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MEMORANDUM TO: James C. Doyle
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THROUGH: Alex Villanueva
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FROM: Nicole Bankhead
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RE: Antidumping Duty Investigation of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Analysis of Ministerial Error Allegations[1]

I. SUMMARY

The Department of Commerce ("the Department") is amending the weighted-average dumping margins listed in the Final Determination for respondents Camau Frozen Seafood Processing Import Export Corporation ("Camimex"), Minh Phu Seafood Corporation ("Minh Phu"); Minh Hai Joint-Stock Seafoods Processing Company ("Seaprodex Minh Hai"), two Section A Respondents, Ngoc Sinh Company ("Ngoc Sinh"), Phuong Nam Co., Ltd. ("Phuong Nam"), and the weighted-average Section A rate for all other respondents granted a separate rate. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of

[1] On January 6, 2005, the International Trade Commission ("ITC") notified the Department of its final determination that two domestic like products exist for the merchandise covered by the Department's investigation: (i) certain non-canned warmwater shrimp and prawns, as defined above, and (ii) canned warmwater shrimp and prawns. The ITC determined that there is no injury regarding imports of canned warmwater shrimp and prawns from Vietnam, therefore, canned warmwater shrimp and prawns will not be covered by the antidumping order.

Vietnam ("Final Determination") 69 FR 71005 (December 8, 2004). The weighted-average margins for Kim Anh Co., Ltd. and the Vietnam-wide entity
remain unchanged.

II. BACKGROUND

As noted above, on December 8, 2004, the Department published its Final Determination, and corresponding Issues and Decision Memorandum.

On December 7, 2004, five Section A Respondents, Truc An Company ("Truc An"), Hai Thuan Export Seaproducts Processing Co., Ltd. ("Hai Thuan"), Nha Trang Fisheries Co., Ltd. ("Nha Trang Fisheries"), Ngoc Sinh, and Phuong Nam, which had been denied a separate rate by the Department in the Final Determination, filed timely requests pursuant to 19 CFR 351.224(e)(1) and (2) requesting that the Department correct alleged ministerial errors in the Final Determination. Also on December 7, 2004, the VASEP Shrimp Committee filed allegations of ministerial errors listing additional names to include in the Department's instructions to the U.S. Customs and Border Protection ("CBP") to be issued after the Final Determination. Camau Frozen Seafood Processing Import Export Corporation ("Camimex"), Minh Phu Seafood Corporation ("Min Phu") and Minh Hai Joint Stock Seafoods Processing Company ("Seaprodex Minh Hai"), hereinafter collectively referred to as "Mandatory Respondents," also filed timely allegations that the Department made ministerial errors in the Final Determination. The Ad Hoc Shrimp Trade Action Committee, Versaggi Shrimp Corporation and Indian Ridge Shrimp Company, hereinafter referred to collectively as "Petitioners," also filed timely allegations that the Department made ministerial errors in the Final Determination.

Additionally, on December 7, 2004, Red Chamber on behalf of Phuong Nam filed timely allegations that the Department made ministerial errors in the Final Determination. However, because Red Chamber submitted new information in its error allegation, on December 13, 2004, in accordance with section 351.302(d) of the Department's regulations, the Department returned Red Chamber's submission and requested that it remove the new information from its December 7, 2004 submission. On December 17, 2004, Red Chamber re-submitted its ministerial error allegation without the new information.

On December 13, 2004, Petitioners filed comments rebutting the five Section A Respondents' and Mandatory Respondents' ministerial error allegations. The Mandatory Respondents also submitted comments on December 13, 2004, rebutting Petitioners' ministerial error allegations. The five Section A Respondents did not submit and rebuttal comments.

The Department will correct any ministerial error by amending its final determination. Section 351.224(f) of the Department's regulations defines a "ministerial error" as "an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or

the like, and any other similar type of unintentional error which the Secretary considers ministerial."

III. GENERAL COMMENTS:

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II. Mandatory Respondents

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IV. Scope Comments

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I. SHRIMP SURROGATE VALUE

Comment 1: Use of Absolute Value

Petitioners argue that the Department should have employed the actual value of the percentage price difference between count sizes rather than the absolute value of the percentage price difference between count sizes. Petitioners state that correcting this arithmetical error results in a change in the weighted-average percentage price difference used in the Department's calculation of its input shrimp surrogate values from 13.24% to 10.32%.

Mandatory Respondents argue that the Department explicitly stated that it intended to use the absolute value of the difference rather than the actual difference between count size specific prices, and therefore did not make a ministerial error. Mandatory Respondents assert that the Department correctly realized that by collapsing the 1/8 and 9/12 count sizes created an aberrational result of smaller shrimp being priced higher than larger shrimp and therefore used the absolute value of the difference instead of the actual value difference.

Department's Position:

The Department finds that this is not a ministerial error. The Petitioners allege that the Department's shrimp surrogate value analysis regarding the proper percentage price difference (absolute value versus actual value) between count sizes for the input shrimp surrogate values is an arithmetic error. This is not an arithmetical error or ministerial error within the meaning of 19 CFR 351.224(f). The Department's use of the absolute value of the difference in price between count sizes in its Final Determination reflects the Department's intended methodological decision. The Department explicitly explained in its Shrimp Valuation Memo, that "the difference in price among count sizes by calculating the absolute value of the percent difference in price between adjacent count sizes, beginning with the largest count size. For example, in order to calculate the price differential between 1/8 and 9/12 shrimp, the Department determined the absolute value of the differential between the price for 1/8 shrimp and 9/12 shrimp, divided by the price for 1/8 shrimp." See Memorandum from James Doyle, Office Director, to the File Regarding Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam: Calculation Methodology for Count Size- Specific Shrimp Surrogate Values ("Shrimp Valuation Memo"), dated November 29, 2004, at 4.

Comment 2: Calculation of the 13.24 Weighted-Average Percent Difference

Petitioners allege that the Department improperly applied the weighted-average percentage price difference between count sizes to its input shrimp base price for count sizes larger than the weighted-average count size, and that this constitutes an arithmetical error. Petitioners argue that the pricing relationship between all count sizes below (smaller than) the weighted-average count size in the Department's raw shrimp surrogate value exists, but that this pricing relationship does not exist for count sizes above (larger than) the weighted-average count size calculated by the Department. As an example, Petitioners note that the price differential between the surrogate value assigned to count size 1/8 and the surrogate value assigned to count size 9/12 is only 11.67 percent, when calculated using the methodology employed by the Department. Petitioners argue that to correct this, the Department should replace the surrogate values assigned to all of the count sizes above the weighted-average count size with the calculated figures presented in attachment 3 of their submission.

