

- Issue 18: Whether the Department Failed to Incorporate Minor Corrections Accepted at Verification.
- Issue 19: Whether the Department Mistakenly Used an MEP from a Subsidy Country to Value an FOP.
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- Issue 25: Whether the Department Applied the Correct kg/Cubic Meter (“M3”) Converter for Fiberboard.
- Issue 26: Whether the Department Used an Incorrect SV for Philippine Harmonized Schedule (“HS”) Number 4407.99.00 in the SNP SV Spreadsheet to Value Several Types of Wood and Wood Parts.

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DEPARTMENT OF COMMERCE

International Trade Administration

A–552–801

Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results of the Third New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 1, 2005, the Department published in the **Federal Register** the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam (“Vietnam”). See *Notice of Antidumping Duty Order: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 68 FR 47909 (August 12, 2003) (“*Order*”). The Department is conducting new shipper reviews (“NSR”) of the *Order*, covering the period of review (“POR”) of August 1, 2007, through January 31, 2008. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (“CBP”) to assess antidumping duties on entries of subject merchandise during the POR for which the importer-specific assessment rates are above *de minimis*.

EFFECTIVE DATE: January 28, 2009.

FOR FURTHER INFORMATION CONTACT: Alan Ray or Emeka Chukwudebe, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–5403 or (202) 482–0219, respectively.

SUPPLEMENTARY INFORMATION:

General Background

On February 25, 2008, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (“the Act”), and 19 CFR 351.214(c), the Department received NSR requests from Asia Commerce Fisheries Joint Stock Company (“Acom”) and Hiep Thanh Seafood Joint Stock Company (“Hiep Thanh”). Both companies certified that they are the producers and exporters of the subject merchandise upon which the requests were based.

On April 7, 2008, the Department initiated antidumping duty new shipper reviews on frozen fish fillets from Vietnam covering the two companies. See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Reviews*, 72 FR 54428 (April 7, 2008).

On April 14, 2008, the Department issued original questionnaires to both Hiep Thanh and Acom. Between May and October 2008, Hiep Thanh and Acom submitted responses to the original sections A, C, and D questionnaires and supplemental sections A, C, and D questionnaires.

Extension of Time Limits

On September 25, 2008, the Department extended the deadline for the preliminary results of this review by 120 days, to January 20, 2009. See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Time Limits for the Preliminary Results of the New Shipper Reviews*, 73 FR 55496 (September 25, 2008)¹ (“*Extension*”).

Surrogate Country and Surrogate Values

On December 12, 2008, the Department sent interested parties a letter requesting comments on surrogate country selection and information pertaining to valuing factors of production (“FOP”). On January 5,

¹ Where a statutory deadline falls on a weekend, federal holiday, or any other day when the Department is closed, the Department will continue its longstanding practice of reaching our determination on the next business day. In this instance, the preliminary results will be released no later than January 21, 2009.

2009, Petitioners² submitted surrogate value data. No other party submitted surrogate country or surrogate value data.

Verification

Pursuant to 19 CFR 351.307(b)(iv), we conducted verification of the sales and factors of production (“FOP”) for Hiep Thanh between November 12–20, 2008. See Memorandum to the File from Alan Ray, Case Analyst through Alex Villanueva, Program Manager, Verification of the Sales and Factors Response of Hiep Thanh in the Antidumping New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam (“Vietnam”), dated December 12, 2008 (“Hiep Thanh Verification Report”).

Scope of the Order

The product covered by this Order is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti*, *Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*), and *Pangasius Micronemus*. Frozen fish fillets are lengthwise cuts of whole fish. The fillet products covered by the scope include boneless fillets with the belly flap intact (“regular” fillets), boneless fillets with the belly flap removed (“shank” fillets), boneless shank fillets cut into strips (“fillet strips/finger”), which include fillets cut into strips, chunks, blocks, skewers, or any other shape. Specifically excluded from the scope are frozen whole fish (whether or not dressed), frozen steaks, and frozen belly-flap nuggets. Frozen whole dressed fish are deheaded, skinned, and eviscerated. Steaks are bone-in, cross-section cuts of dressed fish. Nuggets are the belly-flaps. The subject merchandise will be hereinafter referred to as frozen “basa” and “tra” fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under tariff article codes 1604.19.4000, 1604.19.5000, 0305.59.4000, 0304.29.6033 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the Harmonized Tariff Schedule of the United States (“HTSUS”).³ This

² The Catfish Farmers of America and individual U.S. catfish processors, America’s Catch, Consolidated Catfish Companies, LLC dba Country Select Catfish, Delta Pride Catfish, Inc., Harvest Select Catfish, Inc., Heartland Catfish Company, Pride of the Pond, Simmons Farm Raised Catfish, Inc., and Southern Pride Catfish Company LLC (collectively, “Petitioners”).

