

On January 2, 2003, the Department granted an extension of time to the respondents and the voluntary Section A respondents to submit their second Section A questionnaire responses. On January 8, 2003, Agifish, one of the respondents, submitted a revised Sections C and D supplemental response. On January 10, 2003, the Department issued a section Sections C and D supplemental questionnaire to the respondents. On January 10, 2003, the respondents submitted an extension of time to submit their second Sections C and D supplemental questionnaire responses. On January 14, 2003, the Department granted an extension of time to the respondents to submit their second Sections C and D supplemental questionnaire responses. On January 16, 2003, the petitioners submitted comments relevant to the Department's preliminary determination. On January 17, 2003, the respondents submitted their responses to the second Sections C & D supplemental questionnaire. Also on January 17, 2003, the respondents submitted a letter requesting the Department to reject the petitioners' submission of January 16, 2003 as untimely. On January 21, 2003, the respondents submitted comments requesting that the Department use their actual reported factors of production. On January 22, 2003, the petitioners submitted a letter requesting that the Department reject the respondents' January 16, 2003 submission on the grounds that it was untimely filed. On January 23, 2003, the respondents submitted a request that the Department not use the petitioners' recently filed submissions for the preliminary determination. Also on January 23, 2003, the respondents and the voluntary Section A respondents requested that the Department postpone the final determination until no later than 135 days after the date of publication of the preliminary determination.

#### Postponement of Final Determination

Section 735(a) of the Act provides that a final determination may be postponed until no later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination

be accompanied by a request for an extension of the provisional measures from a four-month period to not more than six months.

On January 23, 2003, the respondents and the voluntary Section A respondents requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the publication of the preliminary determination. The respondents and the voluntary Section A respondents also included a request to extend the provisional measures to not more than six months after the publication of the preliminary determination. Accordingly, since we have made an affirmative preliminary determination, and the requesting parties account for a significant proportion of the exports of the subject merchandise, we have postponed the final determination until no later than 135 days after the date of publication of the preliminary determination, and are extending the provisional measures accordingly.

#### Period of Investigation

The period of investigation ("POI") is October 1, 2001 through March 31, 2002. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition (June 28, 2001). See 19 CFR 351.204(b)(1).

#### Scope of Investigation

For purposes of this investigation, the product covered is frozen fish fillets, including regular, shank, and strip fillets, whether or not breaded or marinated, of the species *Pangasius Bocourti*, *Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*), and *Pangasius Micronemus*. 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 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<sup>1</sup> (Frozen Sole Fillets) of the Harmonized Tariff Schedule of the United States ("HTSUS"). This investigation covers all frozen fish fillets meeting the above specification, regardless of tariff classification. Although the HTSUS subheadings are

<sup>1</sup> The petitioners have included this tariff classification code because they believe that the merchandise under investigation is entering the United States under this classification based on previous uses of the term "sole" to describe Vietnamese basa and tra.

provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

On August 13, 2002, the respondents submitted comments regarding the scope of this investigation. On August 22, 2002, the petitioners also submitted comments regarding the scope language. Citing a report from Tyson Roberts at the California Academy of Sciences and Bhavalit Vidthayanon, National Inland Fisheries Institute, the respondents argued that *Pangasius Micronemus* is an outdated and inaccurate designation that has not been used by the scientific community since the early 1990s. The respondents argued that biologists who specialize in the freshwater fish of Southeast Asia now include the fish once thought to belong to the separate species *Pangasius Micronemus* as part of the species *Pangasius Hypophthalmus*, a correct scientific designation that is already included in the scope of the antidumping investigation. Consequently, the respondents requested that the Department examine more closely the appropriateness of including *Pangasius Micronemus* in the scope of this antidumping investigation.

The petitioners argue that *Pangasius Micronemus* must remain within the scope of this antidumping investigation. According to the petitioners, *Pangasius Micronemus* is a designation that has been, and continues to be, used to describe the species of fish that are being filleted, frozen and exported to the United States, and which are intended to be covered by the scope of this investigation. Referencing the company websites from some of the mandatory and voluntary Section A respondents in this investigation, the petitioners note that *Pangasius Micronemus* continues to be used interchangeably with the *Pangasius Hypophthalmus* species appellation. In addition, the petitioners note that the U.S. Food and Drug Administration continues to recognize *Pangasius Micronemus* as a separate scientific description.

For this preliminary determination, we continue to include the species *Pangasius Micronemus* in the description of the scope. The evidence on the record clearly demonstrates that the producers/exporters of the merchandise under investigation continue to market the species designation *Pangasius Micronemus*. For example, Afex's (a voluntary Section A respondent) product brochure identifies *Pangasius Micronemus* as the live fish species used to produce the subject merchandise. Furthermore, the petitioners submitted a news article regarding Agifish, one of the