

DEPARTMENT OF COMMERCE**International Trade Administration**

A-428-801

Ball Bearings and Parts Thereof From Germany; Amended Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of amended final results of antidumping duty administrative review.

SUMMARY: On September 15, 2004, the Department of Commerce published in the **Federal Register** the final results of the administrative reviews of the antidumping duty orders on ball bearings and parts thereof from France, Germany, Italy, Japan, Singapore and the United Kingdom. The period of review is May 1, 2002, through April 30, 2003. Based on the correction of certain ministerial errors, we have changed the antidumping margin for Paul Mueller Industrie GmbH & Co. KG and we are amending our final results of the administrative review of ball bearings and parts thereof from Germany.

FOR FURTHER INFORMATION CONTACT: Please Contact David Dirstine at (202) 482-4033 or Richard Rimlinger at (202) 482-4477; AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:**Background**

On September 15, 2004, the Department of Commerce (the Department) published in the **Federal Register** the final results of the administrative reviews of the antidumping duty orders on ball bearings and parts thereof (ball bearings) from France, Germany, Italy, Japan, Singapore and the United Kingdom (69 FR 55574) (*Final Results*).

On September 27, 2004, we received timely allegations of ministerial errors from Timken U.S. Corporation (Timken). Specifically, Timken asserted that the Department erred when it included amounts for Paul Mueller Industrie GmbH & Co. KG's (Paul Mueller's) home-market credit expenses and inventory carrying costs in the calculation of selling expenses for use in the calculation of the constructed-export-price (CEP) profit ratio. Furthermore, Timken alleged that there was an irregularity in the margin calculation that resulted in an improper

match for certain models of ball bearings.

On September 29, 2004, Paul Mueller submitted its response to Timken's September 27, 2004, clerical-error submission. In response to Timken's allegation that a clerical error resulted in an incorrect calculation of the CEP profit ratio, Paul Mueller suggested that the alleged error raises a methodological issue. Paul Mueller argues that Timken's clerical error claim regarding the calculation of the CEP profit ratio should be rejected and any dispute relating to this issue should be subject to judicial review. Finally, Paul Mueller agrees that a clerical error resulted in an improper match for certain models of ball bearings.

We agree with Timken that the items in question are ministerial errors and we have amended the final results to correct these errors. See the Paul Mueller Amended Final Results Analysis Memorandum dated October 19, 2004.

Amended Final Results of Review

As a result of the correction of the ministerial errors, the weighted-average margin for Paul Mueller for the period May 1, 2002, through April 30, 2003, changed from 0.36 percent to 0.44 percent.

We revoked the order in part with respect to all subject merchandise manufactured and exported by Paul Mueller in the *Final Results* based in part on the *de minimis* margin we calculated for Paul Mueller in this review. Since the revised margin based on these corrections is still *de minimis* our decision to revoke is not affected by the amended final results of review. While the dumping margin we calculated for Paul Mueller remains *de minimis*, the assessment rate we calculated for Paul Mueller based on entered customs value is not *de minimis*. Therefore, in accordance with 19 CFR 351.106(c)(2), we will direct U.S. Customs and Border Production to assess the resulting percentage margin against the entered customs value of Paul Mueller's entries (all of which were constructed export-price sales) during the review period. See 19 CFR 351.212(b)(1).

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.224(e).

Dated: October 27, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE**International Trade Administration**

[A-552-801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Initiation of Anticircumvention Inquiry and Scope Inquiry

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

ACTION: Notice of initiation of anticircumvention inquiry and scope inquiry: certain frozen fish fillets from the Socialist Republic of Vietnam.

SUMMARY: In response to a request from the Catfish Farmers of America and certain individual U.S. catfish processors, (collectively, "petitioners"), the Department of Commerce ("the Department") is initiating an anticircumvention inquiry to determine whether certain imports of frozen fish fillets from Cambodia are circumventing the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam ("Vietnam") See *Notice of Antidumping Duty Order: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 47909 (August 12, 2003) ("*FFF Duty Order*"). In addition, in response to a scope ruling request filed by Piazza Seafood World LLC ("Piazza") on May 12, 2004, the Department is initiating a scope inquiry.

