

requests for administrative review and partial revocation of the countervailing duty order on corrosion-resistant carbon steel flat products from the Republic of Korea.

#### Partial Rescission of Review

Under 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review.

The *Initiation* was published on September 29, 2010. The respondent companies submitted a timely request for withdrawal on September 27, 2010, and October 1, 2010. No other party requested administrative reviews of Dongbu or POSCO. Therefore, we are rescinding, in part, this review of the countervailing duty order of corrosion-resistant carbon steel flat products from the Republic of Korea with regard to Dongbu and POSCO. This review will continue with respect to Hyundai HYSCO Ltd. (HYSCO).

The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Patrol (CBP) 15 days after publication of this notice. The Department will direct CBP to assess countervailing duties at the cash deposit rate in effect on the date of entry for entries during the period January 1, 2009, through December 31, 2009.

This notice is in accordance with section 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: January 14, 2011.

**Gary Taverman,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

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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 Antidumping Duty New Shipper Reviews

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

**SUMMARY:** On February 1, 2005, the Department of Commerce ("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 two new shipper reviews ("NSR") of the Order, covering the period of review ("POR") of August 1, 2009, through February 15, 2010. 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*.

**DATES:** Effective Date: January 25, 2011

#### FOR FURTHER INFORMATION CONTACT:

Alan Ray, 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.

#### SUPPLEMENTARY INFORMATION:

##### General Background

On March 17, 2010, and March 19, 2010, 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 Thien Ma Seafood Company, Ltd. ("THIMACO") and International Development & Investment Corporation ("IDI") (collectively, "Respondents"), respectively. THIMACO and IDI certified that they were the producers and exporters of the subject merchandise upon which the request was based.

On March 29, 2010, the Department published the initiation NSR on frozen fish fillets from Vietnam covering IDI and THIMACO. See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Reviews*, 75 FR 15416 (March 29, 2010).

On March 25, 2010, the Department issued its original antidumping duty questionnaire to THIMACO and IDI. Between April 15, 2010, and September 29, 2010, THIMACO and IDI submitted responses to the original and supplemental sections A, C, and D antidumping duty questionnaires.

##### Extension of Time Limits

On August 9, 2010, the Department extended the deadline for the preliminary results of these reviews by 120 days, to January 17, 2011. However, the notice incorrectly listed the deadline for the preliminary results of the reviews as January 17, 2010, rather than January 17, 2011. See *Certain Frozen*

*Fish Fillets from the Socialist Republic of Vietnam: Extension of Time Limit for Preliminary Results of the Seventh Antidumping Duty New Shipper Reviews*, 74 FR 47771 (August 9, 2010). The Department therefore published a correction, noting the proper deadline as January 17, 2011. See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Correction of Date for the Extension of Time Limit for Preliminary Results of the Seventh Antidumping Duty New Shipper Reviews*, 75 FR 57261 (September 20, 2010).

#### Surrogate Country and Surrogate Values

On July 28, 2010, the Department sent interested parties a letter requesting comments on surrogate country selection and information pertaining to valuing factors of production ("FOP"). On September 10, 2010, IDI, THIMACO, and Petitioners<sup>1</sup> submitted surrogate country comments and surrogate value ("SV") data. On September 20, 2010, IDI, THIMACO, and Petitioners submitted rebuttal comments to the September 10, 2010, submissions.

#### Verification

Pursuant to 19 CFR 351.307(b)(iv), we conducted verification of the farming FOPs for THIMACO between November 2, 2010, and November 5, 2010. See Memorandum to the File, From Alan Ray, Case Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9: Verification of Factors of Production Responses of Thien Ma Seafood Company Ltd., in the Antidumping Duty New Shipper Reviews of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam ("Verification Report"), issued concurrently with these preliminary results.

#### Scope of the Order

The product covered by the 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

<sup>1</sup> 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").

