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PUBLIC VERSION

EAPA Case Number: 7356

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Re: Notice of Determination as to Evasion

Pursuant to an examination of the record in Enforce and Protect Act (EAPA) Investigation 7356, U.S. Customs and Border Protection (CBP) has determined that there is substantial evidence that MSeafood Corporation¹ (the Importer or MSeafood) entered merchandise covered by antidumping (AD) order A-533-840 on certain frozen warmwater shrimp (shrimp) from India² into the customs territory of the United States through evasion. Substantial evidence demonstrates the Importer imported Indian-origin frozen shrimp that were transshipped and the country of origin claimed as Vietnam. As a result, no cash deposits were applied to the merchandise at the time of entry.

Background

On September 18, 2019, the Trade Remedy Law Enforcement Directorate (TRLED), within CBP's Office of Trade, acknowledged receipt of the properly filed allegation by the Ad Hoc

¹ The importer is affiliated with the following companies: Minh Phu Seafood Export Import Corporation (and affiliates Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.); Minh Phu Seafood Corp.; Minh Phu Seafood Corporation; Minh Phu Seafood Pte; Minh Qui Seafood; Minh Qui Seafood Co., Ltd.; Minh Qui; Minh Phat Seafood Co., Ltd.; Minh Phat; Minh Phat Seafood; Minh Phat Seafood Corp.; Minh Phu Hau Giang Seafood Joint Stock Company; Minh Phu Hau Giang Seafood Co., Ltd.; Minh Phu Hau Giang Seafood Corp.; and Minh Phu Hau Giang Seafood Processing Co., Ltd. (collectively, Minh Phu).

² See *Notice of Amended Final Determination of Sale at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India*, 70 FR 5147 (February 1, 2005) (*India Order*).

Shrimp Trade Enforcement Committee (the Alleger), a domestic manufacturer of frozen shrimp.³ TRLED found the information provided in the allegation reasonably suggested that the Importer entered covered merchandise into the customs territory of the United States through evasion. Consequently, CBP initiated an investigation with respect to the Importer on October 9, 2019, pursuant to Title IV, Section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, commonly referred to as the “Enforcement and Protect Act” or EAPA.⁴

After evaluating all of the information on the record, TRLED determined that reasonable suspicion existed that the frozen shrimp imported into the United States from Vietnam by MSeafood were of Indian-origin. TRLED based its determination on the information provided in the allegation, and information placed on the administrative record including trade data from [], documents related to Minh Phu’s participation in U.S. Department of Commerce (Commerce) proceedings, and copies of Minh Phu’s monthly export reports from its website concerning Minh Phu’s Indian shrimp imports.⁵

On January 31, 2020, Minh Phu submitted voluntary factual information (VFI).⁶ On February 28, 2020, the Alleger filed comments on Minh Phu’s January 31st submission.⁷ On March 4, 2020, the Alleger filed a VFI submission.⁸ On March 5, 2020, pursuant to 19 CFR 165.5, CBP sent Requests for Information (RFIs) to the claimed manufacturer Minh Phu and to the Importer, requesting information on the manufacturer’s shipments to the Importer, as well as the manufacturer’s production capabilities and capacities.⁹ On March 11, 2020, Minh Phu submitted comments on a single entry bond issue.¹⁰ On March 13, 2020, the Alleger submitted comments on Minh Phu’s March 11th submission.¹¹ On March 19, 2020, CBP received an RFI response from MSeafood.¹² On March 23, 2020, CBP received an RFI response from Minh Phu.¹³ On

³ See email “Receipt of EAPA Allegation 7356: Transshipment / Certain Frozen Freshwater Shrimp from India,” dated September 18, 2019.

⁴ See CBP Memorandum, “Initiation of Investigation for EAPA Case Number 7356 – MSeafood Corporation,” dated October 9, 2019 (MSeafood Initiation).

