



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

A-552-802

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

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 warmwater shrimp (“shrimp”) from the Socialist Republic of Vietnam (“Vietnam”).<sup>1</sup> The Department is conducting a new shipper review (“NSR”) of the *Order*, covering the period of review (“POR”) of February 1, 2010, through January 31, 2011. 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: (Insert date published in the *Federal Register*)

FOR FURTHER INFORMATION CONTACT: Susan Pulongbarit and Seth Isenberg, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14<sup>th</sup> Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482-4031 and (202) 482-0588.

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<sup>1</sup> 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) (“*Order*”).

## SUPPLEMENTARY INFORMATION

### *Background*

On February 28, 2011, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the “Act”), and section 351.214(c) of the Department’s regulations, the Department received a NSR request from Thong Thuan Company Limited and its subsidiary company, Thong Thuan Seafood Company Limited (collectively, “Thong Thuan”). Thong Thuan certified that it was the producer and exporter of the subject merchandise upon which the request was based. On March 23, 2011, the Department published a notice of initiation of the NSR of the *Order* for Thong Thuan.<sup>2</sup> On April 1, 2011, the Department issued its original antidumping duty questionnaire to Thong Thuan. Between April 29, 2011, and October 5, 2011, Thong Thuan submitted responses to the original and supplemental sections A, C, D, and Importer antidumping duty questionnaires.

On April 13, 2011, the Department sent Thong Thuan a letter requesting comments on surrogate country selection and information pertaining to valuing factors of production (“FOP”). On June 10, 2011, and July 17, 2011, Thong Thuan submitted surrogate country comments and surrogate value (“SV”) data.<sup>3</sup>

On September 7, 2011, the Department extended the deadline for the preliminary results of this review to November 9, 2011.<sup>4</sup> On November 1, 2011, the Department further extended

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<sup>2</sup> See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Review*, 76 FR 16384 (March 23, 2011).

<sup>3</sup> See Thong Thuan’s June 10, 2011 submission.

<sup>4</sup> See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Extension of Time Limit for the Preliminary Results of the New Shipper Review*, 76 FR 55350 (September 7, 2011).

the deadline to December 9, 2011.<sup>5</sup> On November 29, 2011, the Department fully extended the deadline to January 9, 2012.<sup>6</sup>

### *Scope of the Order*

The scope of the orders includes certain warmwater shrimp and prawns, whether frozen, wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,<sup>7</sup> deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of these orders, regardless of definitions in the Harmonized Tariff Schedule of the United States (“HTS”), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue

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<sup>5</sup> See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Extension of Time Limit for the Preliminary Results of the New Shipper Review*, 76 FR 67418 (November 1, 2011).

<sup>6</sup> See *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Extension of Time Limit for the Preliminary Results of the New Shipper Review*, 76 FR 73594 (November 29, 2011).

<sup>7</sup> “Tails” in this context means the tail fan, which includes the telson and the uropods.

shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of these orders. In addition, food preparations (including dusted shrimp), which are not “prepared meals,” that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of these orders.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the Pandalidae family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) Lee Kum Kee's shrimp sauce;<sup>8</sup> (7) canned warmwater shrimp and prawns (HTS subheading 1605.20.10.40); and (8) certain battered shrimp. Battered shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (“IQF”) freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

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<sup>8</sup> The specific exclusion for Lee Kum Kee's shrimp sauce applies only to the scope in the PRC case.

The products covered by these orders are currently classified under the following HTS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of these orders is dispositive.<sup>9</sup>

#### *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.<sup>10</sup> We calculated normal value (“NV”) in accordance with section 773(c) of the Act, which applies to NME countries.

