

AGREEMENT BETWEEN

**THE GOVERNMENT OF THE UNITED STATES OF AMERICA
(represented by the Office of the United States Trade Representative
and the United States Department of Commerce)**

AND

**THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF
VIET NAM (represented by the Ministry of Industry and Trade)**

ON

**THE ANTIDUMPING DUTY ORDER ON CERTAIN FROZEN
WARMWATER SHRIMP FROM VIET NAM**

July 18, 2016

The Office of the United States Trade Representative (“USTR”) and the Department of Commerce (“DOC”) on behalf of the United States of America (the “United States”), of the one part, and the Ministry of Industry and Trade on behalf of the Government of the Socialist Republic of Viet Nam (“Viet Nam”), of the other part, enter into this Agreement (the “Agreement”):

Desiring to ensure a mutually satisfactory resolution of the WTO disputes *United States – Anti-dumping Measures on Certain Shrimp from Viet Nam* (DS429) and *United States – Anti-dumping Measures on Certain Shrimp from Viet Nam* (DS404); and

Desiring to provide the basis for the settlement of certain litigation, and the compromise of certain claims arising under the antidumping duty order on certain frozen warmwater shrimp from Viet Nam;

HAVE AGREED AS FOLLOWS:

I. Definitions

- A. “Shrimp Order” means *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam*, 70 Fed. Reg. 5152 (February 1, 2005);
- B. “Fourth Administrative Review” means the review pursuant to 19 U.S.C. § 1675(a) which covers the period of review February 1, 2008, through January 31, 2009;
- C. “Eighth Administrative Review” means the review pursuant to 19 U.S.C. § 1675(a) which covers the period of review February 1, 2012, through January 31, 2013;
- D. “Eighth Administrative Review Amended Final” means *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2012-2013*, 79 Fed. Reg. 57047 (Dep’t of Commerce Sept. 24, 2014), as amended by *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Amended Final Results of Antidumping Duty Administrative Review, 2012-2013*, 79 Fed. Reg. 65377 (Dep’t of Commerce Nov. 4, 2014);
- E. “Ninth Administrative Review” means the review pursuant to 19 U.S.C. § 1675(a) which covers the period of review February 1, 2013, through January 31, 2014;
- F. “Ninth Administrative Review Final” means *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2013-2014*, 80 Fed. Reg. 55328 (Dep’t of Commerce Sept. 15, 2015);
- G. “Tenth Administrative Review” means the review pursuant to 19 U.S.C. § 1675(a) which covers the period of review February 1, 2014, through January 31, 2015;
- H. “Eleventh Administrative Review” means the review pursuant to 19 U.S.C. § 1675(a) which covers the period of review February 1, 2015, through January 31, 2016;
- I. “Twelfth Administrative Review” means the review which could be conducted pursuant to 19 U.S.C. § 1675(a) which covers the period February 1, 2016, through January 31, 2017;

- J. “CBP” means U.S. Customs and Border Protection;
- K. “CIT” means the U.S. Court of International Trade;
- L. “Consol. Court No. 14-249” means *Tri Union Frozen Products, Inc. et al. v. United States*;
 - 1. “Court No. 14-258” means *Vietnam Association of Seafood Exporters and Producers, et al. v. United States*, which is a component case of Consol. Court No. 14-249; and
 - 2. “Court No. 14-276” means *Ad Hoc Shrimp Trade Action Committee v. United States*, which is a component case of Consol. Court No. 14-249.
- M. “Consol. Court No. 15-279” means *Ad Hoc Shrimp Trade Action Committee v. United States*;
 - 1. “Court No. 15-284” means *Vietnam Association of Seafood Exporters and Producers, et al. v. United States*, which is a component case of Consol. Court No. 15-279.
- N. “Covered Entries” means:
 - 1. For the Eighth Administrative Review, entries of frozen warmwater shrimp from Viet Nam subject to the Shrimp Order exported by the Minh Phu Group and imported by MSeafood, and which entered, or were withdrawn from warehouse, into the customs territory of the United States, for consumption, on or after February 1, 2012 and on or before January 31, 2013.
 - 2. For the Ninth Administrative Review, entries of frozen warmwater shrimp from Viet Nam subject to the Shrimp Order exported by the Minh Phu Group and imported by MSeafood, and which entered, or were withdrawn from warehouse, into the customs territory of the United States, for consumption, on or after February 1, 2013 and on or before January 31, 2014;
 - 3. For the Tenth Administrative Review, entries of frozen warmwater shrimp from Viet Nam subject to the Shrimp Order exported by the Minh Phu Group and imported by MSeafood, and which entered, or were withdrawn from warehouse, into the

customs territory of the United States, for consumption, on or after February 1, 2014 and on or before January 31, 2015; and

4. For the Eleventh Administrative Review, entries of frozen warmwater shrimp from Viet Nam subject to the Shrimp Order exported by the Minh Phu Group and imported by MSeafood, and which entered, or were withdrawn from warehouse, into the customs territory of the United States, for consumption, on or after February 1, 2015 and on or before January 31, 2016.