EFFECTIVE DATE: November 2, 2004.

FOR FURTHER INFORMATION CONTACT: Kit L. Rudd or Alex Villanueva, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-1385 and (202) 482-3208, respectively.

SUPPLEMENTARY INFORMATION:**Background**

On May 12, 2004, pursuant to 19 CFR 351.225(c), the Department received a request from Piazza Seafood World LLC ("Piazza"), for a scope ruling on certain basa and tra fillets from Cambodia confirming that fillets made from live basa and tra fish which are a product of Vietnam are excluded from the antidumping duty order on certain

frozen fish fillets from Vietnam. See *FFF Duty Order*. On June 9, 2004, the Department issued a supplemental questionnaire to Piazza requesting additional information pertaining to this request. On July 7, 2004, the Department received Piazza's response to this supplemental questionnaire. On July 23, 2004, petitioners commented on Piazza's May 12, 2004, and July 7, 2004 submissions. On October 19, 2004, Piazza submitted to the Department additional factual data supplementing its July 7, 2004, response to the Department's supplemental questionnaire.

On August 20, 2004, petitioners requested that the Department conduct an anticircumvention inquiry pursuant to section 781(b) of the Tariff Act of 1930, as amended ("the Act") to determine whether imports of frozen fish fillets from Cambodia made from live fish which are a product of Vietnam are circumventing the antidumping duty order on certain frozen fish fillets from Vietnam. Specifically, petitioners allege that processing in, and exporting from, Cambodia frozen fish fillets of the species *Pangasius Bocourti*, *Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*), and *Pangasius Micronemus* produced from live fish which are a product of Vietnam constitutes circumvention of the antidumping duty order on certain frozen fish fillets from Vietnam. On October 20, 2004, Piazza submitted comments on petitioners' August 20, 2004, request for an anticircumvention inquiry.

With respect to Piazza's October 19, 2004, and October 20, 2004, submissions, we note that due to the late filing of these submissions, the Department is unable to consider them for purposes of initiation of the requested scope and anticircumvention inquiries. We may, however, consider these submissions in the course of the formal inquiries.

Scope of the Order

The product covered by this order 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 code 0304.20.60.33 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the Harmonized Tariff Schedule of the United States ("HTSUS").¹ This order covers all frozen fish fillets meeting the above specification, regardless of tariff classification. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive. See *FFF Duty Order* at 47909.

Initiation of Anticircumvention Proceeding

Applicable Statute

Section 781(b) of the Act provides that the Department may find circumvention of an antidumping duty order when merchandise of the same class or kind subject to the order is completed or assembled in a foreign country other than the country to which the order applies. In conducting anticircumvention inquiries under section 781(b) of the Act, the Department relies upon the following criteria: (A) Merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is subject to an antidumping duty order; (B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which is subject to the order or produced in the foreign country that is subject to the order; (C) the process of assembly or completion in the foreign country referred to in (B) is minor or insignificant; (D) the value of the merchandise produced in the foreign country to which the antidumping duty order applies is a significant portion of the total value of the merchandise exported to the United States; and (E) the administering authority determines that action is

¹ Until July 1, 2004, these products were 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 HTSUS.

appropriate to prevent evasion of such order or finding. As discussed below, petitioners presented evidence with respect to these criteria.

A. Merchandise of the Same Class or Kind

Petitioners state that the *FFF Duty Order* covers frozen fish fillets of the various *Pangasius* family to include *Pangasius Bocourti*, *Pangasius Hypophthalmus* and *Pangasius Micronemus*. Petitioners argue that since frozen fish fillets of these species, which are being imported into the United States from Cambodia, are physically identical to subject merchandise fillets from Vietnam, pursuant to section 781(b)(1)(A)(i) of the Act, these fillets are of the same class or kind as those fillets produced in Vietnam which are subject to the antidumping duty order.