Mandatory Respondents argue that the Department did not begin with a price for the largest or smallest count size in order to adjust the price the downwards or upwards, but rather started with a price for the a count size in the middle of the range of various count sizes and therefore adjusted the price both

upwards and downwards by 13.24 percent. Mandatory Respondents point to the fact that the Department explicitly explained this in its Shrimp Valuation Memo. Mandatory Respondents further note that the base price would be adjusted by 13.24 percent and that the base price in this context is the price that the Department multiplied by 13.24 percent to calculate either the preceding or succeeding count size. Therefore, because the Department clearly indicated that it would adjust the price upward or downward by 13.24 percent for each preceding or succeeding count size, Petitioners' claim does not constitute a ministerial error.

Department's Position:

Petitioners' allegation takes issue with the Department's analysis regarding the basis for the calculation of the 13.24 weighted-average percent difference that was applied to the input shrimp surrogate values. In the Final Determination, the Department "assigned its input shrimp surrogate value of USD5.42/kg to the 21/25 count size, and adjusted the price upward by 13.24 percent ("%") on a cumulative basis for each count size step above 21/25, and adjusted the price downward by 13.24% on a cumulative basis for each count size step below 21/25." See Shrimp Valuation Memo at 5. The Department's decision to apply a 13.24% weighted average price difference between count sizes in its Final Determination reflects its intended methodology and therefore is not a ministerial error within the meaning of 19 CFR 351.224(f).

II. ALLEGATIONS REGARDING THE DEPARTMENT'S MANDATORY RESPONDENTS' CALCULATIONS

Comment 3: Missing Factor of Production for Minh Phu

Petitioners argue that the Department intended to value [ ]ll three Mandatory Respondents. See Issues and Decision Memo at 20-21. The Department included [ ]factor of production for SMH and Camimex, [ ]or Minh Phu.

Mandatory Respondents did not comment on this issue.

Department's Position:

The Department agrees with Petitioners that the Department made a ministerial error within the meaning of 19 CFR 351.224(f) by not including [ ]factor of production for Minh Phu. The Petitioners are correct in that the Department did include [ ]factor of production for Camimex and Seaprodex Minh Hai, but inadvertently did not do so for Minh Phu. For this amended final determination, the Department will include [ ]factor of production for Minh Phu.

Comment 4: Calculation of the Surrogate Financial Ratios

Petitioners argue that in computing Bionic Seafood's ("Bionic") selling, general and administrative ("SG&A"), and profit ratios, the Department incorrectly determined the total value of Bionic's material, labor, energy and overhead expenses. Specifically, the Department determined that the sum of Bionic's material, labor, energy and overhead expenses to be 246, 937,941 takas ("tk"), when those expenses should have totaled 238,215,932 tk.

Mandatory Respondents argue that in its calculation of factory overhead from the financial statements of the surrogate companies, Apex Foods Limited ("Apex") and Bionic, the Department double counted factory overhead costs in its calculation of normal value. According to the Mandatory Respondents, the financial statements of Apex and Bionic include wages, salaries and bonuses associated with direct labor as well as labor included in factory overhead. Mandatory Respondents contend that the Department should have deducted bonuses and indirect labor from its calculation of Apex's and Bionic's overhead amounts because the Mandatory Respondents have reported, in their factors of production databases, all labor associated with shrimp production, including indirect workers which would normally be accounted for in overhead. Therefore, Mandatory Respondents argue the Department should correct the double counting of labor by deducting indirect labor from the surrogate company financial ratios.

Additionally, Mandatory Respondents argue that the Department should have offset Bionic's SG&A ratio by miscellaneous income, specifically factory rent.

In their rebuttal brief, Petitioners argue that Mandatory Respondents' allegation does not constitute a ministerial error. According to Petitioners, the Department's calculation of financial ratios was clearly intentional and not an error in addition, subtraction, or other arithmetic function, nor a clerical error resulting from inaccurate copying, duplication nor was it unintentional. Petitioners note that in its Final Determination, the Department calculated Apex's financial ratios in the same manner that it did in the Preliminary Determination, basing its calculations on the Mandatory Respondents own computations. See Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam ("Preliminary Determination") 69 FR 42672 (July 16, 2004). Petitioners also note that Mandatory Respondents did not object to the inclusion of wages, salaries and bonuses in factory overhead in the Preliminary Determination, but rather were proponents of including those items. For the amended final determination, Petitioners argue that the Department should continue to use the same methodology applied in the Final Determination.

Mandatory Respondents agree with Petitioners in that the Department incorrectly calculated the denominators for Bionic's SG&A and profit ratios. However, in addition to the Petitioners proposed change, the Mandatory Respondents argue that the Department should correct its Final Determination by discontinuing to double count factory overhead costs in its calculation of normal value and to offset Bionic's SG&A ratio by factory rent.

Department's Position:

With regard to the calculation of Bionic's material, labor, energy and overhead expenses, we agree with Petitioners that the Department made a ministerial error within the meaning of 19 CFR 351.224(f). Due to a mathematical error, the Department incorrectly calculated Bionic's material, labor, energy and overhead expenses. The correct summation of Apex's materials, labor, energy and overhead is 238,215,932 tk, not 246,937,941 tk as calculated in the Final Determination. See Memorandum from Paul Walker, Case Analyst, through Alex Villanueva, Program Manager, to the File Regarding the Antidumping Duty Investigation of Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam: Factor Valuations for the Final Determination ("Final Factors Memo"), dated November 29, 2004, at Exhibit 3. For this amended final determination the Department will correct this error.

With regard to the labor offset to the surrogate companies' overhead calculation, the Department disagrees with Mandatory Respondents that the Department made a ministerial error within the meaning of 19 CFR 351.224(f). The Department's decision to include overhead labor in the calculation of overhead was intentional. The Department adopted the Respondent's methodology in calculating Apex's surrogate financial ratios. In their calculation of overhead, the Respondents specifically did not deduct overhead labor from overhead. See Respondent's May 21, 2004 response at Exhibit 8. The Department's decision not to deduct indirect labor from its calculation of overhead in its Final Determination reflects its intended methodology because the Department adopted the same methodology used by the Respondents and it is not a ministerial error within the meaning of 19 CFR 351.224(f).