#### *Separate Rate Determination*

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*

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<sup>9</sup> On April 26, 2011, the Department amended the antidumping duty order to include dusted shrimp, pursuant to the U.S. Court of International Trade (“CIT”) decision in *Ad Hoc Shrimp Trade Action Committee v. United States*, 703 F. Supp. 2d 1330 (CIT 2010) and the U.S. International Trade Commission (“ITC”) determination, which found the domestic like product to include dusted shrimp. Because the amendment of the antidumping duty order occurred after this POR, dusted shrimp continue to be excluded in this review. See *Certain Frozen Warmwater Shrimp From Brazil, India, the People’s Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision*, 76 FR 23227 (April 26, 2011); see also, *Ad Hoc Shrimp Trade Action Committee v. United States*, 703 F. Supp. 2d 1330 (CIT 2010) (“Ad Hoc”) and *Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam* (Investigation Nos. 731-TA-1063, 1064, 1066-1068 (Review), USITC Publication 4221, March 2011 (“ITC Review Final”).

<sup>10</sup> 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).

*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 NSR, Thong Thuan submitted complete responses to the separate rate section of the Department's NME questionnaire. The evidence submitted by Thong Thuan includes government laws and regulations on corporate ownership, business licenses, and narrative information regarding its operations and selection of management. 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 Thong Thuan.

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.<sup>11</sup>

In its questionnaire responses, Thong Thuan submitted evidence indicating an absence of *de facto* government control over its export activities. Specifically, this evidence indicates that: (1) Thong Thuan sets its own export prices independent of the government and without the approval of a government authority; (2) Thong Thuan retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) Thong Thuan 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 company's use of export revenues. Therefore, the Department preliminarily finds that Thong Thuan has established *prima facie* that it qualifies for a separate rate 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 sale made by Thong Thuan in this NSR.<sup>12</sup> We found that the sale by Thong Thuan was made on

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<sup>11</sup> 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).

<sup>12</sup> See, e.g., *Fourth New Shipper Review of Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty New Shipper Review*, 76 FR 45775 (August 1, 2011).

a *bona fide* basis.<sup>13</sup> Based on our investigation into the *bona fide* nature of the sale, the questionnaire responses submitted by Thong Thuan, and the company's eligibility for separate rates (*see* Separate Rate Determination section above), we preliminarily determine that Thong Thuan has met the requirement to qualify as a new shipper during this POR. Therefore, for the purposes of these preliminary results, we are treating Thong Thuan's sale of subject merchandise to the United States as an appropriate transaction for this NSR.

### *Surrogate Country*

When the Department conducts a review of 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. Further, pursuant to section 351.408(c)(2) of the Department's regulations, the Department will normally value FOPs in a single country, except for labor. The sources of the surrogate factor values are discussed under the "Normal Value" section below.<sup>14</sup>

As noted above, on April 13, 2011, the Department sent Thong Thuan a letter requesting comments on surrogate country selection and information pertaining to valuing FOPs. On June 10, 2011, and June 17, 2011, the Department received comments from Thong Thuan suggesting

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<sup>13</sup> For more detailed discussion of this issue, *see* Memorandum to the File, through Scot T. Fullerton, Program Manager, Office IX, from Susan Pulongbarit, International Trade Analyst, "*Bona Fide* Nature of the Sale in the Antidumping Duty New Shipper Review of Certain Warmwater Shrimp from the Socialist Republic of Vietnam: Thong Thuan Seafood Company Limited and its subsidiary company, Thong Thuan Seafood Company Limited," dated concurrently with this notice.

<sup>14</sup> *See also* Memorandum to the File, through Scot T. Fullerton, Program Manager, Office 9, "Fifth New Shipper Review of Frozen Warmwater Shrimp from Vietnam: Surrogate Values for the Preliminary Results," dated concurrently with this notice ("SV Memo").

that the Department select Bangladesh as the surrogate country, as well as Bangladeshi SV data.<sup>15</sup>

Pursuant to its practice, the Department received a list of potential surrogate countries from Import Administration's Office of Policy ("OP").<sup>16</sup> The OP determined that Bangladesh, Pakistan, India, Sri Lanka, the Philippines, and Indonesia were at a comparable level of economic development to Vietnam.<sup>17</sup> The Department considers the six countries identified by the OP in its Surrogate Country List as "equally comparable in terms of economic development."<sup>18</sup> Thus, we find that Bangladesh, Pakistan, India, Sri Lanka, the Philippines, and Indonesia are all at an economic level of development equally comparable to that of Vietnam. We note that the Surrogate Country List is a non-exhaustive list of economically comparable countries.

