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OFFICE OF AD/CVD OPERATIONS

SOCIALIST REPUBLIC OF VIETNAM (“VIETNAM”)  
**SEPARATE RATE CERTIFICATION**  
FOR FIRMS PREVIOUSLY AWARDED SEPARATE RATE STATUS\*

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\* Firms that do not currently hold a separate rate may **not** use this Certification and **must** instead submit an Application for separate rate status (posted on the Department’s website at <http://trade.gov/ia/index.asp>, “Decisions and Data”).

**REQUESTER(S):** {insert name of applicant }

**REPRESENTATION:** {insert name of counsel and law firm and contact info }

**CASE:** {insert name of subject merchandise, country and case number }

**PERIOD OF INVESTIGATION/REVIEW:** {insert the period of investigation/review }

**DEADLINE FOR SUBMISSION:**

INVESTIGATIONS: 3 weeks from **signature** date of the initiation notice

REVIEWS: 30 days from **publication** date of the initiation notice

**FILING ADDRESS:**

U.S. Department of Commerce  
International Trade Administration  
APO/Dockets Unit, Room 1870  
1401 Constitution Avenue, N.W.  
Washington, DC 20230

**FILING INSTRUCTIONS:** *See “General Instructions” section at Appendix I.  
See also <http://ia.ita.doc.gov/filing/index.html>*

## **SEPARATE RATE BACKGROUND**

The Department assigns a separate rate in non-market economy (“NME”) cases only if the firm can demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), over its export activities in accordance with the separate-rate test criteria. The Department limits its separate rate consideration to firms that exported or sold subject merchandise to the United States during the period of review (“POR”) in a commercial transaction.

- Completion of this Certification does not guarantee separate rate status for this POR.
- If your responses to the questions in this Certification do not demonstrate your eligibility for separate rate status, you will not be granted a separate rate for this POR.
- Each firm seeking separate rate status must submit a separate Certification regardless of any common ownership or affiliation between firms and regardless of foreign ownership.
- Firms whose Certifications are untimely, incomplete or otherwise deficient may be denied a separate rate in the administrative review.
- By completing the Certification, firms certify that they have relevant supporting documents and can submit them to the Department upon request. If a firm that has completed this form is not able to furnish supporting documents as requested by the Department, the Department may conclude the firm is not eligible for a separate rate.
- Along with requesting supporting documentation, the Department may issue questionnaires for clarification purposes. All information submitted and representations made by your firm are subject to verification.
- There is a possibility that your firm may be selected as a mandatory respondent, in which case your firm will be required to provide a response to the full antidumping questionnaire.
- The firm name provided to the Department in this Certification must be the name that appears on the firm’s business license/registration documents. All shipments to the United States declared to U.S. Customs and Border Protection must identify the firm by its legal business name, and this name must match the name that appears on the firm’s business/registration documents. If your firm is assigned separate rate status, your firm will only be able to ship under your separate rate under names that are included on your business license/registration documents.
- Firms owned wholly by entities located in market-economy countries, provided that the ultimate owners are also located in market-economy countries, (“wholly market-economy owned firms”), need not respond to questions marked with an asterisk (“\*”).

## SEPARATE RATE CERTIFICATION

### APPLICANT INFORMATION:

1. Please provide the full name and contact information (including address, telephone, fax, and e-mail address) of the firm, previously granted separate status, which is seeking separate rate status for this administrative review.
2. I certify that during the POR, the firm was owned (select one):
  - wholly or partially by a domestic entity/entities located in Vietnam
  - 100% by a foreign entity/entities <sup>1</sup> located in (identify country or countries)

### FIRM OFFICIAL AND REPRESENTATIVE CERTIFICATIONS:

3. I, (Firm official name and title), currently employed by (Firm), certify that: (1) I have read the attached submission; and (2) the certifications contained in this submission are, to the best of my knowledge, complete and accurate.

(Firm official signature)

4. I, (Legal counsel or representative name), of (law firm or other entity), counsel or representative to (Firm), certify that: (1) I have read the certifications contained in this submission; and (2) based on the information made available to me by (person), I have no reason to believe that this submission contains any material misrepresentation or omission of fact.

(Legal counsel or representative signature)

### GENERAL CERTIFICATIONS:<sup>2</sup>

5. I certify that (Firm) was previously granted separate rate status as part of the final determination/results in the (insert investigation/review and period of investigation/review); published in Federal Register (insert citation), that the separate rate status is currently applicable, and the separate rate status has not been revoked.

(Firm official, legal counsel or representative signature)

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<sup>1</sup> Wholly market-economy owned firms need not respond to questions marked with an asterisk (“\*”).

<sup>2</sup> If you cannot certify to each question in this section, please contact the official in charge.

6. I certify that I will provide, to the best of my ability, any and all documents requested by the Department in support of separate rate status for this administrative review. I understand that if I cannot furnish these documents, the Department may conclude the firm is not eligible for a separate rate.

(Firm official, legal counsel or representative signature)

**EXPORT CERTIFICATIONS (check any that apply):**

7. I certify that during the POR, the firm conducted business under the following (please include a list of all trade names)<sup>3</sup>:
- the same trade names as identified in the segment of investigation or review in which the firm was granted a separate rate (“previous Granting Period”).
  - the same trade names as identified in the previous Granting Period, as well as new trade names.
  - new trade names.
8.  I certify the firm possesses an official government business license/registration documents for each trade name listed in response to question 7, above, valid during the POR. (list each trade name, the corresponding document and its expiration date).<sup>4</sup>
9.  I certify the firm exported or sold subject merchandise to the United States during the POR.

**CERTIFICATIONS OF ABSENCE OF *DE JURE* CONTROL (check any that apply):**

10.  \* I certify that during the POR, as with the previous Granting Period, there were no government laws or regulations, at either national and sub-national (*e.g.*, provincial, local) levels of government, that controlled the firm’s export activities.

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<sup>3</sup> Trade names are other names under which the firm does business. It does not include product brand names or the names of any other entities in the firm’s “group,” affiliated or otherwise. Note that if the Department determines that your firm is eligible for separate rate status, the separate rate will only apply to the firm as named in your business license/registration documents and not to any alternative or trade names that are not included in your business license/registration documents.

<sup>4</sup> It is the Department’s understanding that a valid business license/registration documents with clearly defined periods of validity issued by the appropriate licensing authority is required for all business activity. A firm submitting a business license without an expiration date must provide an explanation in order for the Department to consider its Certification.

11.  I certify that during the POR, the ownership under which the firm registered itself with the official government business license issuing authority remains the same as for the previous Granting Period.<sup>5</sup>
12.  \* I certify that during the POR, the firm had valid Vietnamese Business Registration Certificate(s) and Certificate(s) of Tax Registration.<sup>6</sup>
13.  \* I certify that during the POR, as with the previous Granting Period, in order to conduct export activities, the firm was not required by any national, provincial, or local government law or regulation to possess additional certificates or other documents related to the legal status and/or operation of its business beyond those discussed above.
14.  \* I certify that during the POR, the Vietnamese government laws and legislative enactments applicable to the firm seeking a separate rate remained the same as for the previous Granting Period.

**CERTIFICATIONS OF ABSENCE OF *DE FACTO* CONTROL (check any that apply):**

15.  \* I certify that during the POR, the largest 10 individual/entity shareholders of the firm and all of their shareholders had no significant relationship<sup>7</sup> with any of the following:<sup>8</sup>
- Vietnamese state asset management company (government-owned and/or private chartered);
  - The Vietnamese national government and/or its ministries/agencies;
  - Vietnamese provincial governments;
  - Vietnamese local/municipal/village government(s)/agency(ies).
16.  \* I certify that during the POR, the firm's export prices were not set by, subject to the approval of, or in any way controlled by a government entity at any level (*e.g.*, national, provincial, local).<sup>9</sup>

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<sup>5</sup> If you cannot certify to this statement, leave the box unchecked and provide a short narrative explanation.

<sup>6</sup> If you cannot certify to this statement, leave the box unchecked and provide a short narrative explanation.

<sup>7</sup> A significant relationship would include ownership, control, affiliation, significant transactions, *etc.*

<sup>8</sup> If you cannot certify to this statement, leave the box unchecked and provide a short narrative explanation.

<sup>9</sup> This includes, but is not limited to, the presence of government officials at any meeting where export and pricing decisions are discussed.

17.  I certify that during the POR, the firm had independent authority to negotiate and sign export contracts and other agreements (*i.e.* the firm conducted independent price negotiation).<sup>10</sup>
18.  I certify that during the POR, the firm had autonomy from all levels of the government (*e.g.*, national, provincial, local) and from any government entities in making decisions regarding the selection of management.
19.  I certify that during the POR, the firm did not have to submit for approval any of its candidates for managerial positions within the firm to any government entity at any level (*e.g.*, national, provincial, local).
20.  \* I certify that during the POR, the firm retained the proceeds of its export sales and made independent decisions regarding the disposition of profits or financing of losses.

**SALES & AFFILIATION:**

21. I certify the firm made at least one export or sale to the United States during the POR to (select only one):

- affiliated<sup>11</sup> parties only.
- unaffiliated parties only.
- both affiliated and unaffiliated parties.

**ADDITIONAL DOCUMENTATION:**

22. Please provide copies of the following documentation:
- The firm's business license(s)/ registration document(s) valid during the POR;
  - \* The firm's Vietnamese Business Registration Certificate(s) and Certificate(s) of Tax Registration valid during the POR.

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<sup>10</sup> The authority to conduct independent price negotiation refers to the ability of an NME firm to set its own export prices independently of the government at any level (national, provincial, local) and without the approval of any government entity.