³ Until July 1, 2004, these products were classifiable under tariff article codes 0304.20.60.30 (Frozen Catfish Fillets), 0304.20.60.96 (Frozen Fish Fillets, NESOI), 0304.20.60.43 (Frozen Freshwater

Order covers all frozen fish fillets meeting the above specification, regardless of tariff classification. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the Order is dispositive.

Non-Market Economy Country Status

In every case conducted by the Department involving Vietnam, Vietnam has been treated as a non-market ("NME") country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission*, 73 FR 15479 (March 24, 2008) ("3rd AR Final Results"). None of the parties to this proceeding have contested such treatment. Accordingly, we calculated normal value ("NV") in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rate Determinations

A designation as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. Accordingly, there is a rebuttable presumption that all companies within Vietnam are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("Sparklers"), as amplified by the *Notice of Final Determination of Sales at Less than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("Silicon Carbide").

A. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining

Fish Fillets) and 0304.20.60.57 (Frozen Sole Fillets) of the HTSUS. Until February 1, 2007, these products were classifiable under tariff article code 0304.20.60.33 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the HTSUS.

whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments decentralizing control of companies.

In this review, Hiep Thanh and Acom submitted complete responses to the separate rates section of the Department's NME questionnaire. The evidence submitted by Hiep Thanh and Acom includes government laws and regulations on corporate ownership, business licenses, and narrative information regarding the company's operations and selection of management. The evidence provided by Hiep Thanh and Acom supports a finding of a *de jure* absence of government control over their export activities. We have no information in this proceeding that would cause us to reconsider this determination. Thus, we believe that the evidence on the record supports a preliminary finding of an absence of *de jure* government control based on: (1) an absence of restrictive stipulations associated with the exporter's business license; and (2) the legal authority on the record decentralizing control over the respondents.

B. Absence of De Facto Control

The absence of *de facto* government control over exports is based on whether the Respondent: (1) sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide*, 59 FR at 22587; *Sparklers*, 56 FR at 20589; *see also Notice of Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

In their questionnaire responses, Hiep Thanh and Acom submitted evidence indicating an absence of *de facto* government control over their export activities. Specifically, this evidence indicates that: (1) each company sets its own export prices independent of the government and without the approval of a government authority; (2) each company retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) each company has a general manager, branch manager or division manager with the authority

to negotiate and bind the company in an agreement; (4) the general manager is selected by the board of directors or company employees, and the general manager appoints the deputy managers and the manager of each department; and (5) there is no restriction on any of the companies' use of export revenues. Therefore, the Department preliminarily finds that Hiep Thanh and Acom have established *prima facie* that they qualify for separate rates under the criteria established by *Silicon Carbide* and *Sparklers*.

New Shipper Review Bona Fide Analysis

Consistent with the Department's practice, we investigated the *bona fide* nature of the sales made by Hiep Thanh and Acom for these new shipper reviews. We found that the new shipper sales by Hiep Thanh and Acom were made on a *bona fide* basis. Based on our investigation into the *bona fide* nature of the sales, the questionnaire responses submitted by Hiep Thanh and Acom, and our verification of Hiep Thanh, as well the companies' eligibility for separate rates (*see* Separate Rates Determination section above), we preliminarily determine that Hiep Thanh and Acom have met the requirements to qualify as new shippers during this POR. Therefore, for the purposes of these preliminary results of review, we are treating Hiep Thanh and Acom's sales of subject merchandise to the United States as appropriate transactions for these new shipper reviews.⁴

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production ("FOPs"), valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.

