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DEPARTMENT OF COMMERCE

International Trade Administration

A-552-801

Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Notice of Court Decisions Not in Harmony With Final Results of Administrative And New Shipper Reviews and Notice of Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: On December 18, 2014, the United States Court of International Trade ("the Court") issued final judgments in Catfish Farmers of America et al. v. United States, Consol. Court No. 11-00109 and Catfish Farmers of America et al. v. United States, Court No. 11-00110, sustaining the Department of Commerce's ("the Department") AR6 Remand final results which included an aligned new shipper review.[1] On December 19, 2014, the Court issued final judgment in Catfish Farmers of America et al. v. United States, Court No. 11-00252, sustaining the Department's NSR7 Remand final results.[2] In the AR6 Remand, the Department recalculated the weighted-average dumping margin for Vinh Hoan Corporation ("Vinh Hoan") using revised surrogate values for by-products (fish waste, broken meat, and fish skin) and made adjustments for the inventory changes in the surrogate financial statements.[3] Because Vinh Hoan's margin is now above de minimis, it also becomes the margin for those companies not

[1] See Final Results Of Redetermination Pursuant To Court Remand, Consol. Court Nos. 11-00109 and 11-00110, Slip Ops. 13-63 and 13-64 (CIT May 23, 2013), dated January 17, 2014, ("AR6 Remand") available at http://enforcement.trade.gov/remands/13-63&64.pdf.

[2] See Final Results Of Redetermination Pursuant To Court Remand, Consol. Court No. 11-00252, Slip Op. 13-91 (CIT July 22, 2013), dated January 17, 2014, ("NSR7 Remand") available at http://enforcement.trade.gov/remands/13-91.pdf.

[3] See AR6 Remand at 41-46. As we explain below, the Department's recalculation of these surrogate values now yields an above de minimis weighted-average dumping margin for Vinh Hoan. Thus, consistent with our practice, the Department has amended the final results with respect to Vinh Hoan.

individually examined but receiving a separate rate.[4] The margins for the voluntary respondent Vinh Quang Fisheries Corporation ("Vinh Quang") and the new shipper Cuu Long Fish Joint Stock Company (''CL–Fish'') did not change and remain de minimis.

In the NSR 7 Remand, the Department recalculated the weighted-average dumping margin for IDI Corporation ("IDI") and Thien Ma Seafood Company ("THIMACO") using revised surrogate values for by-products (fish waste, broken meat and fish skin).[5] However, the margins for IDI and THIMACO did not change and remain de minimis.

Consistent with the decision of the United States Court of Appeals for the Federal Circuit ("CAFC") in Timken Co. v. United States, 893 F.2d 337 (Fed. Cir. 1990) ("Timken"), as clarified by Diamond Sawblades Mfrs. Coalition v. United States, 626 F.3d 1374 (Fed. Cir. 2010) ("Diamond Sawblades"), the Department is notifying the public that the final judgment in these cases is not in harmony with the Department's final results of the antidumping duty administrative and new shipper reviews of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam ("Vietnam") covering the period of review August 1, 2008, through July 31, 2009 ("AR6 POR"), and August 1, 2009, through February 15, 2010 ("NSR7 POR"). With respect to the AR6 POR, the Department is amending the final results with respect to the weighted-average dumping margins for Vinh Hoan, Agifish, ESS LLC and South Vina.[6] As the rates did not change for the new shipper reviews, the Department is not amending those final results.

DATES: Effective Date: December 29, 2014

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[4] These companies include: 1) An Giang Fisheries Import and Export Joint Stock Company (aka Agifish or An Giang Fisheries Import and Export); 2) East Sea Seafoods Limited Liability Company (formerly known as East Sea Seafoods Joint Venture Co., Ltd.) ("ESS LLC"); and 3) Southern Fishery Industries Co., Ltd. ("South Vina").
[5] See NSR7 Remand at 39-41.
[6] See Certain Frozen Fish Fillets from the Socialist's Republic of Vietnam: Final Results of the Sixth Antidumping Duty Administrative Review and Sixth New Shipper Review, 76 FR 15941 (March 22, 2011) ("AR6 Final Results") and the accompanying Issues and Decision Memorandum.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, AD/CVD Operations Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-2243.

SUPPLEMENTARY INFORMATION:

Background

On March 22, 2011, the Department issued AR6 Final Results.[7] Vinh Hoan and Petitioners[8] timely filed complaints with the Court and challenged certain aspects of the AR6 Final Results. On May 23, 2013, the Court remanded the Department's AR6 Final Results and instructed the Department to reconsider each of the following issues: (1) surrogate country selection; (2) the surrogate values for by-products (fish waste, broken meat and fish skin); (3) alleged subsidies in one of the surrogate financial statements; and (4) ministerial allegations and effects on margins.[9]

On June 17, 2011, the Department issued NSR7 Final Results.[10] IDI and THIMACO and Petitioners timely filed complaints with the Court and challenged certain aspects of the NSR7 Final Results. On July 22, 2013, the Court remanded the Department's NSR7 Final Results and instructed the Department to reconsider each of the following issues: (1) surrogate country selection; and (2) the surrogate values for by-products (fish waste, broken meat and fish skin).[11]

On January 17, 2014, the Department filed the AR6 Remand and NSR7 Remand with the

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[7] Id.