With regard to Bionic's SG&A calculation, the Department disagrees with Mandatory Respondents that the Department made a ministerial error within the meaning of 19 CFR 351.224(f). The Department specifically included all miscellaneous income in Bionic's profit total, including factory rent. See Final Factors Memo at Exhibit 3. The Department's decision to include miscellaneous income in SG&A in its Final Determination reflects its intended methodology and it is not a ministerial error within the meaning of 19 CFR 351.224(f).

III. SECTION A RESPONDENTS

Comment 5: Additional Name for Aquatic Products Trading Company

Aquatic Products Trading Company ("APT") argues the Department made a ministerial error by failing to include its additional company name, "Thang Loi Frozen Food Enterprise," in its instructions to Customs. According to APT, it provided the Department a copy of its 2003 HACCP plan in its June 10, 2004 submission at exhibit SA-3, which supports its assertion that it "Thang Loi Frozen Food Enterprise" is synonymous with "APT."

Petitioners did not comment on this issue.

Department's Position:

The Department disagrees with APT that the Department made a ministerial error within the meaning of 19 CFR 351.224(f) in deciding not to grant APT an additional company name in our Customs instructions. APT provided the Department with a list of trade names. See APT's Section A questionnaire response ("SAQR") at 1. APT did not list Thang Loi Frozen Food Enterprise as one of its trade names. In addition, APT did not state in either its original SAQR or supplemental SAQRs that it exported subject merchandise to the United States during the POI under the name Thang Loi Frozen Food Enterprise. See Issues and Decision Memo at 55-6. The Department's decision to deny this additional name in its Final Determination reflects its intended methodology and it is not a ministerial error within the meaning of 19 CFR 351.224(f).

Comment 6: Additional Name for Viet Hai Seafood Company Ltd.

Viet Hai Seafood Company Ltd. ("Vietnam Fish One") argues the Department made a ministerial error by failing to include its additional company name, "VINASEAFOOD Co. Ltd.," in its instructions to Customs. According to Vietnam Fish One, it provided the Department with its *Regulations of the Company* in its June 11, 2004 submission at exhibit SA-3, which supports its assertion that it "VINASEAFOOD Co. Ltd." is one of Vietnam Fish One's trading names.

Petitioners did not comment on this issue.

Department's Position:

The Department disagrees with Vietnam Fish One that the Department made a ministerial error within the meaning of 19 CFR 351.224(f) in deciding not to grant Vietnam Fish One an additional company name in our Customs instructions. Vietnam Fish One provided the Department with a list of trade names. See Vietnam Fish One's SAQR at 1. Vietnam Fish One did not list VINASEAFOOD Co. Ltd. as one of its trade names. In addition, Vietnam Fish One did not state in either its original SAQR or supplemental SAQRs that it exported subject merchandise to the United States during the POI under the name VINASEAFOOD Co. Ltd. See Issues and Decision Memo at 58. The Department's decision to deny this additional name in its Final Determination reflects its intended methodology and it is not a ministerial error within the meaning of 19 CFR 351.224(f).

Comment 7: Truc An's Separate Rate

Truc An contends that the Department made a ministerial error by denying it a separate rate.

Truc An argues that the Department did not consider Truc An's August 18, 2004, submission

which contained certified assertions regarding how it negotiates sales. Additionally, Truc An contends that the Department failed to request additional information from Truc An regarding the information it provided in its August 18, 2004 submission which contradicted its earlier submissions. According to Truc An, it provided the relevant documentation to show that it conducts sales of frozen shrimp without the involvement of the Vietnamese Government.

Truc An states that its August 18, 2004, submission clarified its ability to negotiate sales terms through emails with its customers, which Truc An discovered. According to Truc An, its August 18, 2004, submission did not contradict that all of its sales negotiations were conducted *via* telephone, but rather clarified mistaken statements from its supplemental SAQR. Truc An specifically references that it "typically" conducts sales by telephone, but found the email correspondence after searching through its sales records. Truc An states that its August 18, 2004, submission was explanatory, rather than contradictory, of its supplemental SAQR. Therefore, the Department made an error by not considering Truc An's statement in its August 18, 2004, submission when determining Truc An's eligibility for a separate rate.

Truc An argues that the Department's failure to issue a supplemental questionnaire in response to Truc An's August 18, 2004, submission constitutes a ministerial error. According to Truc An, by failing to issue an additional supplemental questionnaire to clarify any outstanding issues, the Department failed to consider this issue and its importance in the Department's decision to deny Truc An a separate rate.

Truc An further argues that the Department's decision to deny Truc An a separate rate violated the Department's statutory and regulatory provisions under Section 776(a) of the Tariff Act of 1930 ("the Act") regarding the application of facts available. According to Truc An, the Department is obligated to explain in writing why it will not accept a party's information in order for the party to remedy or explain any deficiencies. Truc An contends that it was not given a chance to remedy any issues that the Department deemed to be contradictory to previous responses.

Truc An concludes that its statements regarding how it conducts sales with U.S. customers was non-contradictory, and therefore, the Department made a ministerial error by failing to consider the email correspondences provided in Truc An's August 18, 2004, submission.

Petitioners rebut Truc An's contention that the Department made a ministerial error by denying it a separate rate. Petitioners note that Truc An does not allege that the Department made a mathematical or computational error, but rather Truc An's alleged errors involve findings of fact and conclusions of law. Therefore, the Department did not make inadvertent or unintentional errors and thus, did not make a ministerial error.

Petitioners trace Truc An's responses through the investigation. See Petitioners' December 20, 2004 Submission at 20 ("Petitioners' Rebuttal"). Petitioners emphasize the contradictory statements Truc An

made throughout this investigation. Petitioners point to the fact that Truc An certified that it could not produce price negotiation documents because they did not exist, not that it could not locate such documents and would thus keep looking for them. Therefore, Petitioners contend that the emails Truc An provided in its August 18, 2004, submission did not clarify its supplemental SAQR, but rather blatantly contradicted it. Petitioners contend that the Department did not make a ministerial error, but rather made a decision based on the record evidence, which included Truc An's obvious inconsistencies.

Department's Position:

Truc An's allegation takes issue with the Department's analysis regarding the appropriateness of denying Truc An a separate rate. The Department's decision to deny a separate rate to Truc An was intentional and based upon the evidence on the record. The Department's Final Determination reflects its intended methodology. It is not a ministerial error within the meaning of 19 CFR 351.224(f).

