

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-552-801]

Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam

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

ACTION: Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value.

EFFECTIVE DATE: July 24, 2003.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva or James C. Doyle, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-3208, or (202) 482-0159, respectively.

SUPPLEMENTARY INFORMATION:**Scope Of The Investigation**

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

Background

On June 23, 2003, An Giang Fisheries Import and Export Joint Stock Company ("Agifish"), Can Tho Agricultural and Animal Products Import Export Company ("CATACO"), Nam Viet Company Limited ("Nam Viet"), and Vinh Hoan Company Limited ("Vinh Hoan"), hereinafter collectively referred to as "Mandatory Respondents," timely filed allegations that the Department made ministerial errors in the final determination.

Similarly, on June 23, 2003, Catfish Farmers of America ("CFA") and the individual U.S. catfish processors America's Catch Inc.; Consolidated Catfish Co., L.L.C.; Delta Pride Catfish, Inc.; Harvest Select Catfish, Inc.; Heartland Catfish Company; Pride of the Pond; Simmons Farm Raised Catfish, Inc.; and Southern Pride Catfish Co., Inc., hereinafter referred to collectively as "Petitioners," timely filed allegations that the Department made ministerial errors in the final determination.

Amendment Of Final Determination

On June 16, 2003, the Department of Commerce ("the Department") determined that certain frozen fish fillets from the Socialist Republic of Vietnam ("Vietnam") are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735(a) of the Tariff Act. See *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam* ("Final Determination") 68 FR 37116 (June 23, 2003).

The Department is amending the *Final Determination* in the antidumping investigation of certain frozen fish fillets from the Socialist Republic of Vietnam.

Ministerial Error

A ministerial error is defined as an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial. See 19 C.F.R. 351.224(f).

Ministerial Error Allegations From The Mandatory Respondents**Comment 1: By-Product Offset**

The Mandatory Respondents argue that the Department has repeated the ministerial error regarding the by-product credit offset that was contained in the *Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam* ("Preliminary Determination") 68 FR 4986 (January 31, 2003). According to the Mandatory Respondents, in the *Final Determination*, as in the *Preliminary Determination*, the Department deducted the by-product credit from normal value after applying surrogate financial ratios, rather than deducting it from the cost of manufacturing before applying the surrogate financial ratios. The Mandatory Respondents assert that it is the Department's normal practice to deduct the by-product credit from the cost of manufacturing because the costs associated with the production of by-products are reflected in the costs for producing the primary finished products.

The Mandatory Respondents note that the Department previously corrected this error, explaining that the correction represented the Department's "normal practice," and that the method used in the *Preliminary Determination* "represents an error." See *Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam* ("Amended Preliminary Determination"), 68 FR 10440 (March 5, 2003). Finally, the Mandatory Respondents argue that the *Memorandum to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, Group III, Issues and Decision Memorandum for the Antidumping Duty Investigation of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, (June 16, 2003), ("*Issues and Decision Memorandum*") accompanying the *Final Determination* does not clearly explain why the Department reversed the correction in the *Amended Preliminary Determination* for purposes of the *Final Determination*. As a result, the Mandatory Respondents argue that the Department should again correct itself by deducting the by-product credit from the cost of manufacturing, as in the *Amended Preliminary Determination*.

The Petitioners rebut the Mandatory Respondents' allegation by citing the Department's description of its calculation methodology contained in the *Issues and Decision Memorandum* at 6. Furthermore, the Petitioners note that the Department defines ministerial errors as "an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial." Consequently, the Petitioners do not agree with the Mandatory Respondents' ministerial error allegation because the Department explained the rationale for this intended change and because the allegation does not meet the definition of a ministerial error.

Department's Position:

We disagree with the Mandatory Respondents that the Department incorrectly deducted the by-product credit from normal value. As we noted in the *Amended Preliminary Determination*, the Department would "carefully revisit all aspects of this issue in the final determination." As explained in the *Issues and Decision Memorandum*, the Department reviewed the surrogate company financial statements, and noted that Apex and Bionic do not reduce their cost of manufacturing amount for the by-product revenues. Instead, they recognize the by-product revenues as "miscellaneous income" which is shown as a separate line item in their financial statements. We used the cost of manufacturing amounts from the surrogate company's financial statements to calculate the selling, general and administrative ("SG&A") and profit rates. Accordingly, the Department has determined that, because the surrogate financial ratios were calculated excluding any by-product revenues, to deduct the by-product credit from the cost of manufacturing would misstate the results.

Therefore, the Department has not made the requested change.

Comment 2: Agifish's Electricity Consumption

Agifish argues that the Department incorrectly calculated Agifish's factor input for electricity in the production of the subject merchandise. Agifish asserts that the Department inadvertently transposed two numbers when it recorded electricity usage for the month of January 2002.

Department's Position:

We agree with Agifish that the Department incorrectly calculated Agifish's factor input for electricity in the production of the subject merchandise. Accordingly, the error regarding the correction of the electricity alleged by Agifish is a ministerial error within the meaning of 19 C.F.R. 351.224(f).

Therefore, we are amending our *Final Determination* with regard to Agifish's electricity consumption. For a more detailed analysis, please see the *Memorandum to the File from John D. A. LaRose, International Trade Analyst, to the File through James C. Doyle, Program Manager regarding the Amended Final Determination for Agifish* ("Agifish Amended Final Memo"), dated July 18 at 2.