⁴ For more detailed discussion of this issue, please see Memorandum from Alan Ray, Case Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9: Bona Fide Nature of the Sale in the Third Antidumping Duty New Shipper Reviews of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Hiep Thanh and Acom., (January 16, 2009).

The Department determined that Bangladesh, Pakistan, India, Sri Lanka, Philippines and Indonesia are countries comparable to Vietnam in terms of economic development.⁵ Moreover, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data from the countries. See Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) ("Surrogate Country Policy Bulletin"). Since the less-than-fair value investigation, we have determined that Bangladesh is comparable to Vietnam in terms of economic development and has surrogate value data that is available and reliable. In this proceeding, we received no comments regarding surrogate country selection. Since no information has been provided in this review that would warrant a change in the Department's selection of Bangladesh from the prior segments, we continue to find that Bangladesh is the appropriate surrogate country here because Bangladesh is at a similar level of economic development pursuant to section 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has reliable, publicly available data representing a broad-market average. See Memorandum to the File, through James C. Doyle, Office Director, Office 9, Import Administration, from Matthew Renkey, Senior Case Analyst, Subject: Fourth Antidumping Duty Administrative Review and New Shipper Reviews of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Selection of a Surrogate Country (September 2, 2008).

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results.

Affiliation

Section 771(33) of the Act provides that:

The following persons shall be considered to be affiliated' or affiliated persons':

- (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants;
- (B) Any officer or director of an

- organization and such organization;
- (C) Partners;
- (D) Employer and employee;
- (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization;
- (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person;
- (G) Any person who controls any other person and such other person.

Additionally, section 771(33) of the Act stipulates that: "For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restrain or direction over the other person."

We preliminarily find that the Hiep Thanh and HTVN Seafood Inc. ("HTVN") to be affiliated parties within the meaning of section 771(33)(E) of the Act, due to common ownership. Hiep Thanh owns the majority of HTVN. See Hiep Thanh Verification Report at 20. In addition, two of Hiep Thanh's shareholders are the other owners of HTVN. *Id.* Therefore, for these preliminary results we will use the constructed export price ("CEP") price paid to HTVN, the U.S. importer, by its first unaffiliated U.S. customer of subject merchandise during the POR.

U.S. Price

A. Constructed Export Price

For Hiep Thanh, we based the U.S. price on CEP in accordance with section 772(b) of the Act, for sales made on behalf of Hiep Thanh by its U.S. affiliate, HTVN, to unaffiliated purchasers. We based CEP on packed, delivered or ex-warehouse prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, U.S. movement expenses, and appropriate selling adjustments, in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States. We deducted, where appropriate, commissions, inventory carrying costs, credit expenses, and indirect selling expenses.

B. Export Price

In accordance with section 772(a) of the Act, we calculated the EP for sales to the United States for Acorn because

the first sale to an unaffiliated party was made before the date of importation and the use of constructed EP ("CEP") was not otherwise warranted. We calculated EP based on the price to unaffiliated purchasers in the United States.

During the POR, Hiep Thanh made additional shipments of frozen fish fillets to the United States, beyond the reported CEP sales. Based on a request by the Department and prior to verification, Hiep Thanh reported these additional shipments of subject merchandise in a revised U.S. sales database in its October 29, 2008, supplemental questionnaire response.

In our request for these additional sales we cited Article 303(3)⁶ of the North American Free Trade Agreement and 19 CFR 181.53(a)(1)(i)⁷ as support for requesting that Hiep Thanh report these additional shipments. In its October 29, 2008, questionnaire response, Hiep Thanh argued that these additional shipments should not be considered in the margin calculation because any merchandise stored in bond in the United States which is then exported to another NAFTA country should not be subject to review. See Hiep Thanh's October 29, 2008, Questionnaire Response at 5-6. According to Hiep Thanh, to the best of its knowledge, these additional shipments were to be re-exported to another NAFTA country. *Id.* at 1-6. In reviewing the CBP entry documents collected from CBP and those examined at verification, we noted that some of these additional sales of subject merchandise from Hiep Thanh to certain unaffiliated U.S. importers were entered and classified as entries for consumption, while for other entries, we could not determine whether they were for consumption. Therefore, where POR subject merchandise entries exported by Hiep Thanh were classified

⁶ Article 303(3) of the NAFTA requires that if a good is imported pursuant to a duty deferral program and subsequently exported to the territory of another Party, the exporting Party shall assess customs duties as if the exported good had been withdrawn for domestic consumption. Customs treats bonded warehouses as duty deferral programs in a NAFTA context. See 19 CFR 181.53(a)(1)(ii).