<sup>11</sup> See Section 771(33) of the Tariff Act of 1930, as amended, for a definition of affiliation. For the purposes of control under the definition of affiliation, the Department will consider a person to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

## APPENDIX I

### Instructions for Filing the Certification

1. File your Certification in Washington, DC, at the address listed on the first page of this Certification.
2. Proprietary versions of the Certification must be submitted by the day specified on the coversheet of the Certification. The public version of the Certification may be filed one business day after the proprietary version. As per section 351.204(c)(2) of the Department's regulations, you will also have one day after submission of the proprietary version to correct any errors in the bracketing. If you make any changes, you will be required to resubmit the entire Certification.
3. File the original and six copies of the proprietary version. However, if you file an electronic copy of the proprietary version in Microsoft Office Word format, you need file only the original version and four copies. In case of any difference between the paper response and the content of the electronic media, the paper response is the controlling version.

File the original and three copies of the public version of your narrative response and attachments.

4. Submit the required certification of accuracy. Providers of information and the person(s) submitting it, if different (*e.g.*, a legal representative), must certify that they have read the submission and that the information submitted is accurate and complete. The Department cannot accept questionnaire responses that do not contain the certification statements.
5. Provide the required certificate of service with each proprietary version and public version submitted to the Department.
6. Request proprietary treatment for information submitted that you do not wish to be made publicly available. As a general rule, the Department places all correspondence and submissions received in the course of an antidumping proceeding in a public reading file. However, information deemed to be proprietary information will not be made available to the public.<sup>12</sup>

If you wish to make a request for proprietary treatment for particular information, refer to sections 351.304, 351.305, and 351.306 of the Department's regulations. Submit the request for proprietary treatment with the submission of the proprietary version of the questionnaire response accompanied by:

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<sup>12</sup> Supplier names will not be considered proprietary information where the Department has excluded the exporter from the antidumping duty order. Exclusions of non-producing exporters will be granted only to exporter-supplier combinations.

(A) a non-proprietary (public) version of your response that is in sufficient detail to permit a reasonable understanding of the information submitted in confidence, and/or

(B) an itemization of particular information that you believe you are unable to summarize. State the reasons why you cannot summarize each piece of information.<sup>13</sup>

Responses, or portions thereof, that are not adequately summarized may be returned to you and not used.

7. Submit the statements required regarding limited release of proprietary information under the provisions of an administrative protective order ("APO"). U.S. law permits limited disclosure to representatives of parties (*e.g.*, legal counsel) of certain business proprietary information, including electronic business proprietary information, under an APO. (Note that data received under an APO cannot be shared with others who are not covered by the APO.) Under the provisions governing APO disclosure, you must submit either:

(A) a statement agreeing to permit the release under APO of information submitted by you in confidence during the course of the proceeding, or

(B) a statement itemizing those portions of the information which you believe should not be released under APO, together with arguments supporting your objections to that release.<sup>14</sup> As per section 351.304(b)(2)(i) of the Department's regulations, you must provide a clear and compelling need not to disclose the information under APO

The Department is required by its regulations to reject, at the time of filing, submissions of business proprietary information that do not contain one of these statements. You must state in the upper right-hand corner of the cover letter accompanying your questionnaire response whether you agree or object to release of the submitted information under APO. See section 351.304 of the Department's regulations for specific instructions.<sup>15</sup>

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<sup>13</sup> Generally, numerical data are adequately summarized if grouped or presented in terms of indices or figures ranged within ten percent of the actual figure. If a particular portion of the data is voluminous, use ranged figures for at least one percent of the voluminous portion.

<sup>14</sup> The Department will not disclose proprietary customer names under APO during an antidumping investigation until either an order is published or the investigation is suspended. To insure that proprietary customer names are properly treated in this case, place double brackets ("[[ ]") around all proprietary customer names in your submissions to the Department during the course of this investigation.

<sup>15</sup> If you do not agree to release under APO all or part of the proprietary information, but the Department determines that the information should be released, you will have the opportunity to withdraw the information (*see* section 351.304(d) of the Department's regulations). However, any information which you withdraw will be taken out of the official record and will not be used in the Department's determination.



8. Place brackets (" [ ]") around information for which you request business proprietary treatment. Place double brackets ("[[ ]]") around information for which you request proprietary treatment and which you do not agree to release under APO.
9. Provide to all parties whose representatives have been granted APO access (as listed in the cover letter to the questionnaire or as listed on the most recent APO and public service lists posted on the Department's website at: <http://ia.ita.doc.gov/apo/apo-svc-lists.html>) a complete copy of the submission, proprietary and public versions, except for that information which you do not agree to release under APO. If you exclude information because you do not agree to release it under APO, submit with your response to the Department a certificate of service and a copy of the APO version of the document containing the information that you agree may be released under APO. For parties that do not have access to information under APO, you are required to provide a public version only.
10. Please prepare your response in typed form and in English.