B. Completion of Merchandise in a Foreign Country

Petitioners state that the frozen fish fillets which are the subject of the anticircumvention inquiry request are made from live basa and tra produced in Vietnam and processed in Cambodia for export to the United States. Petitioners argue that these frozen fish fillets are the final result of a production process that involves a multi-stage growing process to produce the live basa and tra fish in Vietnam with end stage processing into frozen fillets in Cambodia. Petitioners therefore conclude that pursuant to section 781(b)(1)(B)(ii) of the Act these frozen fish fillets are merchandise completed in another foreign country (Cambodia) from merchandise that is produced in a foreign country with respect to which the referenced antidumping duty order applies (Vietnam).

C. Minor or Insignificant Process

Petitioners argue that for the purposes of section 781(b)(1)(C) of the Act, conversion of whole live Vietnamese basa and tra fish into frozen fillets in Cambodia is a "minor or insignificant process" as defined by the Act. According to petitioners, the respondents in the original investigation argued that the final stage of processing whole live basa and tra fish into frozen fish fillets was minor as compared to the preceding steps for growing the live fish. Petitioners also state that since they have little information about the processing activities in Cambodia they feel that the best information available on Cambodian processing is the record of the underlying investigation concerning production in Vietnam. Petitioners argue that an analysis of the

revelatory statutory factors of section 781(b)(2) of the Act further supports their conclusion that the Cambodian processing is “minor or insignificant.” These factors include: (1) Level of investment in the foreign country; (2) level of research and development in the foreign country; (3) nature of the production process in the foreign country; (4) extent of production facilities in the foreign country; and (5) whether the value of the processing in the foreign country represents a small proportion of the value of the merchandise imported into the United States.

Petitioners’ analysis of these factors to include citations as appropriate, is as follows. Based on this analysis, petitioners conclude that the Cambodian process is “minor and insignificant” as the term is defined in section 781(b)(2) of the Act when compared to the Vietnamese multi-stage live fish growing process.

(1) Level of Investment

Petitioners state they do not have access to information concerning the level of investment that has been made in Cambodia supporting the final processing of basa and tra fish. However, petitioners cite to a February 2001 report by the Cambodian Department of Fisheries on trade, marketing and processing of fish and fish products to support their argument that they believe the level of investment in basa and tra processing is minimal. *See The Department of Fisheries: Trade, Marketing and Processing of Fisheries and Fisheries Product Review Technical Paper 6* (February, 2001) (“*Fisheries Report*”). Petitioners cite to this report to support their argument that even in processing plants where some level of foreign investment has taken place, facilities remain poor and unmodernized. *See Fisheries Report* at 12. Petitioners note that the report states that even those facilities characterized as “modern or industrial” by the Cambodian government were also described as “extremely poor” with “no concept of a proper processing line.” *See Fisheries Report* at 11–12. Petitioners cite to the U.S. International Trade Commission’s (“USITC”) Final Determination and the Department’s Preliminary Issues and Decision Memorandum in the underlying Vietnam investigation to support their belief that, similar to Vietnamese processing facilities, workers cut fillets by hand as opposed to using automated equipment as is typical in the United States. *See Certain Frozen Fish Fillets from Vietnam, U.S. International Trade Commission Investigation No. 731-TA-*

1012 (Final), Pub. No. 3617 (August 2003) (“*USITC Final*”) at I–4; *Issues and Decision Memorandum for the Antidumping Duty Investigation of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam* (June 16, 2003) (“*I & D Memo*”) at 44. Based on these sources, petitioners conclude that the level of investment in Cambodian processing facilities is low.

(2) Level of Research and Development

Petitioners state they rely on the record of the underlying investigation to support their position that the level and extent of research and development in frozen fish fillet processing is low. Petitioners cite to the verification report for An Giang Fisheries Import and Export Joint Stock Company (“AGIFISH”) and the *USITC Final* to support their argument that because fish fillet processing is a mature industry, research and development is almost entirely concentrated in the production of the fish rather than the end stage processing. *See AGIFISH Verification Report* (April 11, 2003) at 14–19; *USITC Final* at VI–5.