⁵ See CBP Memorandum, “Adding Certain Documents to the Administrative Record,” dated December 20, 2019 (December 20 Memorandum).

⁶ See letter from Minh Phu, “Re-Filing of September 13, 2019 Submission: EAPA Case No. 7356,” dated January 31, 2020 (Minh Phu Self-Submission 1).

⁷ See letter from the Alleger, “Part 165 Investigation: AHSTEC – Minh Phu Seafood (EAPA Case No. 7356),” dated February 28, 2020.

⁸ See letter from the Alleger, “Part 165 Investigation: AHSTEC – Minh Phu Seafood (EAPA Case No. 7356),” dated March 4, 2020.

⁹ See Memorandum to Minh Phu, “Request for Information from Manufacturer/Supplier concerning Enforce and Protect Act (EAPA) investigation on whether MSeafood Corporation has evaded the Antidumping Duty (AD) Order A-533-840 on certain frozen warmwater shrimp from India, with entries of merchandise into the United States,” dated February 25, 2020 (Minh Phu RFI); Memorandum to MSeafood, “Request for Information to Importer concerning the Enforce and Protect Act investigation of whether MSeafood Corporation has evaded its Antidumping Duty liability pursuant to the Antidumping Duty Order A-533-840 on frozen warmwater shrimp and prawns from India with entries of merchandise into the United States,” dated March 6, 2020 (MSeafood RFI).

¹⁰ See letter from Minh Phu, “EAPA Case No. 7356: Single Entry Bonds,” dated March 11, 2020.

¹¹ See letter from the Alleger, “Part 165 Investigation: AHSTEC – Minh Phu Seafood (EAPA Case No. 7356): Single Entry Bonds,” dated March 13, 2020.

¹² See letter from MSeafood, “EAPA Case No. 7356: MSeafood Request for Information to Importer Questionnaire Response,” dated March 19, 2020 (MSeafood RFI Response).

¹³ See letter from Minh Phu, “EAPA Case No. 7356: Minh Phu Request for Information to Manufacturer Questionnaire Response,” dated March 23, 2020 (Minh Phu RFI Response).

March 25, 2020, the Alleger filed comments on Minh Phu's RFI response.¹⁴ On March 31, 2020, the Alleger filed comments on MSeafood RFI's response.¹⁵

On May 1, 2020, Minh Phu timely filed VFI for the record.¹⁶ On May 7, 2020, the Alleger filed comments on Minh Phu's VFI.¹⁷ On May 20, 2020, CBP sent supplemental RFIs to Minh Phu and MSeafood.¹⁸ On June 3, 2020, CBP received a response from MSeafood to the supplemental RFI.¹⁹ On June 12, 2020, CBP received a response from Minh Phu to the supplemental RFI.²⁰

Minh Phu, including its affiliated importer MSeafood, submitted written arguments on September 14, 2020.²¹ On September 28, 2020, the Alleger submitted rebuttal written arguments.²²

Analysis as to Evasion

Under 19 USC 1517(c)(1)(A), to reach a final determination as to evasion in this case, CBP must, "make a determination, based on substantial evidence, with respect to whether such covered merchandise entered into the customs territory of the United States through evasion."²³ Evasion is defined as "the entry of covered merchandise into the customs territory of the United States for consumption by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material and that results in any cash deposit or other security of any amount of applicable

¹⁴ See letter from the Alleger "Part 165 Investigation: AHSTEC – Minh Phu Seafood (EAPA Case No. 7356)," dated March 25, 2020.

¹⁵ See letter from the Alleger "EAPA Case No. 7356 – Comments of AHSTEC on Minh Phu Seafood Joint Stock Company's March 23rd Response to CBP," dated March 31, 2020.

¹⁶ See letter from Minh Phu "EAPA Case No. 7356: Voluntary Submission of Supplemental Information," dated May 1, 2020 (Minh Phu Self-Submission 2).