Consistent with its long-standing practice, the Department allowed Truc An two opportunities to demonstrate its separateness. See Final Results of Antidumping Duty Administrative Review: Potassium Permanganate of the People's Republic of China ("Potassium Permanganate") 59 FR 26625 (May 23, 1994) and accompanying Issues and Decision Memorandum at Comment 2; Notice of Preliminary Determination of Sales at Less than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination of Certain Tissue Paper Products: Certain Tissue Paper Products and Certain Crepe Paper Products from the People's Republic of China ("Tissue Crepe"), 69 FR 56407, 56409 (September 21, 2004). First, Truc An was provided an opportunity to submit information in its SAQR. See Truc An SAQR, March 17, 2004 at 6. Second, Truc An was provided an opportunity to cure any noted deficiencies when it responded to the supplemental questionnaire issued by the Department. See Truc An supplemental SAQR, June 14, 2004 at 14, question 20. Truc An also submitted new information after the Preliminary Determination that the Department considered. See Truc An August 18, 2004, Submission. The Department determined that the information submitted after the Preliminary Determination contradicted statements that Truc An made in its two prior submissions. See Memorandum from Nicole Bankhead, Case Analyst, through Alex Villanueva, Program Manager, to James Doyle, Office Director, Antidumping Duty Investigation of Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam: Final Determination Separate Rates Memorandum for Section A Respondents, dated November 29, 2004 at 24-25 ("Final Separate Rates Memo"). Since Truc An was afforded ample opportunity to prove its separateness during the course of the investigation, the Department's decision not to issue an additional supplemental questionnaire was intentional and does not constitute a ministerial error within the meaning of 19 CFR 351.224(f).

Further, upon careful review of all the evidence on the record, the Department determined that Truc An did not demonstrate that it was entitled to a separate rate. See Final Separate Rates Memo at 24-25.

This decision was intentional and does not constitute a ministerial error within the meaning of 19 CFR 351.224(f).

Comment 8: Hai Thuan's Separate Rate

Hai Thuan contends that the Department made a ministerial error by denying it a separate rate.

According to Hai Thuan, the Department mischaracterized certain of Hai Thuan's statements. Hai Thuan contends that the Department did not consider the price negotiation documentation provided in its August 18, 2004, submission. Additionally, Hai Thuan argues that it never stated that it only conducts sales negotiations through faxes. Hai Thuan explains that faxes are just one method it uses to conduct sales. Hai Thuan states that though it "typically" faxes quotations to its customers, thus indicating that other methods are also used to conduct price negotiations. Hai Thuan references the emails provided in its August 18, 2004 submission as an example of the other methods by which it conducts price negotiations. Hai Thuan contends that it clarified in its August 18, 2004, submission that it negotiates *via* email and also confirmed that it uses the telephone during the negotiation process. Hai Thuan further explains that it provided an example of a faxed price negotiation to its customer in Exhibit SA-2 of its supplemental SAQR, which the Department did not use because it was untranslated.

Hai Thuan contends that the Department incorrectly stated that Hai Thuan conducts sales negotiations solely *via* telephone and based its decision to deny it a separate rate based on Hai Thuan's inability to demonstrate with evidence that its sales negotiated by telephone are free of government control. See Final Separate Rates Memo at 19. Hai Thuan asserts that it stated in its supplemental SAQR that it conducts price negotiations *via* fax and telephone and then clarified in its August 18, 2004 submission that it also negotiates *via* email. According to Hai Thuan, the Department based its decision to deny Hai Thuan a separate rate on the incorrect assumption that it only uses the telephone to negotiate prices.

Hai Thuan argues that the Department's failure to issue a supplemental questionnaire in response to Hai Thuan's August 18, 2004 submission constitutes a ministerial error. According to Hai Thuan, by failing to issue an additional supplemental questionnaire to clarify any outstanding issues, the Department failed to consider this issue and its importance in the Department's decision to deny Hai Thuan a separate rate.

Hai Thuan further argues that the Department's decision to deny Hai Thuan a separate rate violated the Department's statutory and regulatory provisions under Section 776(a) of the Act regarding the application of facts available. According to Hai Thuan, the Department is obligated to explain in writing why it will not accept a party's information in order for the party to remedy or explain any deficiencies. Hai Thuan contends that it was not given a chance to remedy any issues that the Department deemed to be contradictory to previous responses.

Hai Thuan concludes that the Department incorrectly stated that Hai Thuan conducts sales only by fax and also that it conducts negotiations only by telephone, which Hai Thuan contends are both inaccurate. Therefore, the Department should correct its ministerial error regarding Hai Thuan and grant it a separate rate.

Petitioners rebut Hai Thuan's contention that the Department made a ministerial error by denying it a separate rate. Petitioners note that Hai Thuan does not allege that the Department made a mathematical or computational error, but rather Hai Thuan's alleged errors involve findings of fact and conclusions of law. Therefore, the Department did not make inadvertent or unintentional errors and thus, did not make a ministerial error.

Petitioners trace Hai Thuan's responses through the investigation. See Petitioners' Rebuttal at 10. Petitioners emphasize the contradictory statements Hai Thuan made throughout this investigation. Specifically, Petitioners note that Hai Thuan provided emails in its final submission after the Department found no evidence of Hai Thuan using faxes for price negotiation, even though the Department's supplemental questionnaire sought faxes *and emails* as evidence of price negotiation. Petitioners argue that the Department did not make a computational or clerical error, but rather, based its decision on the value of the evidence. Petitioners argue that the Department's determination was logical in that Hai Thuan's contradictory statements do not provide a basis for finding that Hai Thuan is able to set its own export price and negotiate and sign contracts freely. Petitioners further note that the Department issued two questionnaires to Hai Thuan, Hai Thuan submitted a ministerial error allegation at the Preliminary Determination, and also provided information before the Final Determination. According to Petitioners, Hai Thuan did not clarify the issue, but rather confused it. Petitioners emphasize that Hai Thuan was given sufficient opportunity to clarify the record and that a "third bite" at the questionnaire apple is undeserving and would shift the burden of proof regarding the country-wide rate presumption to the Department from the NME company. See Petitioners' Rebuttal at 12.

Department's Position:

Hai Thuan's allegation takes issue with the Department's analysis regarding the appropriateness of denying Hai Thuan a separate rate. The Department's decision to deny a separate rate to Hai Thuan was intentional and based upon the evidence on the record, and does not constitute a ministerial error.

The Department does acknowledge that it mis-stated in the Final Separate Rates Memo, at 19, that Hai Thuan conducts all price negotiations *via* telephone instead of by fax. Though the Department incorrectly stated that Hai Thuan conducted "all negotiations solely *via* telephone," the Department's analysis was based on Hai Thuan's statements on the record that it negotiated *via* fax. Therefore, this error does not change the Department's separate rate decision regarding Hai Thuan and is not a ministerial error within the meaning of 19 CFR 351.224(f).