(3) Nature of the Production Process

Petitioners argue that the processing of live basa and tra into fillets requires only unskilled manual labor. Petitioners cite to the AGIFISH Verification Report to support this argument as the report states that virtually every step in the process, from killing to placing the fillets on trays for freezing is done by hand. *See AGIFISH Verification Report* at 16–19. Petitioners point out that although U.S. processors may employ relatively high technology processing equipment, this equipment is not required to process live fish. Petitioners contend there is no indication that high technology processing methods employed in the United States processing facilities are used in Cambodia and it is reasonable to assume that Cambodian processing is no more sophisticated than processing in Vietnam.

(4) Extent of Production in Cambodia

Petitioners state they do not know the extent of facilities that can process Vietnamese basa and tra into frozen fish fillets. However, petitioners cite to the *Fisheries Report* which states that as of February 2001 there were four “freezing processing enterprises” in Cambodia with export permits. *See Fisheries Report* at 11. Petitioners conclude that the ease with which Vietnamese basa and tra can be transported to Cambodia, coupled with the existence of the freezing processing facilities can facilitate an immediate and significant

shift to processing Vietnamese basa and tra in Cambodia.

(5) Value of Cambodian Processing Compared to Fillets Imported Into the United States

Petitioners again refer to respondents’ arguments in the underlying investigation wherein they state that the cost of the live fish was the most important input in the production of subject merchandise. Petitioners cite to the *I & D Memo* to support their argument that because of the relatively low cost of end stage processing in Cambodia, the ability of fish fillet processors to compete successfully depends upon their ability to manage the cost of the main material input, *i.e.* whole live fish. *See I & D Memo* at 28.

D. Value of Merchandise Produced in Cambodia

Petitioners argue that the evidence as noted *supra* in their submission clearly supports their position that the value of the whole live basa and tra produced in Vietnam is a significant percentage of the overall value of the frozen basa and tra fillets imported into the United States from Cambodia. Petitioners also restate their position that in Cambodia, as in Vietnam, manual, low tech processing merely “completes” the product, and the overwhelming value derives from the whole live fish input.

E. Factors To Consider in Determining Whether Action Is Necessary

Petitioners argue that additional factors must be considered in the Department’s decision whether to issue a finding of circumvention regarding importation of Cambodian frozen fish fillets. These factors are discussed below.

Pattern of Trade

Petitioners state that section 781(b)(3) of the Act directs the Department to take into account patterns of trade when making a decision on anticircumvention rulings. Petitioners argue that U.S. Bureau of Census import statistics demonstrate a pattern of trade indicative of significant evasion of the Vietnamese antidumping duty order. Specifically, petitioners argue that prior to issuance of the Vietnam antidumping duty order, virtually no frozen fish fillets entered the United States from Cambodia. However, starting in January 2004, following imposition of the antidumping duty order in August 2003, imports of frozen fish fillets under HTSUS classifications 0304.2060.30, 0304.2060.96, and 0304.2060.43, reached commercially significant levels, totaling 768,000 pounds for the first half

of 2004, compared with no imports for the same period in 2003. Petitioners further argue that if Cambodian imports continue to increase at the current rate, they will reach more than 1.5 million pounds for all of 2004, compared with 70,000 pounds for all of 2003. Petitioners also point out that until July 1, 2004, there was no specific HTSUS classification for frozen fish fillets of the *Pangasius* family. However, petitioners argue, their analysis of publicly available Port Import Export Reporting Service ("PIERS") data on Cambodian imports under HTSUS classifications 0304.2060.30, 0304.2060.96 and 0304.2060.43 indicate that the bulk of shipments are comprised of frozen basa and tra fillets. Petitioners therefore conclude that, absent any knowledge of other types of frozen fish fillets currently produced in Cambodia for export to the United States, the majority of frozen fish fillets entering the United States from Cambodia are basa and tra.

Other Information Not Available to Petitioners

Petitioners argue that they have no information concerning formal or informal relationships, if any, between Vietnamese growers/producers of whole live basa and tra and Cambodian processors. Finally, petitioners contend they are unable to ascertain the level of Vietnamese exports of whole live basa and tra to Cambodia as a result of their inability to obtain applicable trade statistics. Petitioners add that even in the event such trade statistics were made available that the high degree of informal cross-border trade would likely not be accounted for in these statistics.