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").<sup>2</sup> The 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 the Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 11349 (March 17, 2009). 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

In proceedings involving NME countries, there is a rebuttable presumption that all companies within the country 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 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, THIMACO and IDI submitted complete responses to the separate rates section of the Department's NME questionnaire. The evidence submitted by IDI and THIMACO includes government laws and regulations on corporate ownership, business licenses, and narrative information regarding each company's operations and selection of management. The evidence provided by IDI and THIMACO supports a finding of a *de jure* absence of government control over each of its 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, IDI and THIMACO each submitted evidence indicating an absence of *de facto* government control over its export activities. Specifically, this evidence indicates that: (1) IDI and THIMACO set their own export prices independent of the government and without the approval of a government authority; (2) IDI and THIMACO retain the proceeds from their sales and make independent decisions regarding the disposition of profits or financing of losses; (3) IDI and THIMACO have 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 either company's use of export revenues. Therefore, the Department preliminarily finds that IDI and THIMACO 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 IDI and THIMACO in these NSRs. We found that the sales by IDI and THIMACO were made on a *bona fide* basis. Based on our investigation into the *bona fide* nature of the sales, the questionnaire responses submitted by IDI and THIMACO, and our verification, as well as the company's eligibility for separate rates (see Separate Rate Determinations section above), we preliminarily determine that IDI and THIMACO 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 IDI's and THIMACO's sales of subject merchandise to the United States as appropriate transactions for these NSRs.<sup>3</sup>

<sup>2</sup> 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 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.

<sup>3</sup> For more detailed discussion of this issue, see Memorandum to the File, From Alan Ray, Case Analyst, Office 9, Through Alex Villanueva, Program Manager, Office 9: Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Reviews of Certain Frozen Fish Fillets from the

## 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 FOPs, valued in a surrogate market economy ("ME") 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 ME countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.

Regarding the "level of economic development," the Department places primary emphasis on per capita gross national income ("GNI") as the measure of economic comparability.<sup>4</sup> Using per capita GNI, the Department determined that Bangladesh, Pakistan, India, Sri Lanka, the Philippines, and Indonesia are countries comparable to Vietnam in terms of economic development.<sup>5</sup>

As we have stated in prior administrative review determinations, there is no world production data of *Pangasius* frozen fish fillets available on the record with which the Department can identify producers of identical merchandise. Therefore, absent world production data, the Department's practice is to compare, wherever possible, data for comparable merchandise and establish whether any economically comparable country was a

significant producer.<sup>6</sup> In this case, we have determined to use the broader category of frozen fish fillets data as the basis for identifying producers of comparable merchandise. Therefore, consistent with cases that have similar circumstances as are present here, we obtained export data for each country identified in the surrogate country list.<sup>7</sup> Of the non-exhaustive list of economically comparable countries mentioned above, all countries were also found to be significant producers. See "Factor Valuations" section below.

After applying the first two selection criteria, if more than one country remains, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data from those countries. See Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004). In this case, the whole fish input is the most significant input because it accounts for the largest percentage of NV as fish fillets are produced directly from the whole live fish. As such, we must consider the availability and reliability of the SVs for whole fish on the record. This record does not contain any data for whole live fish for Indonesia, India, Sri Lanka, and Pakistan. Therefore, these countries will not be considered for primary surrogate country purposes at this time. However, this record does contain whole fish SV data from both Bangladesh and the Philippines.

## Bangladesh

Respondents placed on the record of this segment of the review the *Economics of Aquaculture Feeding Practices in Selected Asia Countries: FAO Technical Paper 505* (Rome, 2007) ("FAO Report"). See Respondents' September 10, 2010, Surrogate Country and Value Comments.

## Philippines

In the preliminary results of the sixth administrative and new shipper

reviews, the Department selected the Philippines as the primary surrogate country based on an analysis of the Bangladeshi and Philippine data on the record at the time of the preliminary results.<sup>8</sup> The Philippine data submitted is the *Fisheries Statistics of the Philippines, 2006–2008*, published by the Bureau of Agricultural Statistics, Department of Agriculture ("Fisheries Statistics"), in November 2009. In the 6th AR Prelim, the Department found that the *Fisheries Statistics* satisfies each of the criteria that the Department considers in selecting a surrogate country and is closer to the POR than the *FAO Report* is to the POR.