Consistent with its long-standing practice, the Department allowed Hai Thuan two opportunities to demonstrate its separateness. See ("Potassium Permanganate"); Tissue Crepe. First, Hai Thuan was provided an opportunity to submit information in its SAQR. See Hai Thuan SAQR, March 19, 2004 at 6. Second, Hai Thuan was provided an opportunity to cure any noted deficiencies when it responded to the supplemental questionnaire issued by the Department. See Hai Thuan supplemental SAQR June 9, 2004 at 11, question 17. Hai Thuan also submitted new information after the Preliminary Determination that the Department considered. See Hai Thuan August 18, 2004, Submission. The Department determined that this additional information contradicted statements that Hai Thuan made in its two prior submissions. See Final Separate Rates Memo at 18-19. Since Hai Thuan was afforded ample opportunity to prove its separateness during the course of the investigation, the Department's decision not to issue an additional supplemental was intentional and does not constitute a ministerial error within the meaning of 19 CFR 351.224(f).

Further, upon careful review of all the evidence on the record, the Department determined that Hai Thuan did not demonstrate that it was entitled to a separate rate. See Final Separate Rates Memo at 18-19. This decision was intentional and does not constitute a ministerial error within the meaning of 19 CFR 351.224(f).

Comment 9: Nha Trang Fisheries' Separate Rate

Nha Trang Fisheries contends that the Department made a ministerial error by denying it a separate rate.

According to Nha Trang Fisheries, its August 18, 2004, submission provided the Department with documentation supporting that it negotiates its sales free of the Vietnamese government. Nha Trang Fisheries notes that it stated in its June 9, 2004, supplemental SAQR that it did not "maintain a written correspondence file for price negotiations." See Nha Trang Fisheries supplemental SAQR, June 9, 2004, at 4. According to Nha Trang Fisheries, there is a distinct difference between the claim of not maintaining a formal written correspondence file and the claim of not maintaining written correspondence. Therefore, the fax correspondences Nha Trang Fisheries provided in its August 18, 2004, submission does not contradict any of its earlier assertions to the Department. Nha Trang Fisheries contends that the Department incorrectly determined that its information regarding sales negotiations was contradictory.

Nha Trang Fisheries asserts that even though it does not maintain a formal written correspondence file for price negotiation, personnel of Nha Trang Fisheries may have kept sales negotiation correspondence "which could have later been submitted to the Department." See Nha Trang Fisheries Ministerial Error Allegation, December 7, 2004, at 6. Furthermore, Nha Trang Fisheries explains that the information provided in its August 18, 2004, submission originated from either its customer or Nha Trang Fisheries itself and should therefore eliminate any concerns the Department may have regarding the source of the sales negotiations information.

Nha Trang Fisheries argues that the Department's failure to issue a supplemental questionnaire in response to Nha Trang Fisheries's August 18, 2004, submission constitutes a ministerial error. According to Nha Trang Fisheries, by failing to issue an additional supplemental questionnaire to clarify it concerns with the fax transmissions in the August 18, 2004, submission, the Department failed to consider this issue and its importance in the Department's decision to deny Nha Trang Fisheries a separate rate. According to Nha Trang Fisheries, it was not given a chance to address the Department's concerns before the final determination.

Nha Trang Fisheries further argues that the Department's decision to deny Nha Trang Fisheries a separate rate violated the Department's statutory and regulatory provisions under Section 776(a) of the Act regarding the application of facts available. According to Nha Trang Fisheries, the Department is obligated to explain in writing why it will not accept a party's information in order for the party to remedy or explain any deficiencies. Nha Trang Fisheries contends that it was not given a chance to remedy any issues that the Department deemed to be contradictory to previous responses.

Nha Trang Fisheries concludes that the Department incorrectly concluded in the Final Determination that Nha Trang Fisheries had provided contradictory information from its supplemental SAQR to it August 18, 2004, submission.

Petitioners rebut Nha Trang Fisheries' contention that the Department made a ministerial error by denying it a separate rate. Petitioners note that Nha Trang Fisheries does not allege that the Department made a mathematical or computational error, but rather Nha Trang Fisheries' alleged errors involve findings of fact and conclusions of law. Therefore, the Department did not make inadvertent or unintentional errors and thus, did not make a ministerial error.

Petitioners trace Nha Trang Fisheries' responses through the investigation. See Petitioners' Rebuttal at 15. Petitioners argue that Nha Trang Fisheries' attempt to draw a distinction between its statement that it does not keep a written correspondence "file" as being different from an assertion of not keeping no written correspondence is semantic hairsplitting that strains credulity. *Id*. According to Petitioners, Nha Trang Fisheries led the Department to believe that no price negotiation correspondence existed in its SAQR and supplemental SAQRs and then was twisting the meaning of words when it produced copies of faxes in its August 18, 2004, submission. Petitioners point to the fact that Nha Trang Fisheries stated that no explanation was necessary for why it produced faxes in its August 18, 2004, submission since Nha Trang Fisheries never stated that it didn't maintain such correspondence, it just did not maintain a correspondence "file." Petitioners contend that the Department did not make a ministerial error, but rather made a decision based on the record evidence, which included Nha Trang Fisheries obvious inconsistencies.

Department's Position:

Nha Trang Fisheries' allegation takes issue with the Department's analysis regarding the appropriateness of denying Nha Trang Fisheries a separate rate. The Department's decision to deny a separate rate to Nha Trang Fisheries was intentional and based upon the evidence on the record. The Department's Final Determination reflects its intended methodology. It is not a ministerial error within the meaning of 19 CFR 351.224(f).

Consistent with its long-standing practice, the Department allowed Nha Trang Fisheries two opportunities to demonstrate its separateness. See Potassium Permanganate at Comment 2; Tissue Crepe. First, Nha Trang Fisheries was provided an opportunity to submit information in its SAQR. See Nha Trang Fisheries SAQR, March 17, 2004 at 6. Second, Nha Trang Fisheries was provided an opportunity to cure any noted deficiencies when it responded to the supplemental questionnaire issued by the Department. See Nha Trang Fisheries supplemental SAQR June 9, 2004, at 4, question 12. Nha Trang Fisheries also submitted new information after the Preliminary Determination that the Department considered. See Nha Trang Fisheries August 18, 2004, Submission. The Department determined that this additional information contradicted statements that Nha Trang Fisheries made in its two prior submissions. See Final Separate Rates Memo. Since Nha Trang Fisheries was afforded ample opportunity to prove its separateness during the course of the investigation, the Department's decision not to issue an additional supplemental was intentional and does not constitute a ministerial error within the meaning of 19 CFR 351.224(f).

Further, upon careful review of all the evidence on the record, the Department determined that Nha Trang Fisheries did not demonstrate that it was entitled to a separate rate. See Final Separate Rates Memo at 21-22. This decision was intentional and does not constitute a ministerial error within the meaning of 19 CFR 351.224(f).

Comment 10: Ngoc Sinh's Separate Rate

Ngoc Sinh contends that the Department made a ministerial error by denying it a separate rate.

Ngoc Sinh states that it was denied a separate rate because the Department incorrectly considered some information and unintentionally failed to consider other information. Ngoc Sinh argues that it never stated that it *only* conducts price negotiations verbally with its U.S. customers. Ngoc Sinh notes that in its supplemental SAQR that it "simply stated that it orally negotiates prices and, would not be able to provide the Department with written evidence of sales that were orally concluded." See Ngoc Sinh December 7, 2004 Submission at 5. Ngoc Sinh contends that it supplemented this statement with the faxes between Nogc Sinh and its customers in its August 18, 2004 submission. Therefore, Ngoc Sinh asserts that it did not provide contradictory statements regarding how it conducts sales negotiations.

Ngoc Sinh points to the fact that it reaffirmed in its August 18, 2004, submission that it verbally negotiates contracts and provided faxes obtained from its customer that shows the prices verbally agreed-upon. According to Ngoc Sinh, because it never stated that it conducts *all* price

negotiations by telephone, the faxes sent to memorialize the discussions between Ngoc Sinh and its customer do not contradict its previous statements that it conducts all negotiations verbally. Ngoc Sinh further notes that it obtained copies of the fax confirmations from its customer and that providing affidavits to attest that it conducts all price negotiations orally would have been untrue.

Ngoc Sinh argues that the Department's failure to issue a supplemental questionnaire in response to Ngoc Sinh's August 18, 2004, submission constitutes a ministerial error. According to Ngoc Sinh, by failing to issue an additional supplemental questionnaire to clarify it concerns with the fax transmissions in the August 18, 2004, submission, the Department failed to consider this issue and its importance in the Department's decision to deny Ngoc Sinh a separate rate. According to Ngoc Sinh, it was not given a chance to address the Department's concerns with the fax transmissions provided by Ngoc Sinh before the final determination.

Ngoc Sinh further argues that the Department's decision to deny Ngoc Sinh a separate rate violated the Department's statutory and regulatory provisions under Section 776(a) of the Act regarding the application of facts available. According to Ngoc Sinh, the Department is obligated to explain in writing why it will not accept a party's information in order for the party to remedy or explain any deficiencies. Ngoc Sinh contends that it was not given a chance to remedy any issues that the Department deemed to be contradictory to previous responses.

Ngoc Sinh concludes that the Department incorrectly concluded in the Final Determination that Ngoc Sinh conducts all price negotiations verbally and thus provided contradictory information from its supplemental SAQR to it August 18, 2004, submission.

Petitioners rebut Ngoc Sinh's contention that the Department made a ministerial error by denying it a separate rate. Petitioners note that Ngoc Sinh does not allege that the Department made a mathematical or computational error, but rather Ngoc Sinh's alleged errors involve findings of fact and conclusions of law. Therefore, the Department did not make inadvertent or unintentional errors and thus, did not make a ministerial error.

Petitioners disagree with Ngoc Sinh's assertions that its August 18, 2004, submission does not contradict is supplemental SAQR. Petitioners contend that the record proves the contrary. Petitioners point to the fact that Ngoc Sinh only provided copies of faxes as evidence of price negotiation after being denied a separate rate at the Preliminary Determination, even though the Department specifically asked for faxes in its supplemental questionnaire to Ngoc Sinh. Petitioners state that the regulatory predicate for "ministerial error" does not exist and that the Department did not make a computational or clerical error, but rather based its decision on the value of the evidence. Petitioners further comment that Ngoc Sinh's expectation that the Department should have issued an additional supplemental in order for Ngoc Sinh to clarify any outstanding issues would have been unhelpful. Additionally, Petitioners contend that Ngoc Sinh's statement that the Department unreasonably expected affidavits to support Ngoc Sinh's

assertions that it conducts price negotiations *via* telephone is an argumentative red herring. Petitioners note that inconsistencies between Ngoc Sinh's original claims that no faxes existed and its August 18, 2004 submission that provided faxes gave the Department reason to conclude that Ngoc Sinh did not prove its entitlement to a separate rate.

Department's Position:

The Department agrees with Ngoc Sinh that the Department made a ministerial error in its decision to deny Ngoc Sinh a separate rate, within the meaning of 19 CFR 351.224(f). Upon re-examining Ngoc Sinh's August 18, 2004, submission, the Department determines that because Ngoc Sinh obtained the fax confirmations from its customer, this evidence of price negotiation is not contradictory to its previous responses.

Ngoc Sinh stated in its March 19, 2004, submission that it "verbally negotiates prices and other contractual terms directly with" its U.S. customers and due to "the oral nature of the price negotiations, Ngoc Sinh is unable to provide such evidence." See Ngoc Sinh SAQR at 5. In its supplemental SAQR, Ngoc Sinh stated that it "verbally negotiates prices with U.S. customers and therefore does not retain written records of such correspondence." See Ngoc Sinh supplemental SAQR, June 14, 2004, at 9, question 17. In its August 18, 2004, submission, Ngoc Sinh stated that it obtained the fax confirmations from its customer, rather than from its own files. See Ngoc Sinh August 18, 2004, Submission. Since the new information is not contradictory to Ngoc Sinh's previous statements and supports its assertion that Ngoc Sinh is free to negotiate and sign its own contracts, the Department has determined that Ngoc Sinh has demonstrated autonomy in negotiating and signing contracts free of government intervention.

Upon re-examining the evidence on the record, the Department finds that Ngoc Sinh: (1) demonstrated a *de jure* absence of government control over export activities because (a) there were no restrictive stipulations associated with the company's business license, and (b) the company submitted Vietnam regulations that demonstrated decentralized control of the company. See Ngoc Sinh SAQR, dated March 19, 2004; see also Ngoc Sinh supplemental SAQR, dated June 14, 2004. The Department also determines that Ngoc Sinh: (2) further demonstrated a *de facto* absence of government control over export activities because the submitted evidence demonstrates the company's ability to set prices, dispose of proceeds, and selection of management, independent of the government of Vietnam. See Ngoc Sinh SAQR, dated March 19, 2004; see also Ngoc Sinh supplemental SAQR, dated June 14, 2004. After analyzing the separate rates information supplied by Ngoc Sinh, the Department finds that Ngoc Sinh is entitled to a separate rate in the final determination because the company provided sufficient evidence of a lack of *de jure* and *de facto* control by the government of Vietnam. Therefore, the Department is amending its Final Determination and granting a separate rate to Ngoc Sinh.

