

for information regarding vessel captains.

**Needs and Uses:** NOAA National Marine Fisheries Service (NMFS) needs this data collection to properly implement the referendum procedures specified in the Magnuson-Stevens Fishery Conservation and Management Act (Act). The Act provides that on or after October 1, 2000, the Gulf of Mexico Fishery Management Council may prepare and submit a fishery management plan, plan amendment, or regulation for the Gulf of Mexico commercial red snapper fishery that creates an individual fishing quota (IFQ) program or that authorizes the consolidation of licenses, permits, or endorsements that result in different trip limits for vessels in the same class. These actions can only take place if the preparation of such plan, amendment, or regulation is approved in a referendum, and only if the submission to the Secretary of such plan, amendment, or regulation is approved in a subsequent referendum. NMFS also needs to gather data about vessel captains, who are eligible to participate in the referenda, from permit holders with red snapper endorsements.

**Affected Public:** Business or other for-profit organizations, individuals or households.

**Frequency:** On occasion.

**Respondent's Obligation:** Voluntary.

**OMB Desk Officer:** David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: May 21, 2003.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

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**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-557-812, A-570-884]

#### Notice of Initiation of Antidumping Duty Investigations: Certain Color Television Receivers From Malaysia and the People's Republic of China

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

**ACTION:** Initiation of antidumping duty investigations.

**EFFECTIVE DATE:** May 29, 2003.

**FOR FURTHER INFORMATION CONTACT:** Irina Itkin at (202) 482-0656, or Michael Strollo at (202) 482-0629, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

#### Initiation of Investigations

##### *The Petitions*

On May 2, 2003, the Department of Commerce ("the Department") received petitions filed in proper form by Five Rivers Electronic Innovations, LLC ("Five Rivers"), the International Brotherhood of Electrical Workers ("IBEW"), and the Industrial Division of the Communications Workers of America ("IUE-CWA") (collectively "the petitioners").

In accordance with section 732(b)(1) of the Tariff Act of 1930 ("the Act"), the petitioners allege that imports of color television receivers ("CTVs") from Malaysia and the People's Republic of China ("the PRC"), are, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that imports from Malaysia and the PRC, are materially injuring, or are threatening to materially injure, an industry in the United States.

The Department finds that the petitioners filed these petitions on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and 771(9)(D) of the Act and they have demonstrated sufficient industry support with respect to each of the antidumping investigations that they are requesting the Department to initiate. *See infra*, "Determination of Industry Support for the Petitions."

##### *Scope of Investigations*

For purposes of these investigations, the term "certain color television receivers" includes complete and incomplete direct-view or projection-type cathode-ray tube color television

receivers, with a video display diagonal exceeding 52 centimeters, whether or not combined with video recording or reproducing apparatus, which are capable of receiving a broadcast television signal and producing a video image. Specifically excluded from these investigations are computer monitors or other video display devices that are not capable of receiving a broadcast television signal.

The color television receivers subject to these investigations are currently classifiable under subheadings 8528.12.2800, 8528.12.3250, 8528.12.3290, 8528.12.4000, 8528.12.5600, 8528.12.3600, 8528.12.4400, 8528.12.4800, and 8528.12.5200 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the merchandise under investigation is dispositive.

As discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

##### *Determination of Industry Support for the Petitions*

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the

petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.<sup>1</sup>

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

In their initial petitions and subsequent submissions, the petitioners state that they comprise well over 50 percent of U.S. CTV production. The petitions identify three additional U.S. companies engaged in the production of CTVs, none of which have taken a position on (either for or against) the petitions. Through data provided by the petitioners and our own independent

research, we have determined that the CTV production of these three companies is not high enough to place the petitioners' industry support in jeopardy. Based on all available information, we agree that the petitioners comprise over 50 percent of all domestic CTV production.