¹⁷ See letter from the Alleger "EAPA Case No. 7356 – Comments of AHSTEC on Minh Phu Seafood Joint Stock Company's May 1 Submission to CBP," dated May 7, 2020 (Alleger Comments on Minh Phu's Self-Submission 2).

¹⁸ See Memorandum to Minh Phu "Supplemental Request for Information from Manufacturer/Supplier concerning Enforce and Protect Act (EAPA) investigation on whether MSeafood Corporation has evaded the Antidumping Duty (AD) Order A-533-840 on certain frozen warmwater shrimp from India, with entries of merchandise into the United States," dated May 20, 2020 (Minh Phu Supplemental RFI); See Memorandum to MSeafood "Supplemental Request for Information to Importer concerning the Enforce and Protect Act investigation of whether MSeafood Corporation has evaded its Antidumping Duty liability pursuant to the Antidumping Duty Order A-533-840 on frozen warmwater shrimp and prawns from India with entries of merchandise into the United States," dated May 20, 2020 (MSeafood Supplemental RFI).

¹⁹ See letter from MSeafood "EAPA Case No. 7356: MSeafood Response to Supplemental Importer Request for Information," dated June 3, 2020 (MSeafood Supplemental RFI Response).

²⁰ See letter from Minh Phu "EAPA Case No. 7356: Minh Phu Response to Supplemental Manufacturer/Supplier Request for Information," dated June 12, 2020 (Minh Phu Supplemental RFI Response).

²¹ See letter from Minh Phu "EAPA Case No. 7356: Minh Phu Written Argument," dated September 14, 2020 (Minh Phu Written Arguments).

²² See letter from Alleger, "EAPA Case No. 7356: Ad Hoc Shrimp Trade Enforcement Committee's Response to Written Arguments," dated September 28, 2020 (Alleger's Rebuttal Argument).

²³ Substantial evidence is not defined in the statute. However, the Federal Circuit has stated that "substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." See *A.L. Patterson, Inc. v. United States*, 585 Fed. Appx. 778, 781-782 (Fed. Cir. 2014) (quoting *Consol. Edison Co. of N.Y. v. NLRB*, 305 U.S. 197, 229 (1938)).

antidumping or countervailing duties being reduced or not being applied with respect to the merchandise.”²⁴ As discussed below, the record of this investigation indicates that covered merchandise entered the United States through evasion. Further, substantial evidence indicates that MSeafood’s imports were entered through evasion, resulting in the avoidance of applicable AD/CVD deposits or other security.

On February 1, 2005, the Department of Commerce (Commerce) issued the affirmative amended final determination and antidumping order on certain frozen warmwater shrimp for India and Vietnam.²⁵ The Minh Phu Group was the mandatory respondent to the original less than fair value investigation for Vietnam and subject to the *Vietnam Order*.²⁶ Additionally, evidence on the administrative record shows that while Minh Phu was subject to the *Vietnam Order*, Minh Phu stated that it purchased Indian-origin shrimp for processing and supplemented orders to the United States with Indian-origin shrimp.²⁷ On July 18, 2016, Commerce revoked the *Vietnam Order* with respect to the Minh Phu Group.²⁸ This means that Minh Phu no longer has to pay AD duties on its shrimp that originate in Vietnam.²⁹ However, Indian-origin shrimp are still subject to AD duties of 10.17 percent.³⁰ Therefore, Minh Phu has sufficient reason to disguise the true country of origin of its shrimp or to comingle Indian-origin shrimp with Vietnamese-origin shrimp and claim only Vietnam as the country of origin. By doing so, Minh Phu is subject to zero AD duties. Additionally, because Minh Phu was a past respondent in the *Vietnam Order*, it has a strong motive to avoid further AD proceedings, such as the *India Order*.

Record evidence shows that MSeafood, the U.S. based affiliate of Minh Phu, imported shrimp from Minh Phu during the period of investigation (POI), from October 8, 2018, through October 13, 2020.³¹ Evidence on the record shows that Minh Phu has a history of importing Indian-origin shrimp into Vietnam for processing.³² [] data shows that during the POI, Minh Phu imported large volumes of frozen shrimp from India.³³ From October 1, 2018, through August 31, 2019, [] data shows that Indian companies exported about \$[] worth of frozen shrimp to Minh Phu in Vietnam in [] shipments.³⁴ Additionally, Minh Phu has a

²⁴ See 19 CFR 165.1; see also 19 USC 1517(a)(5)(A).

²⁵ See *India Order*; see also *Notice of Amended Final Determination of Sales at Less Than Fair Value Antidumping Duty Order: Certain Frozen warmwater Shrimp from the Socialist Republic of Vietnam*, 70 FR 5152 (February 1, 2005) (*Vietnam Order*).

²⁶ See *Vietnam Order*.

²⁷ See letter from Alleger, “Enforce and Protect Act Allegation Re: MSeafood Corporation,” dated July 17, 2019 (Allegation), at 34-36, Exhibits 6, 9-10, and 13; see also Alleger Comments on Minh Phu’s Self-Submission 2, at Exhibits 1-4.

²⁸ See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order*, 81 FR 47756 (July 22, 2016) (*Revocation of Minh Phu*).

²⁹ *Id.*

³⁰ 10.17 percent is the current cash deposit rate for all-other manufacturers or exporters of covered merchandise subject to the *India Order*. See *Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 57847, 57848 (October 29, 2019).

³¹ See, generally, MSeafood RFI Response and MSeafood Supplemental RFI Response.

³² See letter from Alleger “165.11 Allegation: ASHTEC – Minh Phu Seafood (EAPA 7356),” dated August 30, 2019 (Allegation Second Supplement), at 2-8 and Exhibits 1-8; see also CBP Memorandum, “Adding Certain Documents to the Administrative Record,” dated December 20, 2019 (December 20 Memorandum) at attachments 6-8.

³³ See December 20 Memorandum at attachments 6 and 7.

³⁴ *Id.*, at attachment 6.

known history of using [] in its raw material processing. Minh Phu listed [] Indian companies as suppliers of its raw material inputs (*i.e.*, []) during its participation in Commerce's 2014-2015 administrative review.³⁵ Comparing the [] Indian company names listed by Minh Phu to recent [] demonstrates that Minh Phu imported from [] of the same Indian suppliers during the POI.³⁶ Additionally, [] data shows that value of these recent shipments of [] from those [] Indian suppliers was worth about \$[].³⁷

Minh Phu corroborated the information from the Alleger and CBP when it submitted information indicating that it imported Indian-origin shrimp during POI.³⁸ Evidence on the administrative record shows that Minh Phu stores and processes Indian-origin shrimp in the same facilities and locations in which it processes Vietnamese-origin shrimp,³⁹ which allows for the possibility of comingling or mislabeling. Finally, Minh Phu provided evidence that it processes and comingles shrimp of Indian-origin and Vietnamese-origin for certain orders.⁴⁰

The questions before CBP are whether the Indian-origin shrimp are being comingled with Vietnamese-origin shrimp and whether Indian-shrimp are being mislabeled as Vietnamese-origin shrimp and shipped to the U.S. customs territory. During its participation in a Commerce administrative review of the review period 2014-2015, Minh Phu reported that when it purchases frozen shrimp from market economy countries:

All frozen shrimp entered into production as reprocessed (whether self-produced or purchased) is comingled and entered into product as part of all reprocessed shrimp.⁴¹

Minh Phu later stated in the same submission:

...purchases are comingled in their entirety with... as soon as they are entered into the production line and thawed.⁴²

These statements by Minh Phu demonstrate that the Minh Phu Group has a history of comingling frozen shrimp purchased from market-economy suppliers, *i.e.*, suppliers not in Vietnam.⁴³ Regarding its production processes, Minh Phu further elaborated that:

³⁵ *Id.*, at attachment 7.