Comment 11: Phuong Nam's Separate Rate

Phuong Nam contends that the Department made a ministerial error by denying it a separate rate.

Phuong Nam asserts that it did not state that it *only* negotiates *via* telephone, rather, it stated that due to the oral nature of its price negotiations *via* telephone that it would not be able to provide the Department with written evidence of these negotiations. Therefore, the emails Phuong Nam provided in its August 18, 2004, submission do not contradict its assertion that it conducts price negotiations *via* telephone.

According to Phuong Nam, the Department mistook Phuong Nam's assertion regarding its sales process and made a determination without having a factual basis. Phuong Nam contends that it obtained U.S. sales negotiation from its customer in order to ensure that the Department had such information in writing. In other words, Phuong Nam provided documentation that was not originally in its possession.

Phuong Nam references the sentence from the Final Separate Rates Memo at 23, where the Department incorrectly interpreted "its" to mean Phuong Nam.[2] Phuong Nam contends that because the Department inserted Phuong Nam for "its," the resulting meaning of the sentence was that Phuong Nam provided price negotiation evidence from its own record. According to Phuong Nam, the correct meaning of the sentence is that its customer provided the information. Phuong Nam asserts that the Department had no factual basis on which to determine that Phuong Nam and its U.S. customer are both referenced in this sentence. Furthermore, the Department did not ask Phuong Nam to clarify whether "its" referred to Phuong Nam or its U.S. customer. However, Phoung Nam states that it never declared that it could not provide the Department with written correspondence, only that it was unable to provide documentation of its telephone conversations. Based on the correct reading of the sentence, Phuong Nam argues that because it obtained the price negotiation correspondence from its customer's archive, it did not provide the Department with contradictory information.

Phuong Nam points to the various sales documentation provided in its June 8, 2004, supplemental SAQR as evidence of U.S. sales negotiation. According to Phuong Nam, the Department expressed concerns with the fax date on Phuong Nam's purchase order and therefore could not determine whether Phuong Nam set its own prices. However, Phuong Nam notes that the Department did not express concerns with the submitted email correspondence also provided in the June 8, 2004, supplemental SAQR or comment that it contradicted Phuong Nam's assertion that it conducts U.S. sales negotiations over the telephone.

Phuong Nam argues that the Department's failure to issue a supplemental questionnaire in either the Preliminary Determination or in response to Phuong Nam's August 18, 2004, submission constitutes a ministerial error. According to Phuong Nam, by failing to issue an additional supplemental questionnaire to clarify its concerns with the email correspondences in the August

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[2] "In its attempt to comply with the Department's requests, Phuong Nam was able to obtain three documented examples of price negotiation from its {Phuong Nam's} archive." See Phuong Nam's December 7, 2004, Submission at 7.

18, 2004, submission, the Department failed to consider this issue and its importance in the Department's decision to deny Phuong Nam a separate rate. According to Phuong Nam, if the Department would have addressed its concerns with the email correspondence provided in its supplemental SAQR, it could have addressed the Department's concerns with the email correspondences provided by Phuong Nam before the Final Determination.

Phuong Nam contends that the Department must correct its ministerial errors in respect to its oversight of the email correspondence provided in Phuong Nam's June 8, 2004, supplemental SAQR along with its August 18, 2004, submission. According to Phuong Nam, the Department must reconsider these emails as support that Phuong Nam occasionally emails pricing information. Therefore, the Department must find that Phuong Nam proved its independence from the Vietnamese government based on the provided information.

Phuong Nam further argues that the Department's decision to deny Phuong Nam a separate rate violated the Department's statutory and regulatory provisions under Section 776(a) of the Act regarding the application of facts available. According to Phuong Nam, the Department is obligated to explain in writing why it will not accept a party's information in order for the party to remedy or explain any deficiencies. Phuong Nam contends that it was not given a chance to remedy any issues that the Department deemed found to be contradictory to previous responses.

Phuong Nam concludes that it never stated that it could not provide documentation of written sales correspondence and that because it obtained evidence of price negotiation from its customer, its statements regarding how it conducts sales with U.S. customers was non-contradictory. Therefore, the Department made a ministerial error by failing to mention in the Preliminary Determination or a supplemental questionnaire any concerns regarding Phuong Nam's email correspondences.

Red Chamber, on behalf of Phuong Nam, also asserts that the Department made a ministerial error in its denial of separate rate to Phuong Nam. Red Chamber points to the fact that Phuong Nam certified the accuracy of both its March 19, 2004, submission and its August 18, 2004, submission. Red Chamber contends that the Department did not recognize the corrected information placed on the record in the August 18, 2004, submission as *prima facie* proof of negotiations. According to Red Chamber, Phuong Nam's certification should be just as valid as an affidavit. Red Chamber states that in March 2004, the company official making the statement either believed that all negotiations were conducted *via* telephone or had simply forgotten that electronic communications are sometimes used. Therefore, Red Chamber requests that the Department correct its ministerial error.

Petitioners rebut Phuong Nam's contention that the Department made a ministerial error by denying it a separate rate. Petitioners note that Phuong Nam does not allege that the Department made a mathematical or computational error, but rather Phuong Nam's alleged errors involve findings of fact and conclusions of law. Therefore, the Department did not make inadvertent or unintentional errors and thus, did not make a ministerial error.

Petitioners contend that the record of this investigation belies Phuong Nam's ministerial error allegations that the Department incorrectly determined that Phuong Nam only negotiates frozen shrimp sales by telephone and that the documentation Phuong Nam provided was from its personal archive. Petitioners trace Phuong Nam's responses through the investigation. See Petitioners' Rebuttal at 17. Petitioners argue that Phuong Nam's attempt to resolve the contradictory statements ignores that Phuong Nam stated that it had no written documentation of price negotiations with U.S. customers. Petitioners note that while Phuong Nam may not have documentation of actual conversations, undisclosed email and additional documentation of sales negotiation in fact existed. Petitioners point to the fact that the Department requested evidence of price negotiation in its supplemental section A, not just evidence of telephonic price negotiations, such as the emails Phuong Nam produced in August.