Our review of the data provided in the petition and other information readily available to the Department indicates that the petitioners have established industry support representing over 50 percent of total production of the domestic like product, requiring no further action by the Department pursuant to section 732(c)(4)(D) of the Act. In addition, the Department received no opposition to the petitions from domestic producers of the like product. Therefore, the domestic producers or workers who support the petitions account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) of the Act are met. Furthermore, the domestic producers or workers who support the petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petitions. Thus, the requirements of section 732(c)(4)(A)(ii) of the Act also are met. Accordingly, the Department determines that the petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

With regard to the definition of domestic like product, the petitioner does not offer a definition of domestic like product distinct from the scope of the investigations. On May 19, 2003, Funai Electric Malaysia Sdn., Bhd., and Funai Corporation, Inc., a Malaysian producer of the subject merchandise and importer/reseller, respectively (collectively known as "Funai"), challenged industry support for the petitions, in accordance with section 732(c)(4)(E) of the Act. In addition, on May 20, 2003, Sichuan Changhong Electric Co., Ltd. also challenged industry support for the petitions. On May 21, 2003, the petitioners filed their reply to both of these challenges.

Based on our analysis of the information presented by the petitioners, we have determined that there is a single domestic like product, CTVs, which is defined in the "Scope of Investigations" section above, and we have analyzed industry support in terms of this domestic like product. For more information on our analysis and the data upon which we relied, see Import Administration Antidumping

Investigation Initiation Checklist ("Initiation Checklist"), Industry Support section and Appendix 1, dated May 22, 2003, on file in the Central Records Unit of the main Department of Commerce building.

#### *Export Price and Normal Value*

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations. The sources of data for the deductions and adjustments relating to U.S. and foreign market prices, constructed value ("CV"), and factors of production are discussed in greater detail in the Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate.

Regarding an investigation involving a non-market economy ("NME") country, the Department presumes, based on the extent of central government control in an NME, that a single dumping margin, should there be one, is appropriate for all NME exporters in the given country. In the course of these investigations, all parties will have the opportunity to provide relevant information related to the issues of a country's NME status and the granting of separate rates to individual exporters. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586-87 (May 2, 1994).

#### **Malaysia**

##### *Export Price*

The anticipated POI for Malaysia is April 1, 2002, through March 31, 2003.

The petitioners based export price ("EP") on a U.S. port price quote within the period of investigation ("POI") for the direct sale of 27-inch CTVs produced in Malaysia by Funai to an unaffiliated customer in the United States. The petitioners calculated a net U.S. price by deducting foreign inland freight. See the Initiation Checklist.

Because the petitioners provided price quotes for actual products and we determine that these price quotes are sufficient for initiation purposes, we did not use the average unit values calculated from U.S. import statistics that the petitioners provided because they are based on a broad basket HTSUS category. To the extent necessary, we will consider the appropriateness of the petitioners' alternative methodology during the course of this proceeding.

<sup>1</sup> See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (Ct. Int'l Trade 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 642-44 (Ct. Int'l Trade 1988) ("the ITC does not look behind ITA's determination, but accepts ITA's determination as to which merchandise is in the class of merchandise sold at LTFV").

For our complete analysis of EP, see the Initiation Checklist

#### *Normal Value*

The petitioners based normal value ("NV") on third-country price quotes and offers for sale by Funai because they were unable to obtain price information for any Malaysian producer in the home market. During the course of our initiation, we obtained information which indicated that there is no viable home market for CTVs in Malaysia because all Malaysian-produced CTVs are exported. See the May 16, 2003, memorandum to the File from Irina Itkin, Elizabeth Eastwood, and Jim Nunno entitled "Telephone Conversation with Foreign Market Researcher." The petitioners focused on Funai when seeking a price quote for NV because this company is the largest CTV producer in Malaysia and a price quote from this company forms the basis for U.S. price.

In selecting the third-country market, the petitioners chose Japan because it is the largest third-country market for CTVs produced by Funai. Moreover, the product subject to the Japan price quote is comparable to the product exported to the United States which served as the basis for EP. After examining this evidence, we found the petitioners' selection of Japan as the comparison market to be reasonable.

The petitioners made adjustments for consumption tax, movement expenses, and third-country and U.S. credit expenses. The petitioners based the amounts for third country and U.S. interest rates on lending rates contained in *International Financial Statistics* published by the International Monetary Fund. The petitioners converted NV into U.S. dollars using the annual average 2002 yen/U.S. dollar exchange rate calculated based on the exchange rates posted on the Department's Web site. We revised the petitioners' calculation of NV to correct an error in the consumption tax and the calculation of the average exchange rate. See the Initiation Checklist.