³⁶ Those companies are: []

[]. *Id.*, at attachment 8.

³⁷ *Id.*, at attachment 6.

³⁸ See Minh Phu RFI Response; see also Minh Phu Supplemental RFI Response.

³⁹ See Minh Phu Supplemental RFI Response, at 13-18.

⁴⁰ *Id.*

⁴¹ See Alleger Comments on Minh Phu's Self-Submission 2 at Exhibit 2, pgs. 2-3.

⁴² *Id.*, at Exhibit 2, pg. 5.

⁴³ We note that this is from the public version of documents from Commerce's antidumping proceeding and does not mention the names of the countries of the market economy suppliers. CBP placed the business confidential version of Minh Phu's section D response from this same Commerce proceeding on the administrative record on December 20, 2019. See December 20 Memorandum. We note that Commerce defines the following countries as non-market

Once [] enters into production, therefore, it is comingled from an accounting and production record perspective so that it is indistinguishable from [], and thus the allocation requested by the Department is an inexact allocation rather than the actual shrimp consumption from MPG's own records.⁴⁴

Minh Phu proceeds to identify the suppliers of the [] as [].⁴⁵ While this information occurred before the POI, it establishes that Minh Phu had a pattern and history of openly comingling [] before this EAPA investigation. This information also provides no indication that Minh Phu intended to change its practices prior to the EAPA investigation.

In contrast, Minh Phu now claims that it implemented a tracing system in 2016, which allows it to track imported shrimp from the minute it enters its production facility. Minh Phu also claims that this tracing system ensures that imported shrimp never loses its identity as such.⁴⁶ It further claims:

...that before sizing, grading, and further processing, the manufacturers {Minh Phu} rely on a handwritten mark "XH" to separate the Indian shrimp/prawns from the Vietnamese goods before accounting for them as finished goods in the SAP production system. Also, frozen imported shrimp/prawns from India are taken from inventory and staged at an intermediate warehouse before consolidating goods for an order. MPSJSC explained they intermix Indian and Vietnamese shrimp/prawns to consolidate them for the same order. However, they claim the goods are not destined for the United States. Also, in contrast to the stated roles as only exporters, MPSJSC provided photographs of Minh Phat and Minh Qui personnel performing processing and packaging at the facilities pictured.⁴⁷

As previously noted, Minh Phu alleges that this tracing system has been in place since the *Vietnam Order* revoked Minh Phu from it.⁴⁸ To verify the veracity of this claim, CBP requested in question 11 of Minh Phu's supplemental RFI the following information:

economy countries: Republic of Armenia, Republic of Azerbaijan, Republic of Belarus, People's Republic of China, Georgia, Kyrgyz Republic; Republic of Moldova, Republic of Tajikistan, Turkmenistan, Republic of Uzbekistan, and Socialist Republic of Vietnam. *See Preliminary Determinations of Sales at Less Than Fair Value: Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan; and Preliminary Determinations of Sales at Not Less Than Fair Value: Uranium from Armenia, Azerbaijan, Byelarus, Georgia, Moldova and Turkmenistan*, 57 FR 23380, 23383 (June 3, 1992); *see also Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116, 37119 (June 23, 2003); *see also Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017).

⁴⁴ See December 20 Memorandum at attachment 7, pgs. 20-21.

⁴⁵ *Id.*, at attachment 7, Exhibit D-5A.

⁴⁶ See Minh Phu Self-Submission 1, at 3; *see also* Minh Phu RFI Response, at 50; *see also* Minh Phu Supplemental RFI Response, at 13.

⁴⁷ See Minh Phu RFI Response, at 50; *see also* Minh Phu Supplemental RFI Response, at 13.

⁴⁸ See Minh Phu Supplemental RFI Response, at 13.