Comment 3: Water Consumption

The Mandatory Respondents argue that the Department incorrectly estimated their water consumption ratios in the *Final Determination*. According to the Mandatory Respondents, the Department included the labor and electricity used to pump water into their processing facilities in the consumption figures for labor and electricity, respectively. The Mandatory Respondents argue that for this reason and because the companies do not pay for the water that they pump, the Department double-counted their water consumption at the processing facility in the *Final Determination*. The Mandatory Respondents argue that the Department should not value the water pumped into their processing facilities.

The Petitioners rebut the allegation regarding Agifish and CATACO by noting that the Department stated in the *Issues and Decision Memorandum* at 23 and 25 that Agifish and CATACO failed to provide data on water consumption at their by-products facilities. Accordingly, the Department applied the highest water consumption figures from the processing stage as adverse facts available. Petitioners assert that this was a methodological decision made by the Department.

The Petitioners also rebut all four Mandatory Respondents' argument that water costs are irrelevant because the companies did not pay for the water. Petitioners assert that the Department has specifically determined in past non-market economy cases that it is appropriate to value water in these specific instances, and that the actual price paid by the respondent for water is irrelevant.

Department's Position:

The Department disagrees with the Mandatory Respondents. The issue of "double-counting" water consumption by the inclusion in the margin calculations of both the water input and the factors (labor and electricity) used to pump the water is not a ministerial error within the meaning of 19 C.F.R. 351.224(f) because the Department intended to value the Mandatory Respondents' water consumption factors in the manner in which we did. At the time of the *Final Determination*, the Department was unaware of the possibility that the factors to pump water may have been included in the labor and electricity consumption factors. We note that no interested parties raised the issue regarding the "double-counting" of water during the investigation. Furthermore, even if any parties had raised the issue, no information or evidence was provided on the record which would have enabled the Department to address the issue otherwise. Finally, we note that the Mandatory Respondents did not cite any record evidence of "double-counting" in their ministerial error allegation.

Because the Department intended to value the Mandatory Respondents' water consumption factors in the manner in which we did at the time of the *Final Determination*, we do not consider this allegation as a ministerial error within the meaning of 19 C.F.R. 351.224(f). Consequently, the Department has not made the requested change.

Ministerial Error Allegations From The Petitioners

Comment 4: Agifish's, CATACO's and Nam Viet's Cold Storage and Warehousing Expenses

The Petitioners argue that the Department erred in applying the surrogate value for cold storage warehousing in the net U.S. price calculation for the Agifish, CATACO, and Nam Viet. The Petitioners assert that the Department only included a single day of cold storage costs, and failed to multiply the rate for a single day by the number of days of storage reported by each company. The Petitioners argue that the Department should remedy this error by multiplying the cold storage surrogate value of \$0.0025 kg/day by the number of days the subject merchandise is kept in storage as reported by each company.

None of the Mandatory Respondents replied to this allegation.

Department's Position:

We agree with the Petitioners that the Department erred in calculating Agifish's, CATACO's, and Nam Viet's cold storage warehousing costs. In their December 30, 2002 supplemental response, Agifish, CATACO and Vinh Hoan reported their respective number of days that the subject merchandise is kept in cold storage at its warehouses. However, we inadvertently did not multiply the cold storage cost by the number of days each company stores the subject merchandise in cold storage in the *Final Determination*. Accordingly, the error regarding the cold storage costs is an error within the meaning of 19 C.F.R. 351.224(f) with regard to Agifish, CATACO and Nam Viet. Therefore, we have multiplied each companies' number of storage days by the single-

day cold storage rate of \$0.0025 to calculate the company-specific cold storage warehousing costs. For a more detailed explanation, please see the company specific analysis memoranda.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the U.S. Bureau of Customs and Border Protection ("Customs") to continue to suspend liquidation of all entries of subject merchandise from Vietnam, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the *Preliminary Determination* for Agifish, CATACO, Vinh Hoan, Mekonimex, and Viet Hai. With respect to Nam Viet, QVD, Da Nang, Afifex, Cafatex, Vinh

Long and all other Vietnam exporters, the Department will continue to direct Customs to suspend liquidation of all entries of certain frozen fish fillets from Vietnam that are entered, or withdrawn from warehouse, on or after 90 days before the date of publication of the *Preliminary Determination*. Customs shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. This suspension of liquidation instructions will remain in effect until further notice.

Amended Final Determination

We determine that the following weighted-average dumping margins exist for the period October 1, 2001 through March 30, 2002:

CERTAIN FROZEN FISH FILLETS FROM VIETNAM

Producer/Manufacturer/Exporter	Final Margin	Amended Final Margin
Agifish	44.76	47.05
Vinh Hoan	36.84	36.84
Nam Viet	52.90	53.68
CATACO	45.55	45.81
Afifex	44.66	45.55
CAFATEX	44.66	45.55
Da Nang	44.66	45.55
Mekonimex	44.66	45.55
QVD	44.66	45.55
Viet Hai	44.66	45.55
Vinh Long	44.66	45.55
Vietnam-Wide Rate	63.88	63.88

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our amended final determination. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d), 735(e) and 777(i)(1) of the Act.

Dated: July 17, 2003.

Jeffrey May,

Acting Assistant Secretary for Grant Aldonas, Under Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071703C]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat Oversight Committee in August, 2003 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Thursday, August 7, 2003 at 9:30 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, 31 Hampshire Street,

Mansfield, MA 02048; telephone: (508) 339-2200.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465-0492.

SUPPLEMENTARY INFORMATION: The Habitat Committee will consider alternatives for minimizing adverse effects of monkfishing on Essential Fish Habitat (EFH) within Amendment 2 to the Monkfish Fishery Management Plan (FMP). The Committee will also consider public comments received on habit issues related to Scallop Amendment 10.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens