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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 Review and Notice of Amended Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On May 24, 2018, the United States Court of International Trade (Court) issued final judgments in *Vinh Hoan Corporation et al. v. United States*, Consol. Court No. 13-00156, sustaining the Department of Commerce's (Commerce) remand results for the eighth administrative review of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam (Vietnam) covering the period of review (POR) August 1, 2010, through July 31, 2011. Commerce is notifying the public that the Court's final judgment is not in harmony with Commerce's final results of the administrative review, and that Commerce is amending the final results with respect to certain exporters.

DATES: Applicable June 3, 2018.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, AD/CVD Operations Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-2243.

SUPPLEMENTARY INFORMATION:

Background

On March 21, 2013, Commerce issued its *AR8 Final Results*.¹ On May 20, 2013, Commerce issued its *AR8 Amended Final Results*.² Vinh Hoan *et al.*³ and the petitioners⁴ timely filed complaints with the Court and challenged certain aspects of the *AR8 Amended Final Results*. On February 19, 2015, the Court remanded Commerce's *AR8 Amended Final Results*.⁵

In the first remand, in accordance with the Court's instructions, Commerce reconsidered its selection of the surrogate country, and the selection of certain surrogate values (SVs), *i.e.*, whole live *pangasius* fish, surrogate financial statements, various by-products and several other SVs, as they relate to the selection of the surrogate country.⁶ Additionally, and in accordance with the Court's instructions, Commerce made changes to Vinh Hoan Corporation's⁷ (Vinh Hoan) margin calculation, specifically, by adjusting the denominators for Vinh Hoan's factors of production (FOPs) to exclude water weight, and adjusting the consignment expense for certain sales. Commerce made changes to the margin calculations of Vinh Hoan, Anvifish Joint Stock Company (Anvifish) and the separate rate respondents' margins to account for a small change in the whole live fish SV. Also, at Commerce's request, the Court granted Commerce a voluntary

¹ See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2010-2011*, 78 FR 17350 (March 21, 2013) (*AR8 Final Results*).

² See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Amended Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 29323 (May 20, 2013) (*AR8 Amended Final Results*) and accompanying Ministerial Error Memorandum.

³ These include Vinh Hoan, the Vietnam Association of Seafood Exporters and Producers, Binh An Seafood Joint Stock Company (Binh An), Anvifish and Vinh Quang Fisheries Corporation (Vinh Quang).

⁴ 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, the petitioners).

⁵ See *Vinh Hoan Corporation et al. v. United States*, Court No. 13-00156, Slip Op. 15-16 (CIT February 19, 2015).

⁶ See *Final Results of Redetermination Pursuant to Vinh Hoan Corporation et al. v. United States*, Consol. Court No. 13-00156, and Slip Op. 15-16, dated August 3, 2015 (First Remand Results).

⁷ Vinh Hoan was one of two mandatory respondents selected by Commerce. Vinh Hoan includes Vinh Hoan Corporation and its affiliates Van Duc Food Export Joint Company and Van Duc Tien Giang (VDTG).

remand to reconsider the calculation of the cap applied to Vinh Hoan's fish oil by-product offset.

On May 26, 2016, the Court remanded Commerce's First Remand Results.⁸ In the second remand, in accordance with the Court's instructions, Commerce reconsidered its selection of the sawdust and rice husk SVs, provided further explanation concerning the cap to the fish oil by-product offset, and discussed the use of the absolute value of by-products in the margin calculation.⁹ The Court upheld our findings on these issues, except one, the fish oil by-product offset.¹⁰

On July 10, 2017, the Court remanded Commerce's Second Remand Results.¹¹ In the third remand, in accordance with the Court's instructions, Commerce provided further explanation with respect to the calculated fish oil by-product offset and its superiority with respect to the other fish oil SVs on the record.¹² On September 22, 2017, Commerce filed the Third Remand Results with the Court. On May 24, 2018, the Court upheld the Third Remand Results.

As a result of the AR8 Remand Results,¹³ there are calculation changes. After accounting for all such changes and issues in the AR8 Remand Results, the resulting antidumping margin for Vinh Hoan is \$0.13 per kilogram and \$2.39 per kilogram for Anvifish. Because Vinh Hoan's and Anvifish's margins changed, their weighted average also becomes the margin (\$1.28 per kilogram) for those companies not individually examined but receiving a separate rate. On May

⁸ See *Vinh Hoan Corporation et al. v. United States*, Court No. 13-00156, Slip Op. 16-53 (CIT May 26, 2016).