Provide a bill of lading report for all the covered merchandise imported from India. Include references to the importer name, dates, goods descriptions, commercial invoices, source vendor and country, bills of lading, and total kilograms/pounds received during September 18, 2018 through January 31, 2020. Include a purchase value column with VND, U.S. currency, or conversion to U.S. currency. Provide enough information to tie forward to the SAP goods receipt history with origin, "Factory code", "Type" (for mark "XH"), "Trace code", and "Batch Note", and any other information to show Indian shrimp/prawns were not commingled with Vietnamese shrimp/prawns. Identify the plant name for the factory code and trace code.⁴⁹

In response to this question, Minh Phu stated:

At the outset, Minh Phu notes that it cannot trace specific imported shrimp from the import bill of lading through to specific "XH" marked shrimp in finished goods inventory, but it segregates and traces *all* imported shrimp in order to ensure that no imported shrimp is exported to the United States...⁵⁰

Minh Phu's inability to trace specific imports of Indian-origin shrimp through the production facility to specific sales is problematic in that it is crucial to CBP's understanding of whether comingling or mislabeling of Indian-origin shrimp was happening. Minh Phu further claims that it can reconcile its purchases of imported shrimp to sales to all markets, meaning that it knows exactly how much Indian-origin shrimp it sold and the destination of those sales.⁵¹ The problem with this claim is that it is an accounting reconciliation that is unsupported by Minh Phu's internal production records of the shrimp being processed at different stages. If Minh Phu had provided the requested information to CBP, this information would have supported Minh Phu's claims that it implemented a robust tracking system of its sales that prevented Indian-origin shrimp from entering U.S. customs territory.

The importance of this missing information cannot be understated; for example, Minh Phu admitted that during the preparation of its Supplemental RFI response it discovered that one of its affiliates, Minh Phat, exported comingled Indian-origin and Vietnamese-origin shrimp into the customs territory of the United States. Regarding this occurrence, Minh Phu stated:

... it was discovered that one of Minh Phat's export sales to [] contained [] kg of mixed Vietnamese and Indian shrimp (marked "XH") and [] kg of solely Vietnamese-origin shrimp, for a total export sale quantity of [] kg of shrimp. This can be observed by comparing MPSJSC's 2018 Inventory Withdrawal and Minh Phat's September 18, 2018 to January 31, 2020 COGS excels sheets provided in Minh Phu's May 1, 2020 submission, and sorting for material [].⁵²

There are a couple of issues with this response. First, according to Minh Phu's previous claims, its robust tracing system should have prevented this instance of comingling. However, this error was only discovered some 18 months after the shipment and during the EAPA investigation; thus, this error either shows a critical "flaw" in its robust system or it reflects an underlying

⁴⁹ See Minh Phu Supplemental RFI, at 5.

⁵⁰ See Minh Phu Supplemental RFI Response, at 13.

⁵¹ *Id.*, at 15.

⁵² *Id.*, at 8-9 and footnotes 4-5.

pattern of AD duty evasion. Second, if Minh Phu could precisely trace this sale of co-mingled shrimp, then why was it unable to “...trace specific imported shrimp from the import bill of lading through to specific “XH” marked shrimp in finished goods inventory...” when CBP requested that information in its RFIs? Minh Phu’s ability to trace one case to [], under the auspices of not knowing it was part of the [], while not being able to do it for all other sales suggests that it was not cooperating to the best of its ability. Nevertheless, the point remains that MSeafood sold co-mingled Vietnamese-origin and Indian-origin shrimp to the United States during the POI.