- O. “DOJ” means the U.S. Department of Justice;
- P. “DS429 Report” means the panel and Appellate Body reports in *United States – Anti-dumping Measures on Certain Shrimp from Viet Nam* (DS429) (Nov. 17, 2014);
- Q. “Section 129” means 19 U.S.C. § 3538(b);
- R. “Section 617” means 19 U.S.C. § 1617;
- S. “Effective Date of Revocation” means the effective date that the Minh Phu Group will be revoked from the Shrimp Order;
- T. “Effective Date of this Agreement” means the date on which all of the events referenced in the following paragraphs have occurred:
 - 1. Paragraph III.A.2;
 - 2. Paragraph III.B.2; and
 - 3. Paragraph III.D.1.
- U. “Signature Date of this Agreement” means the date this Agreement will be signed by USTR and DOC on behalf of the United States and the Ministry of Industry and Trade on behalf of Viet Nam; and
- V. “WTO” means the World Trade Organization.

II. Private Entities Referenced in the Agreement:

Minh Phu Seafood Corporation, Minh Qui Seafood Co., Ltd., Minh Phat Seafood Co., Ltd., and Minh Phu Hau Giang Seafood Joint Stock Company (collectively, “the Minh Phu Group”), member of VASEP and mandatory

respondent in the Fourth Administrative Review, Eighth Administrative Review, and Ninth Administrative Review, represented by Curtis, Mallet-Prevost, Colt & Mosle LLP;

MSeafood Corporation (“MSeafood”), represented by Curtis, Mallet-Prevost, Colt & Mosle LLP;

Vietnam Association of Seafood Exporters and Producers (“VASEP”), represented by Curtis, Mallet-Prevost, Colt & Mosle LLP;

Ad Hoc Shrimp Trade Action Committee (“AHSTAC”), represented by Picard Kentz & Rowe; and

American Shrimp Processors Association (“ASPA”), represented by Stewart & Stewart and Leake & Andersson LLP.

III. General Provisions

A. Mutually Agreed Solution With Respect to DS429 and DS404

1. On the Signature Date of this Agreement, the United States and Viet Nam will sign the Notification of Mutually Agreed Solution in Appendix 1 which will indicate the resolution of outstanding conclusions and recommendations of the panel and Appellate Body reports in *United States – Anti-dumping Measures on Certain Shrimp from Viet Nam* (DS429) and *United States – Anti-dumping Measures on Certain Shrimp from Viet Nam* (DS404); and
2. On or after the Signature Date of this Agreement, pursuant to Article 3.6 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*, the United States and Viet Nam will file the Notification of Mutually Agreed Solution in Appendix 1 referenced in Paragraph III.A.1 with the WTO Dispute Settlement Body.

B. Potential Revocation of the Minh Phu Group from the Shrimp Order under Section 129

1. On the Signature Date of this Agreement, DOC will issue a final determination under Section 129(b)(2) in which it has addressed the conclusions and recommendations in the DS429

Report at paragraphs 8.1.b. and 8.1.k with respect to a DOC redetermination in the Fourth Administrative Review of whether to revoke the Shrimp Order as it applies to the Minh Phu Group.

- a. In the event that this final determination indicates an intent to revoke the Shrimp Order with respect to the Minh Phu Group, DOC will notify parties of its intent to establish a certification requirement for all importers and exporters of frozen warmwater shrimp from Viet Nam produced and exported by the Minh Phu Group which is no longer subject to the Shrimp Order as a result of the revocation. This certification requirement will be effective for all such entries which enter, or are withdrawn from warehouse, into the customs territory of the United States for consumption on or after the Effective Date of Revocation;
2. On or after the Signature Date of this Agreement, USTR, following consultations under Section 129(b)(4), may direct DOC to implement the final determination referenced in Paragraph III.B.1;
 3. On or the day after the Effective Date of this Agreement, DOC will issue its implementation of the final determination referenced in Paragraph III.B.1. In the event that this implementation results in the revocation of the Shrimp Order with respect to the Minh Phu Group, the Effective Date of Revocation will be the Effective Date of this Agreement; and
 4. In the event that DOC has revoked the Shrimp Order with respect to the Minh Phu Group pursuant to the implementation referenced in Paragraph III.B.3, within five days of the publication of the *Federal Register* notice of implementation referenced in Paragraph III.B.3 DOC will issue the instructions in Appendix 2 to CBP which instruct CBP to:
 - a. No longer suspend liquidation and cease collection of cash deposits for estimated antidumping duties under the Shrimp Order for entries of frozen warmwater shrimp from Viet Nam produced and exported by the Minh Phu

Group which enter, or are withdrawn from warehouse, into the customs territory of the United States for consumption on or after the Effective Date of Revocation; and

- b. Implement the certification requirement referenced in Paragraph III.B.1.a.

