

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, Aflix, 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