Furthermore, Minh Phu and MSeafood should be capable of conforming to the Seafood Import Monitoring Program (SIMP) and able to provide substantiating documentation.⁵³ SIMP requires traceability back to point of harvest of the shrimp, with records regarding the movement among and between each custodian of the shrimp up to the point of entry into U.S. customs territory.⁵⁴ However, the accuracy of Minh Phu’s SIMP documents are in question if they are unable to trace imported shrimp that has been processed through its production documents. The Alleger contends that when importers are incapable of producing documentary support under the SIMP, this is a strong indicator of evasion of country of origin.⁵⁵ This is further evidence that Minh Phu is evading the *India Order* through comingling. Taken *in toto* this gives Minh Phu the opportunity and means to transship comingled Indian-origin shrimp.

Finally, we note a number of discrepancies that cast doubt on the overall reliability of Minh Phu’s responses. For example, in its Supplemental RFI response, Minh Phu stated it stopped importing shrimp into Vietnam from [] after July 2019.⁵⁶ This is misleading because, even though Minh Phu stopped purchasing imported shrimp after July 2019, it continued to process imported shrimp from July 2019 until [].⁵⁷ Furthermore, Minh Phu’s Self Submission 2 clarified there is comingling of Indian-shrimp and Vietnamese-shrimp in the same order; however, the goods are not destined for the United States.⁵⁸ In contrast, Minh Phu’s Self-Submission 1 explained that it sized Indian-shrimp separately from Vietnamese-shrimp, without explaining the intermixing.⁵⁹ Minh Phu’s RFI response also indicated that it processed Indian-shrimp separately from Vietnamese-shrimp, contradicting Minh Phu’s Self Submission 2.⁶⁰ In addition, Exhibit 13 of Minh Phu’s Self-Submission 1 contains photographs of []

[].⁶¹ However, Minh Phu stated that

⁵³ See Allegation, at 3-8 and Exhibits 3-4.

⁵⁴ *Id.*, at 8.

⁵⁵ *Id.*

⁵⁶ See Minh Phu Supplemental RFI Response, at 6-7.

⁵⁷ *Id.*, at 11-12. We note that while Minh Phu processed imported []-shrimp until [], the finished processed goods could have sat in inventory, *i.e.*, frozen, and sold in 2020. We also note, given all the discrepancies mentioned above, the accuracy of Minh Phu’s statements of when it stopped processing is also in question.

⁵⁸ See Minh Phu Self-Submission 2, at 16.

⁵⁹ See Minh Phu Self-Submission 1, at 5.

⁶⁰ See Minh Phu RFI Response, at 32.

⁶¹ See Minh Phu Self-Submission 1, at Exhibit 13.

[] were companies dealing only with [].⁶²

Determination as to Evasion

Pursuant to 19 USC 1517(c)(3) and 19 CFR 165.6, CBP may apply an adverse inference if the party to the investigation that filed an allegation, the importer, or the foreign producer or exporter of the covered merchandise fails to cooperate and comply to the best of its ability with an RFI made by CBP. In applying an adverse inference against a party, CBP may use the facts otherwise available to make a final determination as to evasion pursuant to 19 USC 1517(c)(1)(A) and 19 CFR 165.27. Moreover, an adverse inference may be used with respect to U.S. importers, foreign producers, and manufacturers “without regard to whether another person involved in the same transaction or transactions under examination has provided the information sought....”⁶³

Based on the aforementioned analysis, CBP determines that the failure of Minh Phu to provide the requested information, *i.e.*, tracing imported shrimp’s bill of lading to specific exported shrimp, that would allow CBP to trace its imports of Indian-origin shrimp through its production processes to its sales demonstrates that Minh Phu did not act to the best of its abilities in this EAPA investigation, justifying the application of adverse inferences under 19 USC 1517(c)(3). As a result, CBP will apply adverse inferences to its final determination in this case.