Analysis

Based on our analysis of the application, the Department determines that a formal anticircumvention inquiry is warranted. With regard to whether the merchandise from Cambodia is of the same class or kind as the merchandise produced in Vietnam, petitioners have presented information indicating that the merchandise being imported from Cambodia is of the same class or kind as those fillets produced in Vietnam which are subject to the antidumping duty order. The merchandise from Cambodia shares physical characteristics with the merchandise covered by the antidumping duty order.

With regard to completion of merchandise in a foreign country, petitioners have also presented information that the fish fillets from Cambodia are being processed in Cambodia, using Vietnamese fish as the input. This information is consistent with the information contained in the

Piazza scope request. See Scope Inquiry Request from Piazza, dated May 12, 2004.

With regard to whether the conversion of whole live Vietnamese basa and tra fish into frozen fish fillets from Cambodia is a "minor or insignificant process," petitioners addressed the relevant statutory factors used to determine whether the processing of live fish is minor or insignificant with the best information available to petitioners at the time of the request. Although petitioners submitted minimal information that addresses the minor or insignificant factor, the information submitted by petitioners with respect to the level of investment, research and development, nature of production process, extent of production in Cambodia, and the value of the Cambodian processing as compared to fillets imported to the United States supports their request to initiate an anticircumvention inquiry.

With respect to the value of the merchandise produced in Cambodia, petitioners rely upon the findings of the investigation, which show the cost of the live fish input is significant relative to the cost of end-stage processing.

Finally, petitioners argued that the Department should also consider the pattern of trade factor in determining whether to initiate the anticircumvention inquiry. The import information submitted by petitioners indicates that imports of frozen fish fillets from Cambodia are rising significantly.

Accordingly, we are initiating a formal anticircumvention inquiry concerning the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam, pursuant to section 781(b) of the Act. In accordance with 19 CFR 351.225(l)(2), if the Department issues a preliminary affirmative determination, we will then instruct the Bureau of Customs and Border Protection ("CBP") to suspend liquidation and require a cash deposit of estimated duties on the merchandise.

Concurrent Scope Request

On May 12, 2004, Piazza submitted a scope request asking that the Department confirm that frozen fish fillets processed in Cambodia from Vietnamese-origin whole fish are excluded from the scope of the antidumping duty order on frozen fish fillets. Specifically, Piazza argues that the whole live fish raised in Vietnam are outside the scope of the *FFF Duty Order* and that the filleting, freezing, and packaging process in Cambodia results in the fillets having a country of origin of Cambodia. Further, Piazza argues

that, if the Department concludes that the description of the merchandise does not clearly exclude the whole live fish raised in Vietnam and filleted and frozen in Cambodia, a substantial transformation analysis demonstrates that the live fish would be substantially transformed into a product of Cambodia and thus would not fall under the scope of antidumping duty order on frozen fish fillets from Vietnam.

After reviewing Piazza's scope inquiry request, the Department determines that it is not clear whether the frozen fish fillets produced from Vietnamese whole live fish are outside the scope of the order on frozen fish fillets from Vietnam. Specifically, a determination as to whether the frozen fish fillets are within the scope of the antidumping duty order may depend upon an analysis of the significance of the production process in Cambodia; therefore, further inquiry is necessary. Because both the anticircumvention and scope request may necessitate an analysis of the significance of the production process in Cambodia, the Department finds it appropriate to initiate both concurrently. In addition, at this time, the Department is focusing its analysis of the significance of the production process in Cambodia on the single processor identified by the petitioners in their August 20, 2004, anticircumvention request and about which sufficient information to initiate an inquiry has been provided. However, within 45 days of the date of initiation of this inquiry, if the Department receives sufficient evidence that other Cambodian processors are involved in processing Vietnamese whole live fish for export to the United States, we will consider examining such additional processors.

The Department will, following consultation with interested parties, establish a schedule for questionnaires and comments on the issues. The Department intends to issue its final determination within 300 days of the date of publication of this initiation.

This notice is published in accordance with section 781(b) of the Act and 19 CFR 351.225.

Dated: October 22, 2004.

Joseph A Spetrini,

Acting Assistant Secretary for Import Administration.

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