Thong Thuan submitted evidence that Bangladesh, Pakistan, India, Sri Lanka, the Philippines and Indonesia are all significant producers of comparable merchandise.<sup>19</sup> However, while we find that these countries are economically comparable to Vietnam and produce comparable merchandise, we note that the record contains limited publicly available SV factors of production ("FOP") information for India and Indonesia, but no publicly available SV FOP information for Pakistan, Sri Lanka, or the Philippines.

With regard to Bangladesh, the record contains publicly available SV factor information for the majority of FOPs. Given the above-cited facts, we find that the information on the record shows that Bangladesh is an appropriate surrogate country because Bangladesh is at a similar

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<sup>15</sup> See Thong Thuan's June 10, 2011, and June 17, 2011 submission.

<sup>16</sup> See Letter to All Interested Parties, from Scot T. Fullerton, Program Manager, regarding New Shipper Review of Warmwater Shrimp from the Socialist Republic of Vietnam: Surrogate Country Selection, dated April 13, 2011, at Attachment I ("Surrogate Country List").

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> See Thong Thuan's June 10, 2011 submission at Exhibit 1.

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 for the majority of the factors of production.

#### *U.S. Price*

In accordance with section 772(a) of the Act, the Department calculated the export price (“EP”) for sales to the United States, because the first sale to an unaffiliated party was made before the date of importation. The Department calculated EP based on the price to the unaffiliated purchaser in the United States. In accordance with section 772(c) of the Act, as appropriate, we deducted from the starting price to the unaffiliated purchaser foreign inland freight and brokerage and handling. Each of these services was either provided by an NME vendor or paid for using an NME currency. Thus, we based the deduction of these movement charges on SVs. Additionally, for international freight provided by an ME provider and paid in an ME currency, we used the actual cost per kilogram of the freight.<sup>20</sup>

#### *Normal Value*

##### A. 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 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.

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<sup>20</sup> See SV Memo for details regarding the SVs for movement expenses.

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.

B. Factor Valuations<sup>21</sup>

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to value the FOPs, but when a producer sources an input from an ME country and pays for it in an ME currency, the Department may value the factor using the actual price paid for the input. During the POR, Thong Thuan reported that it purchased a certain input from an ME supplier and paid for the input in an ME currency.<sup>22</sup> The Department confirmed that this input was produced in a ME country through supplemental questionnaires.

The Department has a rebuttable presumption that ME input prices are the best available information for valuing an input when the total volume of the input purchased from all ME sources during the period of investigation or review exceeds 33 percent of the total volume of the input purchased from all sources during the period.<sup>23</sup> In these cases, unless case-specific facts provide adequate grounds to rebut the Department's presumption, the Department will use the weighted-average ME purchase price to value the input. Alternatively, when the volume of an NME firm's purchases of an input from ME suppliers during the period is below 33 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department will weight-average the ME

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<sup>21</sup> In accordance with section 351.301(c)(3)(ii) of the Department's regulations, 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.

<sup>22</sup> See Letter from Thong Thuan, to Secretary of Commerce, regarding Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, dated June 2, 2011, at Exhibit D-4.

<sup>23</sup> See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717-18 (October 19, 2006) ("*Antidumping Methodologies*").

purchase price with an appropriate SV according to their respective shares of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption.<sup>24</sup> When a firm has made ME input purchases that may have been dumped or subsidized, are not *bona fide*, or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair determination of whether valid ME purchases meet the 33-percent threshold.<sup>25</sup> Because Thong Thuan's ME purchase of broodstock exceeded the 33-percent threshold, we have valued this input using the ME purchase price paid by Thong Thuan.

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by Thong Thuan for the POR. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available Bangladeshi SVs. In selecting 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 Bangladeshi import SVs 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 ("CAFC") 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.