C. Settlement of Certain Litigation Before the CIT in the Eighth Administrative Review and Ninth Administrative Review

- 1. On or the day after the Effective Date of this Agreement, the Minh Phu Group, the United States (represented by DOJ), and AHSTAC will file with the CIT in Consol. Court Nos. 14-249 and 15-279 the stipulation of judgment and accompanying order in Appendix 3 which provide that:
 - a. The Minh Phu Group stipulates to the dismissal of its claims in Consol. Court Nos. 14-249 and 15-279;
 - b. The CIT's preliminary injunction orders in Court Nos. 14-258 and 15-284, which were issued at the Minh Phu Group's request to enjoin liquidation of entries subject to the Eighth Administrative Review and Ninth Administrative Review exported by the individual VASEP plaintiffs, are dissolved with respect to the Minh Phu Group;
 - c. The CIT's preliminary injunction orders in Court Nos. 14-276 and 15-279, which were issued at AHSTAC's request to enjoin liquidation of entries subject to the Eighth Administrative Review and Ninth Administrative Review exported by various companies, are dissolved with respect to the Minh Phu Group;
 - d. Following dissolution of the preliminary injunctions referenced in Paragraphs III.C.1.b and c, DOC will issue the instructions in Appendix 4 which instruct CBP:
 - i. To liquidate the Covered Entries subject to the Eighth Administrative Review and the Ninth Administrative Review at a rate of zero percent,

issue any applicable refunds, and withhold interest which would otherwise be payable under 19 U.S.C. § 1677g; and

- ii. Subject to any other outstanding preliminary injunctions, to liquidate all other entries exported by the Minh Phu Group at the rates determined in the Eighth Administrative Review Amended Final and the Ninth Administrative Review Final.

2. Within ten days after the CIT grants the order stipulating to the entry of judgment referenced in Paragraph III.C.1 in Consol. Court Nos. 14-249 and 15-279, and concurrently with its issuance of the instructions in Appendix 5 referenced in Paragraph III.D.3, DOC will issue the instructions in Appendix 4 referenced in Paragraph III.C.1.d to CBP.

D. Compromise of Certain Claims with Respect to the Tenth Administrative Review, Eleventh Administrative Review, and Twelfth Administrative Review Pursuant to Section 617

1. Upon receipt of withdrawal of review requests from the Minh Phu Group, AHSTAC, and ASPA with respect to review of the Minh Phu Group's entries in the Tenth Administrative Review and the Eleventh Administrative Review:
 - a. DOC will exercise its discretion to extend the deadline in 19 C.F.R. § 351.213(d)(1), as appropriate, to accept the withdrawal of review requests referenced in Paragraph III.D.1 for the Tenth Administrative Review and Eleventh Administrative Review. *See* Appendix 6.
2. On or the day after the Effective Date of this Agreement, DOC will issue a partial rescission and compromise of claims which provides that:
 - a. DOC is rescinding the Tenth Administrative Review, in part, and Eleventh Administrative Review, in part, with respect to the Minh Phu Group;

- b. Under its authority to compromise claims for antidumping duties under Section 617, DOC will issue the instructions in Appendix 5 which instruct CBP:
- i. To liquidate the Covered Entries subject to the Tenth Administrative Review and Eleventh Administrative Review at a rate of zero percent, issue any applicable refunds, and withhold interest which would otherwise be payable under 19 U.S.C. § 1677g;
 - ii. To liquidate all other entries exported by the Minh Phu Group subject to the Tenth Administrative Review and Eleventh Administrative Review at the cash deposit rate for estimated antidumping duties in effect at the time of entry;
 - iii. To liquidate entries of frozen warmwater shrimp from Viet Nam subject to the Shrimp Order exported by the Minh Phu Group and imported by MSeafood which entered, or were withdrawn from warehouse, into the customs territory of the United States, for consumption, on or after February 1, 2016, through May 3, 2016 at the cash deposit rate for estimated antidumping duties in effect at the time of entry, which is approximately \$500,000 in deposits; and
 - iv. To liquidate entries of frozen warmwater shrimp from Viet Nam subject to the Shrimp Order exported by the Minh Phu Group and imported by MSeafood which entered, or were withdrawn from warehouse, into the customs territory of the United States, for consumption, on or after May 4, 2016, through the day before the Effective Date of Revocation at a rate of zero percent, issue any applicable refunds, and withhold interest which would otherwise be payable under 19 U.S.C. § 1677g; and