Petitioners find that the Department made a reasonable conclusion that Phuong Nam conducts price negotiation by telephone and thus had no records of price negotiation. Petitioners agree with the Department's interpretation that "its" referred to Phuong Nam in the sentence: "Phuong Nam was able to obtain three documented examples of price negotiation from its US customer or its archive." See Petitioners' Rebuttal at 19. Petitioners point to the fact that Red Chamber also interpreted "its" to refer to Phuong Nam. In fact, Petitioners note that Red Chamber references the statement Phuong Nam made in its August 18, 2004, submission "'that the documents were found either by the U.S. customer or were found in Phuong Nam's archives. Phuong Nam certified th{e} accuracy of that statement.'" *Id.* Petitioners contend that Phuong Nam had access to this information, as apparent in its August 18, 2004, submission. Petitioners also assert that Phuong Nam's argument that the Department made a ministerial error by neglecting to notify Phuong Nam of the Department's concerns with regard to the emails overlooks the fact that Phuong Nam had ample opportunity before the Final Determination to establish its entitlement to a separate rate. Therefore, the record supports the Department's conclusion and thus no ministerial errors were made.

Department's Position:

The Department agrees with Phuong Nam and Red Chamber that the Department made a ministerial error within the meaning of 19 CFR 351.224(f) in its decision to deny Phuong Nam a separate rate. Upon re-examining Phuong Nam's supplemental SAQR, the Department determined that it inadvertently overlooked an email that was provided before the Preliminary Determination. See Preliminary Determination; see also Phuong Nam supplemental SAQR, June 12, 2004 at attachment 4 ("PNSSA"). The email Phuong Nam provided in PNSSA contains an offer from a customer to Phuong Nam. On this basis, the Department has determined that Phuong Nam has demonstrated autonomy in negotiating and signing contracts free of government intervention. Moreover, since the Department overlooked an email Phuong Nam submitted prior to the Preliminary Determination, the emails Phuong Nam submitted on August 18, 2004, do not contradict its previous submissions. See Phuong Nam August 18, 2004, Submission.

Upon re-examining the evidence on the record, the Department finds that Phuong Nam: (1) demonstrated a *de jure* absence of government control over export activities because (a) there were no restrictive stipulations associated with the company's business license, and (b) the company submitted Vietnam regulations that demonstrated decentralized control of the company. See Phuong Nam SAQR, dated March 19, 2004; see also Phuong Nam supplemental SAQR, dated June 14, 2004. The Department also determines that Phuong Nam: (2) further demonstrated a *de facto* absence of government control over export activities because the submitted evidence demonstrates the company's ability to set prices, dispose of proceeds, and selection of management, independent of the government of Vietnam. See Phuong Nam SAQR, dated March 19, 2004; see also Phuong Nam supplemental SAQR, dated June 14, 2004. After analyzing the separate rates information supplied by Phuong Nam, the Department finds that Phuong Nam is entitled to a separate rate in the final determination because the company provided sufficient evidence of a lack of *de jure* and *de facto* control by the government of Vietnam. Therefore, the Department is amending its Final Determination and granting a separate rate to Phuong Nam.

IV: SCOPE COMMENTS

Comment 12: Dusted Shrimp

Petitioners contend that the Department made a ministerial error in the exclusion of dusted shrimp from the scope of this investigation.

Petitioners note that the Department excluded dusted shrimp from the scope of this investigation in spite of Petitioners' opposition. Petitioners point to the fact that the Department cited significantly to the declarations of Dr. Otwell and Mr. Thompson submitted by Eastern Fish and Long John Silvers ("EF/LJS") in support of excluding dusted shrimp. Petitioners contend that the Department based much of its decision to exclude dusted shrimp from the scope of this investigation on these affidavits. Petitioners specifically note that the Department referenced both declarations eight times regarding an adequate definition to separate dusted shrimp from subject merchandise and at least four times regarding the fact that the benefits of removing the dusting layer from the shrimp did not outweigh the costs.

Petitioners contend that they provided a declaration that directly rebutted many of the claims of EF/LJS. According to Petitioners, their declaration stated that frozen dusted shrimp can have its dusting layer removed. Additionally, the practice of thawing and rinsing undusted frozen shrimp is common industry practice, thus the same can be done for dusted shrimp. Furthermore, the barriers to removing the dusting layer are economic, not physical. The declaration provided by Petitioners further noted that the cost of removing the dusting layer could be more economially sensible than paying the dumping duty. The declaration also notes that the technology to remove the dusting layer is available. See Petitioners' December 7, 2004, Submission at 11.

According to Petitioners, the Department did not address these statements, which directly

contested EF/LJS's claims, in its Dusted/Battered Final Scope Memo 2. See Memorandum from Edward C. Yang, China/NME Unit Coordinator, Import Administration, to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, Antidumping Investigation on Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the Socialist Republic of Vietnam and the Socialist Republic of Vietnam: Scope Clarification on Dusted Shrimp and Battered Shrimp ("Dusted/Battered Scope Memo 2"), dated November 29, 2004. Furthermore, Petitioners assert that the Department did not acknowledge that Petitioners' declaration even existed. Petitioners therefore conclude that the Department completely overlooked Petitioners' declaration, and thus made an unintentional error that must be corrected by including dusted shrimp in the scope of this investigation.

The Respondents did not comment on this issue.

Department's Position:

The Department disagrees with Petitioners that the Department made a ministerial error within the meaning of 19 CFR 351.224(f) in its decision to exclude dusted shrimp from the scope of this investigation. The Department notes that it considered Petitioners affidavit and referenced the provided affidavit and statements made in the affidavits. See Dusted/Battered Scope Memo 2 at 15 and 16. The Department carefully reviewed and considered all evidence submitted by all parties prior to making its determination to exclude dusted shrimp from the scope of this investigation. See Final Determination. The Department's decision to exclude dusted shrimp from the scope of this investigation was an intentional decision, and not a ministerial error.

IV. RECOMMENDATION

Based upon a review of the ministerial error allegations received, the Department is amending the weighted-average dumping margins for respondents Camimex, Minh Phu; Seaprodex Minh Hai, two Section A Respondents, Ngoc Sinh, Phuong Nam, and the weighted-average Section A rate for all other respondents granted a separate rate as listed in the accompanying Federal Register notice. See Final Determination. The weighted-average margins for Kim Anh Co., Ltd. and the Vietnam-wide entity remain unchanged.

If accepted, we will publish these results in the Federal Register.

___________ Agree   ___________ Disagree

____

James C. Doyle
Director, Office 9
AD/CVD Operations

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Date