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

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

source data may be subsidized.<sup>26</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>27</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.<sup>28</sup> Moreover, 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.<sup>29</sup> Lastly, the Department has also excluded imports identified as being from Bangladesh into Bangladesh because there is no information on the record regarding what these data represent (*e.g.*, another category of unspecified imports or the

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<sup>26</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>27</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.

<sup>28</sup> See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of 1998-1999 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part*, 66 FR 1953 (January 10, 2001) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>29</sup> See *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 56158 (September 12, 2011) (“*Fifth Vietnam Shrimp AR*”) unchanged at *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Amended Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 64307 (October 18, 2011) (“*Fifth Vietnam Shrimp Amended Final*”).

result of an error in reporting). Thus, these data do not represent the best available information upon which to rely for valuation purposes.<sup>30</sup>

Therefore, based on the information currently available, we have not used prices from these countries either in calculating the Bangladeshi import-based SVs or in calculating ME input values. In instances where an ME input was obtained solely from suppliers located in these countries, we used Bangladeshi import-based SVs to value the input.

The Department used UN ComTrade Statistics, provided by the UN Department of Economic and Social Affairs' Statistics Division, as its primary source of Bangladeshi SV data to value the raw material and packing material inputs that Thong Thuan used to produce the merchandise under review during the POR, except where listed below.<sup>31</sup> For a detailed description of all SVs, *see* SV Memo. The data represents cumulative values for the calendar year 2007, for inputs classified by the Harmonized Commodity Description and Coding System number. As noted above, for each input value, we used the average value per unit for that input imported into Bangladesh from all countries that the Department has not previously determined to be NME countries, countries that the Department has determined to be countries which subsidized exports (*i.e.*, Indonesia, South Korea, Thailand, and India), imports from unspecified countries and imports from Bangladesh into Bangladesh.

It is the Department's practice to calculate price index adjustors to inflate or deflate, as appropriate, SVs that are not contemporaneous with the POR using the wholesale price index ("WPI") for the subject country.<sup>32</sup> However, in this case, a WPI was not available for

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<sup>30</sup> *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 47771 (August 9, 2010) and accompanying Issues and Decision Memorandum at Comment 6.

<sup>31</sup> This can be accessed online at: <http://www.unstats.un.org/unsd/comtrade/>.

<sup>32</sup> *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).

Bangladesh. Therefore, where publicly available information contemporaneous with the POR with which to value factors could not be obtained, SVs were adjusted using the Consumer Price Index (“CPI”) rate for Bangladesh, or the WPI for Indonesia (for certain SVs where Bangladeshi data could not be obtained), as published in the *International Financial Statistics* of the International Monetary Fund.

Where necessary, the Department made currency conversions into 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. We relied on the daily exchange rates posted on the Import Administration website.<sup>33</sup>

Consistent with the *Fifth Vietnam Shrimp AR*, we valued labor using 2009 data collected by the Bangladesh Bureau of Statistics. We inflated the value using the POR average CPI rate.<sup>34</sup>

We valued electricity using data from the Bangladesh Ministry of Power, Energy, & Mineral Resources. This information was published on their Power Division’s website. We valued water using 2007 data from the Asian Development Bank. We inflated the value using the POR average CPI rate. We valued diesel using data published by the World Bank in “Bangladesh: Transport at a Glance,” published in June 2006. We inflated the value using the POR average CPI rate.

To value truck freight, we used data published in *2008 Statistical Yearbook of Bangladesh* published by the Bangladesh Bureau of Statistics. We inflated the value using the POR average CPI rate. We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in India. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by

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<sup>33</sup> See <http://www.trade.gov/ia/>, see also SV Memo.

<sup>34</sup> See *Fifth Vietnam Shrimp AR*, unchanged at *Fifth Vietnam Shrimp Amended Final*.

ocean transport in India that is published in *Doing Business 2010: India*, published by the World Bank. Because the price is for 2009, we inflated the value using the POR average CPI rate.