Pursuant to section 773(b) of the Act, the petitioners provided information demonstrating reasonable grounds to believe or suspect that sales by Malaysian producers in the relevant foreign market were made at prices below the cost of production ("COP") and, accordingly, requested that the Department conduct a country-wide sales-below-COP investigation in connection with this investigation. The Statement of Administrative Action ("SAA"), submitted to the Congress in connection with the interpretation and application of the URAA, states that an

allegation of sales below COP need not be specific to individual exporters or producers. SAA, H.R. Doc. No. 103-316 at 833 (1994). The SAA, at 833, states that "Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation."

Further, the SAA provides that section 773(b)(2)(A) of the Act retains the requirement that the Department have "reasonable grounds to believe or suspect" that below-cost sales have occurred before initiating such an investigation. Reasonable grounds exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices. *Id.*

Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing ("COM"); selling, general, and administrative expenses ("SG&A"); financial expenses; and packing expenses. The petitioners stated that they were unable to obtain information concerning Funai's actual CTV COP data. Therefore, the petitioners calculated COM based on the costs incurred by an Indian producer of CTVs with a production process similar to Funai's, adjusted for known differences between costs incurred to produce CTVs in India and Malaysia. To calculate SG&A and financial expenses, the petitioners relied upon amounts reported in the 2002 consolidated financial statements of Funai. The petitioners based packing costs on the Indian producer's experience.

Based on a comparison of the Japanese market prices for CTVs to the COP calculated in the petition, we find reasonable grounds to believe or suspect that sales of the foreign like product were made at prices below COP within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation relating to third-country sales to Japan. We note, however, that if we determine that the home market (*i.e.*, Malaysia) is viable, our initiation of a country-wide cost investigation with respect to sales to Japan will be rendered moot.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners also based NV for sales in the United States on CV. The petitioners calculated CV using the same COM, SG&A, and financial expense figures used to compute the Japanese third-country

market costs. Consistent with 773(e)(2) of the Act, the petitioners included in CV an amount for profit. For profit, the petitioners relied upon amounts reported in Funai's 2002 consolidated financial statements. The petitioners adjusted CV to make a circumstance-of-sale adjustment for credit expenses, in accordance with the Department's statutory EP calculation methodology. We revised the petitioners' calculation of CV to correct an error in the average exchange rate, as noted above. For our complete analysis of NV, see the Initiation Checklist.

The estimated dumping margin in the petition for Malaysia based on a comparison between EP and the third-country price is 30.89 percent. Our recalculation, as described above, resulted in a margin of 30.88 percent. The estimated price-to-CV margin in the petition is 47.76 percent. The adjusted price-to-CV comparison resulted in an estimated dumping margin of 47.02 percent.

#### **The PRC**

##### *Export Price*

The anticipated POI for the PRC is October 1, 2002, through March 31, 2003.

The petitioners based EP on price quotes within the POI for the sale of 27-inch curved and flat-screen CTVs produced in the PRC to an unaffiliated customer in the United States. The petitioners calculated net U.S. prices by deducting foreign brokerage and handling expenses, international freight expenses, U.S. customs duties, and U.S. inland freight expenses.

Because the petitioners provided price quotes for actual products and we determine that these price quotes are sufficient for initiation purposes, we did not use the average unit values calculated from U.S. import statistics that the petitioners provided as a second basis to estimate dumping margins. To the extent necessary, we will consider the appropriateness of the petitioners' alternative methodology during the course of this proceeding. For our complete analysis of EP, see the Initiation Checklist.

##### *Normal Value*

The petitioners allege that the PRC is an NME country, and that in all previous investigations the Department has determined that the PRC is an NME. See, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China*, 68 FR 27530 (May 20, 2003). In accordance with section 771(18)(C) of the Act, any determination that a foreign

country has at one time been considered an NME shall remain in effect until revoked. Therefore, the PRC will continue to be treated as an NME unless and until its NME status is revoked. Pursuant to section 771(18)(C)(i) of the Act, because the PRC's status as an NME remains in effect, the petitioners determined the dumping margin using an NME analysis.