- v. To liquidate entries of frozen warmwater shrimp from Viet Nam subject to the Shrimp Order exported by the Minh Phu Group and imported by firms other than MSeafood which entered, or were withdrawn from warehouse, into the customs territory of the United States, for consumption, on or after February 1, 2016, through the day before the Effective Date of Revocation at the cash deposit rate for estimated antidumping duties in effect at the time of entry.
 - c. As a result of the revocation of the Minh Phu Group from the Shrimp Order and the compromise of claims under Section 617, DOC will not initiate the Twelfth Administrative Review with respect to the Minh Phu Group.
3. After the publication in the *Federal Register* of the notice of partial rescission and compromise of claims referenced in Paragraph III.D.2 and concurrently with its issuance of the instructions in Appendix 4 referenced in Paragraph III.C.2, DOC will issue the instructions in Appendix 5 referenced in Paragraph III.D.2.b to CBP.

IV. Other Provisions

- A. The instructions issued by DOC under this Agreement will include unliquidated entries from the following Minh Phu Group entities:

Minh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.), aka
Minh Phu Seafood Corp., aka
Minh Phu Seafood Corporation, aka
Minh Phu Seafood Pte, or
Minh Qui Seafood, aka
Minh Qui Seafood Co., Ltd., aka
Minh Qui, or
Minh Phat Seafood Co., Ltd., aka
Minh Phat Seafood, aka
Minh Phat Seafood Corp., aka
Minh Phat, or

Minh Phu Hau Giang Seafood Joint Stock Company, aka
Minh Phu Hau Giang Seafood Corp., aka
Minh Phu Hau Giang Seafood Processing Co., Ltd., aka
Minh Phu Hau Giang Seafood Co., Ltd.

- B. Unless otherwise enjoined by a court of competent jurisdiction, DOC shall order the lifting of suspension of liquidation, changes to the collection of cash deposits for estimated antidumping duties, liquidation, and refunds required under this Agreement pursuant to the terms provided for in this Agreement. In the event a court of competent jurisdiction enjoins DOC from ordering 1) the lifting of suspension of liquidation, 2) changes to the collection of cash deposits, or 3) the liquidation or refunding required under this Agreement, DOC shall amend the applicable instructions to reflect that court's order; and
- C. The United States shall act in accordance with the view that the six month period specified in 19 U.S.C. § 1504(d) does not begin until CBP receives from DOC notice of the lifting of the suspension or notice of the lifting of the injunction, whichever is applicable, unless an extension request under 19 U.S.C. § 1504(b) and 19 C.F.R. § 159.12 is applicable.
- D. If any specified day or date provided for under this Agreement falls on a weekend or U.S. Federal Holiday, the applicable day or date will be the next business day; and
- E. For all purposes hereunder, communications and notice under this Agreement shall be given and addressed to:

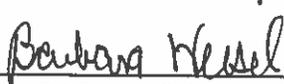
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Assistant Secretary for Enforcement & Compliance
International Trade Administration
U.S. Department of Commerce
Washington, D.C. 20230

Deputy Minister
Ministry of Industry and Trade of the Socialist Republic of Viet Nam
54 Hai Ba Trung Street
Hoan Kiem District
Hanoi, Viet Nam

Signed, at Washington, D.C., on this 18th day of July, 2016.

For and on behalf of **The Government of the United States of America:**



The Office of the United States Trade Representative
Assistant U.S. Trade Representative for Southeast Asia and the Pacific



The United States Department of Commerce
Assistant Secretary for Enforcement & Compliance

For and on behalf of **The Government of the Socialist Republic of Viet Nam:**



The Ministry of Industry and Trade
Deputy Minister

LIST OF APPENDICES

*The descriptions in this list are only general descriptions,
and do not affect the interpretation of this Agreement*

- Appendix 1 Letter from Assistant U.S. Trade Representative for Southeast Asia and the Pacific, Office of the United States Trade Representative; WTO Notification of Mutually Agreed Solution for DS429 and DS404
- Appendix 2 Draft instructions to CBP related to the revocation of the Minh Phu Group from the Shrimp Order
- Appendix 3 Draft settlement documents to be filed in Consol. Court Nos. 14-249 and 15-279
- Appendix 4 Draft instructions to CBP pursuant to CIT order in Consol. Court Nos. 14-249 and 15-279
- Appendix 5 Draft instructions to CBP related to the Tenth Administrative Review, Eleventh Administrative Review, and Twelfth Administrative Review
- Appendix 6 Agreement between DOC, Minh Phu Group, MSeafood , AHSTAC, and ASPA