## Analysis

First, we note that both the *FAO Report* data and the *Fisheries Statistics* data are publicly available, tax- and duty-exclusive, and from an approved surrogate country. Therefore, we examined each source with respect to the broad market average, specificity, and contemporaneity. With respect to the broad market average, we find that the data from both the *FAO Report* and the *Fisheries Statistics* are considered broad market averages. As we have stated in prior reviews, the *FAO Report* data were obtained directly from 60 fish farmers located in a region that produces fish in Bangladesh. The *FAO Report* states why this particular region was selected (i.e., importance of this region in *Pangasius* farming, the availability of hatchery produced fry, availability of ponds, warm climate, cheap and abundant labor). See *FAO Report* at 38. Similarly, the Philippine data were collected from 34 respondents (i.e., "farmers, operators, or caretakers. Other possible respondents are aqua farm traders and persons knowledgeable of aquaculture production in the locality.") See Petitioners' September 10, 2010 submission. Although we recognize that the Philippine data volume is only 12 metric tons, while the Bangladeshi data is 178 metric tons, for these preliminary results, we find that both of these sources are significant broad market averages because they represent national level data of similar quality using similar collection methods (i.e., interviews, questionnaires, etc.).

With respect to specificity, the Bangladeshi data in the *FAO Report* specifically identify the whole live fish examined as *Pangasianodon Hypophthalmus*, which is one of the fish

Socialist Republic of Vietnam: Thien Ma Seafood Company Ltd., ("THIMACO") dated January 17, 2010, and Memorandum from Alan Ray, Case Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9: Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Reviews of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: International Development & Investment Corporation ("IDI"), dated January 17, 2010.

<sup>4</sup> It is Departmental practice, pursuant to 19 CFR 408, to use per capita GNI, rather than per capita gross domestic product, because while the two measures are very similar, per capita GNI is reported across almost all countries by an authoritative source (the World Bank), and because the Department believes that the per capita GNI represents the single best measure of a country's level of total income and, thus, level of economic development. See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61716 at n. 2. (October 19, 2006) ("Antidumping Methodologies Notice").

<sup>5</sup> The Department notes that these six countries are part of a non-exhaustive list of countries that are at a level of economic development comparable to the PRC. See Memorandum from Carol Showers, Director, Office of Policy, to Alex Villanueva, Program Manager, AD/CVD Enforcement, Office 9: Request for a list of Surrogate Countries for a New Shipper Review of the Antidumping Duty Order on Certain Frozen Fish Fillets ("Fish Fillets") from the Socialist Republic of Vietnam, dated June 4, 2010.

<sup>6</sup> See *Certain Magnesite Carbon Bricks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 11847 (March 12, 2010) (unchanged for the final determination, 75 FR 45468 (August 2, 2010)).

<sup>7</sup> Global Trade Atlas ("GTA") data from 2007 is the only year in which all countries have data for comparison. 2008 and 2009 data contains gaps preventing the Department from making appropriate comparisons. See Memorandum to the File through Alex Villanueva, Program Manager, Office 9 from Alan Ray, Case Analyst, Office 9: Antidumping Duty New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Values for the Preliminary Results, dated January 17, 2011 ("Surrogate Values Memo") at Attachment I.

<sup>8</sup> See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Preliminary Results and Partial Rescission of the Sixth Antidumping Duty Administrative and Sixth New Shipper Review*, 75 FR 56062 (September 15, 2010) ("6th AR Prelim").

fillets species identified in the scope of the *Order*. The Philippine data in the *Fisheries Statistics* are identified as *Pangasius*, which is the genus name for the fish fillets subject to the *Order*. First, we note that *Pangasius* is a genus name and *Pangasianodon Hypophthalmus* is a species in that genus. In prior reviews, we used whole fish SV data identified as *Pangas* and found it comparable to the fish input used by the respondents. See *3rd AR Final Results* at Comment 4.<sup>9</sup> In this case, although the whole fish data from Bangladesh are more specific to the input used by Respondents in producing fish fillets, we note that the record does not contain any information that would lead us to preliminarily determine that any difference between the two sources would necessarily generate a difference in price. Moreover, *Pangasianodon Hypophthalmus* is considered a component of *Pangasius* so it is reasonable to find that the *Pangasius* price from the Philippines in the *Fisheries Statistics* is likely to include *Pangasianodon Hypophthalmus* and other comparable species names also listed in the *Order*.

Finally, with respect to contemporaneity, we find that the Philippine data are closer to the POR as they are based on data collected in calendar year 2008. See *Fisheries Statistics*. The Bangladeshi data in the *FAO Report* are from October 2005 through February 2006. Therefore, the data from the Philippines are closer to the POR, than the Bangladeshi data.