We valued the by-product using shell scrap values using a surrogate value for shrimp by-products based on a purchase price quote for wet shrimp shells from an Indonesian buyer of crustacean shells. Although we recognize that Thong Thuan reported by-products other than shells and that this surrogate value is not from Bangladesh, the primary surrogate country, this information represents the best information on the record and has been used in past case segments.<sup>35</sup> Moreover, we also note that this is the only surrogate value on the record for by-products, and as a consequence, is being used for these preliminary results. We inflated the value using the POR average CPI rate.<sup>36</sup>

To value factory overhead, selling, general and administrative expenses, and profit, we used the simple average of the 2009-2010 financial statement of Apex Foods Limited and the 2008-2009 financial statement of Gemini Seafood Limited, both of which are Bangladeshi shrimp processors.<sup>37</sup>

*Preliminary Results of Review*

The Department has preliminarily determined that the following dumping margin exists for the period February 1, 2010, through January 31, 2011:

Manufacturer/Exporter	Margin
Thong Thuan Company Limited and its subsidiary company, Thong Thuan Seafood Company Limited	0.00%

*Disclosure*

<sup>35</sup> See SV Memo which contains the following memorandum: Memorandum to Barbara E. Tillman, Director, Office of AD/CVD Enforcement VII, through Maureen Flannery, Program Manager, Office of AD/CVD Enforcement VII, from Christian Hughes and Adina Teodorescu, Case Analysts, “Surrogate Valuation of Shell Scrap: Freshwater Crawfish Tail Meat from the People’s Republic of China (PRC), Administrative Review 9/1/00-8/31/00 and New Shipper Reviews 9/1/00-8/31/01 and 9/1/00-10/15/01.”

<sup>36</sup> *Id.*

<sup>37</sup> See SV Memo at Exhibit 7.

The Department will disclose to parties of this proceeding the calculation performed in reaching the preliminary results within five days of the date of publication of this notice in accordance with section 351.224(b) of the Department's regulations.

### *Comments*

In accordance with section 351.301(c)(3)(ii) of the Department's regulations, for the final results, 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 section 351.301(c)(1) of the Department's regulations, for the final results of this NSR, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party within 10 days of the applicable deadline for submission of such factual information. However, the Department notes that section 351.301(c)(1) of the Department's regulations permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record.<sup>38</sup>

In accordance with section 351.309(c)(ii) of the Department's regulations, 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 this NSR. In accordance with section 351.309(d) of the Department's regulations, 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. The Department requests that interested parties provide an executive summary of each argument contained within the case briefs and rebuttal briefs.

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<sup>38</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.

Any interested party may request a hearing within 30 days of publication of these preliminary results.<sup>39</sup> 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, 14<sup>th</sup> Street and Constitution Avenue, NW, Washington, DC 20230.

The Department intends to issue the final results of this NSR, 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 351.214(i) of the Department's regulations.

#### *Assessment Rates*

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this NSR. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this NSR. 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 section 351.212(b)(1) of the Department's regulations, we will calculate importer-specific (or customer) *ad valorem* 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 review is above *de minimis*.

#### *Cash-Deposit Requirements*

The following cash deposit requirement will be effective upon publication of the final results of this NSR for all shipments of subject merchandise produced and exported from Thong

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<sup>39</sup> See section 351.310(c) of the Department's regulations.

Thuan 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 Thong Thuan, the cash deposit rate will be the rate established in the final results of this NSR. If the cash deposit rate calculated in the final results is zero or *de minimis*, no cash deposit will be required for the specific producer-exporter combination listed above; (2) for subject merchandise exported by Thong Thuan but not manufactured by Thong Thuan, the cash deposit rate will continue to be the Vietnam-wide rate (*i.e.*, 25.76 percent); and (3) for subject merchandise manufactured by Thong Thuan, but exported by any other party, the cash deposit rate will be the Vietnam-wide rate (*i.e.*, 25.76 percent). The cash deposit requirement, when imposed, shall remain in effect until further notice.

#### *Notification to Importers*

This notice serves as a preliminary reminder to importers of its responsibility under section 351.402(f)(2) of the Department's regulations 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 sections 351.214(h) and 351.221(b)(4) of the Department's regulations.

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Christian Marsh  
Acting Assistant Secretary  
for Import Administration

January 3, 2012  
Date

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