Furthermore, Minh Phu’s failure to submit sufficient tracing information and cooperate to the best of its abilities means that Minh Phu was unable to demonstrate that it did not co-mingle Indian-origin shrimp with Vietnamese-origin shrimp on its sales to the United States during the POI. Since the record does not contain sufficient evidence to support how many imports to the United States contained comingled Indian-origin and Vietnamese-origin shrimp, CBP will select from the facts otherwise available and infer that the merchandise imported to the United States contained co-mingled Indian-origin and Vietnamese-origin shrimp. The information on the record supporting this fact, as explained throughout this determination notice, includes Minh Phu’s history of co-mingling Indian-origin shrimp with Vietnamese-origin shrimp in the past;⁶⁴ the trade data on the record indicating Minh Phu received imports of Indian-origin shrimp through July 2019;⁶⁵ Minh Phu’s refusal to provide full tracing of all of its Indian-origin shrimp purchases to its sales of shrimp although it claims to have such a tracing system in place;⁶⁶ and Minh Phu’s finding that it had sold a shipment of co-mingled Indian-origin and Vietnamese-origin shrimp to the United States.⁶⁷ Accordingly, evidence on the record indicates that there is a

⁶² See Minh Phu RFI Response, at pgs. 16, 19, 22, and 23.

⁶³ See 19 USC 1517(c)(3)(B).

⁶⁴ See letter from Alleger, “Enforce and Protect Act Allegation Re: MSeafood Corporation,” dated July 17, 2019 (Allegation), at 34-36, Exhibits 6, 9-10, and 13; see also Alleger Comments on Minh Phu’s Self-Submission 2, at Exhibits 1-4.

⁶⁵ See Minh Phu Supplemental RFI Response, at 6-7.

⁶⁶ See Minh Phu Self-Submission 1, at 3; see also Minh Phu RFI Response, at 50; see also Minh Phu Supplemental RFI Response, at 13. See also Minh Phu Supplemental RFI Response, at 13.

⁶⁷ See Minh Phu Supplemental RFI Response, at 8-9 and footnotes 4-5.

strong likelihood that Minh Phu co-mingled Indian-origin shrimp with Vietnamese-origin shrimp on imports to the United States.

Therefore, based on the evidence on the record, CBP finds that Minh Phu has been co-mingling Indian-origin shrimp with Vietnamese-origin shrimp on imports to the United States. The aforementioned failure of Minh Phu to respond to the best of its ability supports the application of adverse inferences. In relying on an adverse inference for failure to respond to the RFIs, or failure to cooperate and comply to the best of one's ability with an RFI, CBP will look at the facts otherwise available. Here, CBP selects and relies on the information on the administrative records that indicates that Minh Phu co-mingled Indian-origin shrimp with Vietnamese-origin shrimp. Based on the aforementioned analysis, CBP determines that substantial evidence exists demonstrating that the shrimp entered by MSeafood during the POI was co-mingled Indian-origin shrimp with Vietnamese-origin shrimp, and is subject to the all-others rate for the *India Order*.⁶⁸

Actions Taken Pursuant to the Affirmative Determination as to Evasion

In light of CBP's determination that substantial evidence demonstrates that MSeafood entered covered merchandise into the customs territory of the United States through evasion, and pursuant to 19 USC 1517(d) and 19 CFR 165.28, CBP will suspend or continue to suspend the entries subject to this investigation, until instructed to liquidate. For those entries previously extended in accordance with Interim Measures, CBP will rate adjust and change those entries to type 03 and continue suspension until instructed to liquidate these entries. Finally, CBP will continue to evaluate MSeafood's continuous bonds in accordance with CBP's policies, and will continue to require single transaction bonds as appropriate. None of the above actions precludes CBP or other agencies from pursuing additional enforcement actions or penalties.

Sincerely,



Brian M. Hoxie
Director, Enforcement Operations Division
Trade Remedy & Law Enforcement Directorate
CBP Office of Trade

⁶⁸ EAPA does not have a knowledge requirement for evasion as defined under 19 CFR 165.1, nor is there any requirement that an importer know of the material or false statement. Therefore, CBP does not need to determine any level of culpability, only that evasion occurred with entry.