After examining all the factors considered in selecting the SV for fish as part of our surrogate country analysis, we find that the data available from the Philippines for the whole live fish represent the best SVs for these preliminary results. Given that Philippines data are closer to the POR, as equally a broad market average as the Bangladeshi data, and of a similar genus of the fish used by Respondents to produce fish fillets, we preliminarily select the Philippines as the primary surrogate country.

#### 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 restraint or direction over the other person.”

Finally, according to 19 CFR 351.401(f)(1) and (2), two or more companies may be treated as a single entity for antidumping duty purposes if (1) the producers are affiliated, (2) the producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (3) there is a significant potential for manipulation of price or production. See 19 CFR 351.401(f)(1) and (2).

We preliminarily find Golden Fish Seafood Company Limited (“GOFICO”) and THIMACO to be affiliated within the meaning of section 771(33)(E) of the Act, based on ownership. THIMACO wholly owns GOFICO. See THIMACO’s April 15, 2010, section A questionnaire response. With respect to whether the two companies should be considered a single entity, we look to the factors set forth in 19 CFR 351.401(f)(1) and (2). Those factors include the following: (1) If two or more affiliated producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production; (2) the level of common ownership; (3) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (4) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

THIMACO and GOFICO’s relationship satisfies each of the factors we consider in determining whether companies should be considered a single entity.

See *id.* Because both THIMACO and GOFICO have production facilities for identical products; share 100 percent common ownership; share 100 percent board members and certain management employees; and are intertwined in sharing of employees and facilities, and conducted significant transactions with each other during the POR, we find that THIMACO and GOFICO should be treated as a single entity in these preliminary results.

#### U.S. Price

##### Export Price

For THIMACO’s and IDI’s export price (“EP”) sales, we used the EP methodology, pursuant to section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation and constructed export price was not otherwise warranted by the facts on the record. We calculated EP based on cost and freight foreign port price to the first unaffiliated purchaser in the United States. We also deducted foreign inland freight, and foreign brokerage and handling from the starting price (or gross unit price), in accordance with section 772(c) of the Act. We reviewed the movement expenses incurred in Vietnam by IDI and THIMACO 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 SVs. See Surrogate Values Memo for details regarding the SVs for movement expenses.

#### Normal Value

##### 1. Methodology

Section 773(c)(1)(B) of the Act provides that the Department shall determine the NV using an 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 an FOP methodology if: (1) The merchandise is exported from an NME 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.

<sup>9</sup> 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) and accompanying Issues and Decision Memorandum (“*3rd AR Final Results*”).

IDI 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 IDI's reported inputs in the NV calculation.

THIMACO reported the inputs beginning with fish fry and fingerlings, as it operated farms and processing facilities during the POR. See Verification Report and THIMACO's section D questionnaire response. However, at verification, it was found that THIMACO had provided unreliable farming FOPs. Specifically, four out of eight of the farming factors that THIMACO reported were found to not be accurate for the purpose of calculating NV. See Verification Report at 2. Therefore, the Department will account for THIMACO's reported inputs in the calculation of NV beginning with the purchase of food-size fish at the processing stage of production.

## 2. Factor Valuations<sup>10</sup>

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by IDI and THIMACO during the POR, although for THIMACO, NV was calculated beginning at the processing stage of production. The Department valued the processing FOPs using publicly available Philippine and Bangladeshi SVs. The Philippines was our first surrogate country source from which to obtain data to value inputs, and when data were not available from there, we used Bangladeshi sources. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available SVs. In selecting the SVs, we 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 the SVs a surrogate freight cost, and in the case of import statistics SVs, 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 court decision in *Sigma Corp. v. United States*, 24 C.I.T. 97, 86 F. Supp. 2d 1344 (CIT 2000). Where we did not use import statistics, we calculated freight

based on the reported distance from the supplier to the factory. For those values not contemporaneous with the POR, we adjusted for inflation using data published in the International Monetary Fund's International Financial Statistics.

In accordance with the *OTCA 1988* legislative history, the Department continues to apply its long-standing practice of disregarding SVs if it has a reason to believe or suspect the source data may be subsidized.<sup>11</sup> In this regard, the Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies.<sup>12</sup> Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea and Thailand may have benefitted from these subsidies.

