometer basis.

We valued inland boat freight charges by using Indonesian freight rates that were published by the Indonesian freight forwarder, PT. Mantap Abiah Abadi, for the month of September 2011.¹⁰⁶

(iv) *Labor*

In NME antidumping proceedings, Commerce prefers to value labor based solely on data from the surrogate country.¹⁰⁷ In *Labor Methodologies*, Commerce determined that the best methodology to value labor is to use industry-specific labor rates from the surrogate country.¹⁰⁸ Additionally, we determined that the best data source for the industry-specific labor rate is the manufacturing labor rates from ILOSTAT, the labor database compiled by the International Labor Organization. In this review, we find that the ILOSTAT data on the record from Indonesia are the best available information for valuing labor.¹⁰⁹

(v) *Financial Ratios*

Pursuant to 19 CFR 351.408(c)(4), Commerce values overhead, selling, general and administrative (SG&A) expenses, and profit, using publicly available information gathered from producers of identical or comparable merchandise in the surrogate country. In addition, the CIT has held that, in the selection of surrogate producers, Commerce may consider how closely the

¹⁰³ See Respondents April 21, 2023 Surrogate Values at Exhibit SV-10; and Petitioners April 21, 2023 Surrogate Values at Exhibit SV-7.

¹⁰⁴ See Petitioners April 21, 2023 Surrogate Values at Exhibit SV-11; and Respondents April 21, 2023 Surrogate Values at Exhibit SV-12.

¹⁰⁵ See Petitioners April 21, 2023 Surrogate Values at Exhibit SV-11; and Respondents April 21, 2023 Surrogate Values at Exhibit SV-12.

¹⁰⁶ See Petitioners April 21, 2023 Surrogate Values at Exhibit SV-11.

¹⁰⁷ See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Productions: Labor*, 76 FR 36092 (June 31, 2011) (*Labor Methodologies*).

¹⁰⁸ *Id.*

¹⁰⁹ See Preliminary SV Memorandum; see also Petitioners April 21, 2023 Surrogate Values at Exhibit SV-9; and Respondents April 21, 2023 Surrogate Values at Exhibit SV-8.

surrogate producers approximate the NME producer's experience.¹¹⁰ To value factory overhead, SG&A, and profit, Commerce used the 2021/2022 financial statements from PT Dharma Samudera Fishing Industries Tbk, and PT Japfa Comfeed Indonesia Tbk, Indonesian producers of *Pangasius*.¹¹¹ These financial statements show a profit and cover periods contemporaneous with the POR. Moreover, the financial statements do not indicate that these companies received subsidies from a program which Commerce has found to be countervailable.

I. Currency Conversion

Where necessary, we 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.

VIII. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

Agree

Disagree

8/31/2023

X



Signed by: LISA WANG

Lisa W. Wang

Assistant Secretary

for Enforcement and Compliance

¹¹⁰ See *Rhodia, Inc. v. United States*, 240 F. Supp. 2d 1247, 1253-1254 (CIT 2002); see also *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005), and accompanying IDM at Comment 1.

¹¹¹ See Preliminary SV Memorandum; see also Petitioners April 21, 2023 Surrogate Values at Exhibits SV-13, SV-13A, SV-13B, and SV-13C; and Respondents April 21, 2023 Surrogate Values at Exhibits SV-15(a) and SV-15(b).

Appendix I

Companies for Which We Intend to Rescind the Review

Bien Dong Seafood Company Ltd. (also known as Bien Dong, Bien Dong Seafood, Bien Dong Seafood Co., Ltd., Biendong Seafood Co., Ltd., Bien Dong Seafood Limited Liability Company or Bien Dong Seafoods Co., Ltd.)

C.P. Vietnam Corporation (also known as C.P. Vietnam Corp.)

Dai Thanh Seafoods Company Limited (also known as DATHACO, Dai Thanh Seafoods or Dai Thanh Seafoods Co., Ltd.)

East Sea Seafoods LLC (also known as East Sea Seafoods Limited Liability Company, ESS LLC, ESS, ESS JVC, or East Sea Seafoods Joint Venture Co., Ltd.)

Hai Huong Seafood Joint Stock Company (also known as HHFish, HH Fish, or Hai Huong Seafood)

NTSF Seafoods Joint Stock Company (also known as NTSF, NTSF Seafoods or Ntsf Seafoods Jsc)

PREFCO Distribution, LLC.

Vinh Quang Fisheries Corporation (also known as Vinh Quang, Vinh Quang Fisheries Corp., Vinh Quang Fisheries Joint Stock Company, or Vinh Quang Fisheries Co., Ltd.)

Appendix II

Companies With No Shipments During the POR*

Fatfish Company Limited (also known as FATIFISH or FATIFISHCO or Fatfish Co., Ltd.)

GF Seafood Corp.

Green Farms Seafood Corporation

GODACO Seafood Joint Stock Company (also known as GODACO, GODACO Seafood, GODACO SEAFOOD, GODACO_SEAFOOD, or GODACO Seafood J.S.C.)

Golden Quality Seafood Corporation (also known as Golden Quality, GoldenQuality, GOLDENQUALITY, or GoldenQuality Seafood Corporation)

Green Farms Seafood Joint Stock Company (also known as Green Farms, Green Farms Seafood JSC, GreenFarm SeaFoods Joint Stock Company, or Green Farms Seafoods Joint Stock Company)

Nam Viet Corporation (also known as NAVICO)

Nha Trang Seafoods, Inc. (also known as Nha Trang Seafoods-F89, Nha Trang Seafoods, or Nha Trang Seaproduct Company)

QMC Foods, Inc.

QVD Food Co., Ltd.**

*We received no shipment certifications from 16 companies. However, certain of those companies do not have existing or preliminary separate rates, and are part of the Vietnam-wide entity, which remains under review. We decline to make a no shipment finding with respect to a portion of the Vietnam-wide entity. Additionally, certain other companies that filed a no shipment statement are among the companies for which we have announced our intent to rescind this review, in Appendix I.

**This is a single entity comprised of QVD Food Co., Ltd, QVD Dong Thap Food Co., Ltd. (also known as Dong Thap or QVD DT), and Thuan Hung Co., Ltd. (also known as THUFICO).