

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;