Additionally, we disregarded prices from NME countries. Finally, imports that were labeled as originating from an "unspecified" country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies. For further detail, see Surrogate Values Memo.

We valued FOPs in the preliminary results of this review using SVs, as follows (see Surrogate Values Memo for more specific details). Except as noted below, we valued raw materials and packing materials using weighted-average Philippines import values derived from GTA and Bangladeshi import values derived from U.N.

<sup>11</sup> See *Omnibus Trade and Competitiveness Act of 1988*, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) ("OTCA 1988") at 590.

<sup>12</sup> See, e.g., *Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010) and accompanying Issues and Decision Memorandum at 4–5; *Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review*, 70 FR 45692 (August 8, 2005) and accompanying Issues and Decision Memorandum at 4; see *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009) and accompanying Issues and Decision Memorandum at 17, 19–20; see *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 50410 (October 3, 2001) and accompanying Issues and Decision Memorandum at 23.

Comtrade.<sup>13</sup> The Philippines import statistics that we obtained from GTA were published by the Philippines National Statistics Office and are contemporaneous with the POR.<sup>14</sup> The Bangladeshi import statistics were published by the *2005 Statistical Yearbooks of Bangladesh*, published by the Bangladesh Bureau of Statistics, Planning Division, Ministry of Planning.

On May 14, 2010, the Court of Appeals for the Federal Circuit ("CAFC") in *Dorbest Ltd. v. United States*, 604 F.3d 1363, 1372 (CAFC 2010), found that the "{regression-based} method for calculating wage rates {as stipulated by 19 CFR 351.408(c)(3)} uses data not permitted by {the statutory requirements laid out in section 773 of the Act (i.e., 19 U.S.C. 1677b(c))}." The Department is continuing to evaluate options for determining labor values in light of the recent CAFC decision. However, for these preliminary results, we have calculated an hourly wage rate to use in valuing Respondents' reported labor input by averaging industry-specific earnings and/or wages in countries that are economically comparable to Vietnam and that are significant producers of comparable merchandise.

For the preliminary results of these NSRs, the Department is valuing labor using a simple average industry-specific wage rate using earnings or wage data reported under Chapter 5B by the International Labor Organization ("ILO"). To achieve an industry-specific labor value, we relied on industry-specific labor data from the countries we determined to be both economically comparable to Vietnam, and significant producers of comparable merchandise.<sup>15</sup> A full description of the industry-specific wage rate calculation methodology is provided in the Surrogate Values Memo. The Department calculated a simple average industry-specific wage rate of \$1.09 for these preliminary results. Specifically,

<sup>13</sup> Available online at: <http://www.gtis.com/gta.htm>.

<sup>14</sup> See Surrogate Values Memo.

<sup>15</sup> The Department notes that for purposes of valuing wage rates alone, the Department believes the use of multiple data points is important given the nature of that input. See *Certain Activated Carbon From the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review*, 75 FR 70208 (November 17, 2010) and accompanying Issues and Decision Memorandum at Comment 4f. Accordingly, the Department's current practice is to define significant producers as any country with exports of comparable merchandise in deriving a list of wage rates to use in its calculations. For all other inputs, the Department continues to review several factors, and not exports alone, in determining whether or not a country is a significant producer of comparable merchandise.

<sup>10</sup> In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping NSR, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of the preliminary results.

for this review, the Department has calculated the wage rate using a simple average of the data provided to the ILO under Sub-Classification 05 of the ISIC–Revision 3 standard by countries determined to be both economically comparable to Vietnam and significant producers of comparable merchandise. The Department finds the two-digit description under ISIC–Revision 3 (Fishing, operation of fish hatcheries and fish farms; service activities incidental to fishing) to be the best available wage rate SV on the record because it is specific and derived from industries that produce merchandise comparable to the subject merchandise. Consequently, we averaged the ILO industry-specific wage rate data or earnings data available from the following countries found to be economically comparable to Vietnam and significant producers of comparable merchandise: Bangladesh, Bolivia, Cote d'Ivoire, Egypt, Ghana, Guyana, India, Indonesia, Kenya, Mali, Mauritania, Nicaragua, Pakistan, the Philippines, Sao Tome and Principe, Senegal, Sri Lanka, Sudan, Yemen, and Zambia. For further information on the calculation of the wage rate, see Surrogate Values Memo.