[8] Catfish Farmers of America and the following 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, and Simmons Farm Raised Catfish, Inc. (collectively, "Petitioners").

[9] See Catfish Farmers of America et al. v. United States, Court No. 11-00109, Slip Op. 13-63 (CIT May 23, 2013).

[10] See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty New Shipper Reviews, 76 FR 35403 (June 17, 2011) ("NSR7 Final Results").

[11] See Catfish Farmers of America et al. v. United States, Court No. 11-00252, Slip Op. 13-91 (CIT July 22, 2013).

Court. With regard to the AR6 Remand and NSR7 Remand issues stated above, first, the Department maintained the selection of Bangladesh as the primary country. Second, the Department selected different surrogate values for the fish waste, broken meat, and fish skin by-products. With regard to the AR6 Remand only, the Department continued to use the same financial statements to calculate the surrogate financial ratios because the record did not contain evidence to provide a reason to believe or suspect that a countervailable subsidy was received during the relevant financial period. In addition, we accounted for all calculation changes as a result of the original ministerial error allegations and addressed the issues raised by the Court regarding the financial statements.

As a result, there are calculation changes due to selecting different by-product surrogate values and making an adjustment for the inventory changes in the financial statements. With regard to the AR6 Remand, after accounting for all such changes and issues, the resulting antidumping margin for the only mandatory respondent, Vinh Hoan, is $0.06 per kilogram. Because Vinh Hoan's margin is now above de minimis, it would also become the margin for those companies not individually examined, but receiving a separate rate. The margins for the voluntary respondent Vinh Quang and the new shipper CL-Fish did not change and remain de minimis. On December 18, 2014, the Court entered judgments sustaining the AR6 Remand.[12]

With regard to the NSR7 Remand, after accounting for all such changes and issues, the resulting antidumping margins for IDI and THIMACO remain de minimis. On December 19, 2014, the Court entered judgment sustaining the Remand.[13]

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[12] See Catfish Farmers of America et al. v. United States, Court No. 11-00109, Slip. Op. 14-144 (CIT December 18, 2014); and Catfish Farmers of America et al. v. United States, Court No. 11-00110, Slip. Op. 14-145 (CIT December 18, 2014).

[13] See Catfish Farmers of America et al. v. United States, Court No. 11-00252, Slip. Op. 14-149 (CIT December 19, 2014).

Timken Notice

In its decision in Timken, 893 F.2d at 341, as clarified by Diamond Sawblades, the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended ("the Act"), the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The Court's December 18, 2014, judgment sustaining the AR6 Remand constitutes a final decision of the Court that is not in harmony with the Department's AR6 Final Results. In addition, the Court's December 19, 2014, judgment sustaining the NSR 7 Remand constitutes a final decision of the Court that is not in harmony with the Department's NSR7 Final Results. This notice is published in fulfillment of the publication requirement of Timken.

Amended Final Results

Because there is now a final court decision, the Department is amending the AR6 Final Results with respect to Vinh Hoan, Agifish, ESS LLC, and South Vina. The revised weighted-average dumping margins for these exporters during the period April 1, 2009, through March 31, 2010, follow:

Exporter Name	Weighted Average Dumping Margin (Dollars Per Kilogram)
Vinh Hoan Corporation	0.06
An Giang Fisheries Import and Export Joint Stock Company (aka Agifish or An Giang Fisheries Import and Export)	0.06
East Sea Seafoods Limited Liability Company (formerly known as East Sea Seafoods Joint Venture Co., Ltd.)	0.06
Southern Fishery Industries Co., Ltd.	0.06

Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and

conclusive court decision. In the event the Court's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on unliquidated entries of subject merchandise exported by Vinh Hoan, Agifish, ESS LLC, and South Vina using the assessment rate calculated by the Department in the Remand and listed above.

Cash Deposit Requirements

The cash deposit rate will remain the respondent-specific rate established for the subsequent and most-recent period during which the respondent was reviewed. The cash deposit rate for the Vietnam-wide entity, which is 2.39 U.S. dollars per kilogram, is the rate established for the subsequent and most-recent period during which the Vietnam-wide entity, including ESS LLC, was reviewed.[14]

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e), 751(a)(1), and 777(i)(1) of the Act.

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Paul Piquado
Assistant Secretary
for Enforcement and Compliance

February 3, 2015_
Date

[14] See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review; 2012-2013, 80 FR 2394 (January 16, 2015). For ESS LLC prior to the publication of the final results of review on January 16, 2015 the cash deposit rate remained the rate established prior to losing its separate rate status, which was 1.20 U.S. dollars per kilogram. See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Amended Final Results of Antidumping Duty Administrative Review; 2011–2012, 79 FR 37714 (July 2, 2014).

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