⁷ In *Entry of Certain Steel Products*, 68 FR 13835 (March 21, 2003), Customs stated that "under 19 CFR 181.53, goods withdrawn from a U.S. duty-deferral program (such as a Customs bonded warehouse) for exportation to Canada must be treated as entered or withdrawn for consumption." In *CTL Plate from Italy* we concluded that temporary import bond entries of subject merchandise to the United States and re-exported to a NAFTA party should be considered entries for consumption and, should properly be included in the margin calculation. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon Quality Steel Plate Products from Italy*, 64 FR 73234 (December 29, 1999) ("CTL Plate from Italy").

⁵ See Memorandum from Kelley Parkhill, Acting Director, Office of Policy, to Alex Villanueva, Program Manager, AD/CVD Enforcement, Office 9: New Shipper Reviews of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: List of Surrogate Countries, dated January 15, 2009.

as “for consumption,” we will include those sales in the margin calculation for these preliminary results.

For the additional sales of subject merchandise which do not appear as entries for consumption, we will gather additional information (e.g., CBP entry documentation) after these preliminary results and continue to examine this issue for the final results. For the final results, we will consider whether Article 303(3) of NAFTA applies to these additional shipments.

In accordance with section 772(c) of the Act, as appropriate, we deducted from the starting price to unaffiliated purchasers foreign inland freight and brokerage and handling. We calculated EP based on the price to unaffiliated purchasers entered into the United States. In accordance with section 772(c) of the Act, as appropriate, we deducted from the starting price to unaffiliated purchasers foreign inland freight and brokerage and handling. We have reviewed each of these services and expenses reported by Acom and Hiep Thanh and find that they were provided by an NME vendor or paid for using Vietnamese currency. Thus, we based the deduction of these movement charges on surrogate values. See Memorandum to the File through Alex Villanueva, Program Manager, Office 9 from Alan Ray, Case Analyst, Office 9: Antidumping Duty New Shipper Reviews of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results, (January 16, 2008) (“Surrogate Values Memo”) for details regarding the surrogate values for movement expenses.

Normal Value

1. Methodology

Section 773(c)(1)(B) of the Act provides that the Department shall determine the NV using a FOP methodology if the merchandise is exported from an NME country and the information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department’s normal methodologies.

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors–of–production methodology if: (1) the merchandise is exported from a non–market economy country; and (2) the information does

not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act.

Although Hiep Thanh reported the inputs used to produce the main input to the processing stage (food–sized fish), for the purposes of these preliminary results, we are not valuing those inputs when calculating the NV. In the past, the Department has used an intermediate input methodology when the accuracy of the normal value based on an integrated FOP calculation would be sacrificed, (e.g., *Fish Fillets from Vietnam*⁸ and *Garlic from China*⁹). In this case, because a substantial number of farming FOPs were significantly revised and numerous other factors used in the production process were not reported,¹⁰ valuing Hiep Thanh’s farming FOPs would be less reliable and compromise the accuracy of the NV. Instead, we preliminary find that valuing the intermediate input, food–size fish, would be more accurate in this case. As a result, we will begin the NV calculation at the processing stage and apply a surrogate value for whole, food–sized fish.

Acom reported the inputs beginning with the food–size fish because it is only a processor of fish fillets and had no hatchery or farming FOPs during the POR. Therefore, it only reported FOPs associated with the processing and packing stages of production. As such, the Department will account for all of Acom’s reported inputs in the normal value calculation.

2. Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by Hiep Thanh and Acom during the POR. To calculate NV, we multiplied the reported per–unit factor–consumption rates by publicly available Bangladeshi surrogate values. In selecting the surrogate values, we

⁸ See Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam, 68 FR 4986 (January 31, 2003); 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 (June 23, 2003), and accompanying Issues and Decision Memorandum, at Comment 3.

⁹ See Fresh Garlic from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 34082 (June 13, 2005), Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews, 71 FR 26329 26330 (May 4, 2006), and accompanying Issues and Decision Memorandum, at Comment 1.