The Department is using the financial statements of Bluefin Seafood Export, Inc. and RDEX Food International Phils., Inc. for the calculation of the surrogate financial ratios. Both of these companies are Philippine fish processors. Truck movement expenses were valued using the “Cost of Doing Business in Camarines Sur.” Brokerage and handling was valued using a price listed by the Philippine Tariff Commission. Finally, marine insurance was valued using a price listed by RJG Consultants.

Philippine and other SVs denominated in foreign currencies have been converted to U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. These exchange rates can be accessed at the website of Import Administration.<sup>16</sup> For further details regarding the SVs used for these preliminary results, see Surrogate Values Memo.

### Preliminary Results of Review

The Department has preliminarily determined that the following dumping margins exist for the period August 1, 2009, through February 15, 2010:

### CERTAIN FROZEN FISH FILLETS FROM VIETNAM

Manufacturer/exporter	Per unit assessment
THIMACO .....	3.25
IDI .....	3.96

### 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 these NSRs, 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 these NSRs, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party within ten days of 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.<sup>17</sup>

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of the preliminary results of these NSRs. 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 five 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

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 NSRs, 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 19 CFR 351.214(i).

### 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.<sup>18</sup> 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 these reviews if any importer-specific assessment rate calculated in the final results of these reviews is above *de minimis*.

### Cash-Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of these NSRs for all shipments of subject merchandise from THIMACO and IDI 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 THIMACO, the cash deposit rate will be \$3.25/Kg; and (2) for subject merchandise produced and exported by IDI, the cash deposit rate will be \$3.96/Kg. 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-exporters. These cash deposit requirements, when

<sup>16</sup> The Import Administration Web site is available at: <http://ia.ita.doc.gov/exchange/index.html>.

<sup>17</sup> 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.

<sup>18</sup> We divided the total dumping margins (calculated as the difference between NV and EP) 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.

imposed, shall remain in effect until further notice.

### Notification to Importers

This notice serves as a preliminary reminder to importers of its 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 notice 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 14, 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2011-1381 Filed 1-24-11; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-912]

### Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Notice of Rescission of Changed Circumstances Review

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

**DATES:** *Effective Date:* January 25, 2011.

**SUMMARY:** On June 16, 2010, the Department of Commerce ("the Department") published in the **Federal Register** a notice of initiation of a changed circumstances review ("CCR") of the antidumping duty order on certain new pneumatic off-the-road tires ("OTR tires") from the People's Republic of China ("PRC") in order to determine whether Shandong Linglong Tyre Co., Ltd. ("Shandong Linglong") is the successor-in-interest to Zhaoyuan Leo Rubber Co., Ltd. ("Leo Rubber") for the purpose of determining antidumping duty liability.<sup>1</sup> On December 8, 2010, Ling Long North America LLC, doing business as Atlas Tire, an affiliated importer of record and the requesting party, submitted a request to rescind

this CCR. The Department is now rescinding this CCR.

### FOR FURTHER INFORMATION CONTACT:

Raquel Silva or Erin Begnal, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-6475 or (202) 482-1442.

### Background

On September 4, 2008, the Department published in the **Federal Register** an antidumping duty order on OTR tires from the PRC.<sup>2</sup> As part of the *Order*, Leo Rubber, as a separate rate respondent that was not individually reviewed, was granted separate rate status and received the weighted-average dumping margin of 12.91 percent.<sup>3</sup>

On April 21, 2010, Atlas Tire filed a submission requesting that the Department conduct a CCR of the *Order*.<sup>4</sup> On June 16, 2010, the Department initiated a CCR of the antidumping duty order on OTR tires.<sup>5</sup> On December 8, 2010, Atlas Tire withdrew its request for a CCR.<sup>6</sup>