The petitioners assert that India is the most appropriate surrogate country for the PRC, claiming that India is: (1) A market economy; (2) a significant producer of comparable merchandise; and (3) at a level of economic development comparable to that of the PRC in terms of per-capita gross national income. Based on the information provided by the petitioners, we believe that the petitioners' use of India as a surrogate country is appropriate for purposes of initiation of this investigation.

The petitioners valued the factors of production using the quantities of inputs reported by an Indian CTV producer, because public information about PRC factor quantities for production of 27-inch curved-screen and 27-inch flat-screen CTVs was not reasonably available. The factors of production and usage amounts were derived from the actual production records of the Indian surrogate generated for both 27-inch curved-screen and 27-inch flat-screen CTVs during the period October 2002 through March 2003.

Values for color picture tubes, chassis, cabinets, remote controls with tuners, assorted components, and packing materials were based on the actual costs incurred by the Indian CTV manufacturer relied upon for the usage amounts discussed above. Labor was valued using the Department's regression-based wage rate for the PRC, in accordance with 19 CFR 351.408(c)(3). Electricity was valued based upon the 2001–2002 annual report of BPL Display Devices, Ltd., a publicly traded Indian color picture tube producer. All surrogate values that fell outside the anticipated period of investigation, which in the PRC case is October 1, 2002, through March 31, 2003, were adjusted for inflation.

The petitioners based their calculations of factory overhead, SG&A expenses, and profit on the average of the rates reported in the 2001–2002 annual reports of BPL Ltd. ("BPL") and Onida Saka ("Onida"), Indian producers of CTVs, and the 2000–2001 annual report of Videocon International, Ltd. ("Videocon"), a third Indian producer of CTVs. As the annual report of Videocon was less contemporaneous with the POI

than those of BPL and Onida, we revised the calculation of factory overhead, SG&A expenses, and profit to exclude Videocon's data.

Based on the information provided by the petitioners, we believe that the surrogate values represent information reasonably available to the petitioners and are acceptable for purposes of initiation of this investigation. For our complete analysis of NV, see the Initiation Checklist.

The estimated dumping margins in the petition for the PRC based on a comparison of EP to NV are as follows: for 27-inch curved screen CTVs, 50.94 percent; and for 27-inch flat screen CTVs, 80.16 percent. However, based upon comparisons of EP to the adjusted NV, the revised estimated dumping margins are as follows: for 27-inch curved screen CTVs, 49.50 percent; and for 27-inch flat screen CTVs, 78.45 percent.

#### Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of CTVs from Malaysia and the PRC are being, or are likely to be, sold at less than fair value.

#### Allegations and Evidence of Material Injury and Causation

With regard to both Malaysia and the PRC, the petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV.

The petitioners contend that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, profit-to-sales ratios, production employment, and capacity utilization. The allegations of injury and causation are supported by relevant evidence including U.S. Bureau of Customs and Border Protection import data, lost sales, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. See the Initiation Checklist.

#### Initiation of Antidumping Investigations

Based upon our examination of the petitions on CTVs, we have found that they meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether

imports of CTVs from Malaysia and the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended pursuant to section 733(b)(1)(A) of the Act, we will make our preliminary determinations no later than 140 days after the date of this initiation.

#### Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each petition has been provided to the representatives of the governments of Malaysia and the PRC. We will attempt to provide a copy of the public version of each petition to each exporter named in the petitions, as provided for under 19 CFR 351.203(c)(2).

#### ITC Notification

We have notified the ITC of our initiations as required by section 732(d) of the Act.

#### Preliminary Determinations by the ITC

The ITC will preliminarily determine no later than June 16, 2003, whether there is a reasonable indication that imports of CTV's from Malaysia and the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for either country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: May 22, 2003.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 03–13453 Filed 5–28–03; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 012303A]

#### Small Takes of Marine Mammals Incidental to Specified Activities; Port of Miami Construction Project (Phase II)

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of issuance of an incidental harassment authorization.