¹⁰ See Hiep Thanh Verification Report at 2.

considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Bangladeshi import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory of production or the distance from the nearest seaport to the factory of production where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit’s decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407–1408 (Fed. Cir. 1997). Where we did not use Bangladeshi Import Statistics, we calculated freight based on the reported distance from the supplier to the factory.

It is the Department’s practice to calculate price index adjustors to inflate or deflate, as appropriate, surrogate values that are not contemporaneous with the POR using the wholesale price index (“WPI”) for the subject country. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Hand Trucks and Certain Parts Thereof from the People’s Republic of China, 69 FR 29509 (May 24, 2004). However, in this case, a WPI was not available for Bangladesh. Therefore, where publicly available information contemporaneous with the POI with which to value factors could not be obtained, surrogate values were adjusted using the Consumer Price Index rate for Bangladesh, or the WPI for India or Indonesia (for certain surrogate values where Bangladeshi data could not be obtained), as published in the International Financial Statistics of the International Monetary Fund.

Bangladeshi and other surrogate values denominated in foreign currencies were converted to USD using the applicable average exchange rate based on exchange rate data from the Department’s website.

For further details regarding the surrogate values used for these preliminary results, see the Surrogate Values Memo.

Preliminary Results of the Review

The Department has determined that the following preliminary dumping margins exist for the period August 1, 2007, through January 31, 2008:

CERTAIN FROZEN FISH FILLETS FROM VIETNAM	
Manufacturer/Exporter	Weighted–Average Margin (Percent)
Hiep Thanh	0.00

CERTAIN FROZEN FISH FILLETS FROM
VIETNAM—Continued

Manufacturer/Exporter	Weighted-Average Margin (Percent)
Acom	0.00

Disclosure

The Department will disclose to parties of this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Comments

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, in accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record.¹¹

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of this new shipper review. See 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 5 days after the deadline for submitting the case briefs. See 19 CFR 351.309(d). The Department requests that interested parties provide an executive summary of each argument contained within the case briefs and rebuttal briefs.

Any interested party may request a hearing within 30 days of publication of these preliminary results. See 19 CFR 351.310(c). Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral

¹¹ See *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission*, in Part 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

presentations will be limited to issues raised in the briefs. If we receive a request for a hearing, we plan to hold the hearing seven days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Department intends to issue the final results of these new shipper reviews, which will include the results of its analysis raised in any such comments, within 90 days of publication of these preliminary results, pursuant to section 751(a)(2)(B)(iv) of the Act.

Assessment Rates

Upon completion of the final results, pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries on a per-unit basis.¹² The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. If these preliminary results are adopted in our final results of review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer) per-unit duty assessment rates. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this is above *de minimis*.

Cash-Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of subject merchandise from Hiep Thanh or Acom entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for subject merchandise produced and exported by Hiep Thanh or produced and exported Acom, the cash deposit rate will be zero; (2) for subject merchandise exported by Hiep Thanh or Acom but not manufactured by Hiep Thanh or Acom, the cash deposit rate will continue to be the Vietnam-wide rate (*i.e.*, 63.88 percent); and (3) for

¹² We divided the total dumping margins (calculated as the difference between NV and EP or CEP) for each importer by the total quantity of subject merchandise sold to that importer during the POR to calculate a per-unit assessment amount. We will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (*i.e.*, per-kilogram) rates by the weight in kilograms of each entry of the subject merchandise during the POR.

subject merchandise manufactured by Hiep Thanh or Acom, but exported by any other party, the cash deposit rate will be the rate applicable to the exporter. If the cash deposit rate calculated in the final results is zero or *de minimis*, no cash deposit will be required for those specific producer-exporter combinations. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(2)(B) and 777(i) of the Act, and 19 CFR 351.214(h) and 351.221(b)(4).

Dated: January 16, 2009.

Ronald K. Lorentzen,
Acting Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

A-552-802

Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of the Second New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 1, 2005, the Department of Commerce ("the Department") published in the **Federal Register** the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam ("Vietnam"). See *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 FR 5152 (February 1, 2005) ("VN Shrimp Order"). The Department is conducting a new shipper review ("NSR") of the VN Shrimp Order, covering the period of review ("POR")