### Scope of the Order

The products covered by the order are new pneumatic tires designed for off-the-road ("OTR") and off-highway use, subject to exceptions identified below. Certain OTR tires are generally designed, manufactured and offered for sale for use on off-road or off-highway surfaces, including but not limited to, agricultural fields, forests, construction sites, factory and warehouse interiors, airport tarmacs, ports and harbors, mines, quarries, gravel yards, and steel mills. The vehicles and equipment for which certain OTR tires are designed for use include, but are not limited to: (1) Agricultural and forestry vehicles and equipment, including agricultural

tractors,<sup>7</sup> combine harvesters,<sup>8</sup> agricultural high clearance sprayers,<sup>9</sup> industrial tractors,<sup>10</sup> log-skidders,<sup>11</sup> agricultural implements, highway-towed implements, agricultural logging, and agricultural, industrial, skid-steers/mini-loaders;<sup>12</sup> (2) construction vehicles and equipment, including earthmover articulated dump products, rigid frame haul trucks,<sup>13</sup> front end loaders,<sup>14</sup> dozers,<sup>15</sup> lift trucks, straddle carriers,<sup>16</sup> graders,<sup>17</sup> mobile cranes,<sup>18</sup> compactors; and (3) industrial vehicles and equipment, including smooth floor, industrial, mining, counterbalanced lift trucks, industrial and mining vehicles other than smooth floor, skid-steers/mini-loaders, and smooth floor off-the-road counterbalanced lift trucks.<sup>19</sup> The

<sup>7</sup> Agricultural tractors are dual-axle vehicles that typically are designed to pull farming equipment in the field and that may have front tires of a different size than the rear tires.

<sup>8</sup> Combine harvesters are used to harvest crops such as corn or wheat.

<sup>9</sup> Agricultural sprayers are used to irrigate agricultural fields.

<sup>10</sup> Industrial tractors are dual-axle vehicles that typically are designed to pull industrial equipment and that may have front tires of a different size than the rear tires.

<sup>11</sup> A log-skidder has a grappling lift arm that is used to grasp, lift and move trees that have been cut down to a truck or trailer for transport to a mill or other destination.

<sup>12</sup> Skid-steer loaders are four-wheel drive vehicles with the left-side drive wheels independent of the right-side drive wheels and lift arms that lie alongside the driver with the major pivot points behind the driver's shoulders. Skid-steer loaders are used in agricultural, construction and industrial settings.

<sup>13</sup> Haul trucks, which may be either rigid frame or articulated (*i.e.*, able to bend in the middle) are typically used in mines, quarries and construction sites to haul soil, aggregate, mined ore, or debris.

<sup>14</sup> Front loaders have lift arms in front of the vehicle. They can scrape material from one location to another, carry material in their buckets, or load material into a truck or trailer.

<sup>15</sup> A dozer is a large four-wheeled vehicle with a dozer blade that is used to push large quantities of soil, sand, rubble, *etc.*, typically around construction sites. They can also be used to perform "rough grading" in road construction.

<sup>16</sup> A straddle carrier is a rigid frame, engine-powered machine that is used to load and offload containers from container vessels and load them onto (or off of) tractor trailers.

<sup>17</sup> A grader is a vehicle with a large blade used to create a flat surface. Graders are typically used to perform "finish grading." Graders are commonly used in maintenance of unpaved roads and road construction to prepare the base course onto which asphalt or other paving material will be laid.

<sup>18</sup> *i.e.*, "on-site" mobile cranes designed for off-highway use.

<sup>19</sup> A counterbalanced lift truck is a rigid framed, engine-powered machine with lift arms that has additional weight incorporated into the back of the machine to offset or counterbalance the weight of loads that it lifts so as to prevent the vehicle from overturning. An example of a counterbalanced lift truck is a counterbalanced fork lift truck. Counterbalanced lift trucks may be designed for use on smooth floor surfaces, such as a factory or warehouse, or other surfaces, such as construction sites, mines, *etc.*

<sup>1</sup> See *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Initiation of Changed Circumstances Review*, 75 FR 34098 (June 16, 2010) ("Initiation Notice").

<sup>2</sup> See *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Notice of Amended Final Affirmative Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 73 FR 51624 (September 4, 2008) ("Order").

<sup>3</sup> See *id.* at 51627.

<sup>4</sup> See Letter from Atlas Tire to the Department regarding: *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China, Request for Changed Circumstances Review*, dated April 21, 2010.

<sup>5</sup> See *Initiation Notice*.

<sup>6</sup> See Letter from Atlas Tire to the Department regarding: *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China, Rescission Request*, dated December 8, 2010.