⁹ See Final Results of Redetermination Pursuant to *Vinh Hoan Corporation et al. v. United States*, Consol. Court No. 13-00156, Slip Op. 16-00053, dated May 26, 2016 (Second Remand Results).

¹⁰ See *Vinh Hoan Corporation et al. v. United States*, Consol. Court No. 13-00156, Slip Op. 17-00081 (July 10, 2017) (*Vinh Hoan*).

¹¹ See *Vinh Hoan Corporation et al. v. United States*, Court No. 13-00156, Slip Op. 17-81 (CIT July 10, 2017).

¹² See Final Results of Redetermination Pursuant To Court Remand, Consol. Court No. 13-00156, Slip Op. 15-16 (CIT February 19, 2015), dated September 22, 2017, (Third Remand Results).

¹³ See First Remand Results, Second Remand Results, and Third Remand Results (collectively AR8 Remand Results).

24, 2018, the Court sustained the AR8 Remand Results.¹⁴

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*), Commerce is notifying the public that the final judgment in this case is not in harmony with Commerce's final results of the antidumping duty administrative review of the antidumping duty order on fish fillets from Vietnam covering the POR. Thus, Commerce is amending the *AR8 Amended Final Results* with respect to the weighted-average dumping margins for Vinh Hoan, Anvifish and the separate rate respondents.¹⁵

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 (Act), Commerce must publish a notice of a court decision that is not "in harmony" with a Commerce determination and must suspend liquidation of entries pending a "conclusive" court decision. The Court's May 24, 2018, judgment sustaining the AR8 Remand constitutes a final decision of the Court that is not in harmony with Commerce's *AR8 Amended 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, Commerce is amending the *AR8 Amended Final Results* with respect to Vinh Hoan, Anvifish and the separate rate respondents. The

¹⁴ See *Vinh Hoan Corporation et al. v. United States*, Court No. 13-00156, Slip Op. 18-59 (CIT May 24, 2018).

¹⁵ These include: An Giang Agriculture and Food Import-Export Joint Stock Company; Asia Commerce Fisheries Joint Stock Company; Binh An Seafood Joint Stock Company; Cadovimex II Seafood Import-Export and Processing Joint Stock Company; Hiep Thanh Seafood Joint Stock Company; Hung Vuong Corporation; Nam Viet Corporation; NTSF Seafoods Joint Stock Company; QVD Food Company Ltd.; Saigon Mekong Fishery Co., Ltd.; Southern Fisheries Industries Company Ltd.; and Vinh Quang Fisheries Corporation (collectively, separate rate respondents).

revised weighted-average dumping margins for these exporters during the period August 1, 2010, through July 31, 2011, are as follows:

Exporter	Weighted-Average Dumping Margin (Dollars Per Kilogram)
Vinh Hoan Corporation ¹⁶	0.13
Anvifish Joint Stock Company ¹⁷	2.39
An Giang Agriculture and Food Import-Export Joint Stock Company	1.28
Asia Commerce Fisheries Joint Stock Company	1.28
Binh An Seafood Joint Stock Company	1.28
Cadovimex II Seafood Import-Export and Processing Joint Stock Company	1.28
Hiep Thanh Seafood Joint Stock Company	1.28
Hung Vuong Corporation	1.28
Nam Viet Corporation	1.28
NTSF Seafoods Joint Stock Company	1.28
QVD Food Company Ltd. ¹⁸	1.28
Saigon Mekong Fishery Co., Ltd.	1.28
Southern Fisheries Industries Company Ltd.	1.28
Vinh Quang Fisheries Corporation	1.28

Accordingly, Commerce 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, Commerce will instruct U.S. Customs and Border Protection to assess antidumping duties on unliquidated entries of subject merchandise exported by the companies

¹⁶ This rate is applicable to the Vinh Hoan Group which includes: Vinh Hoan, Van Duc, and VDTG.

¹⁷ Includes the trade name Anvifish Co., Ltd.

¹⁸ This rate is also applicable to QVD Dong Thap Food Co., Ltd. (Dong Thap) and Thuan Hung Co., Ltd. (THUFICO). In the second review of this order, Commerce found QVD, Dong Thap and THUFICO to be a single entity, and because there has been no evidence submitted on the record of this review that calls this determination into question, we continue to find these companies to be part of a single entity. Therefore, we will assign this rate to the companies in the single entity. See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 53387 (September 11, 2006).

mentioned above using the assessment rate calculated by Commerce in the AR8 Remand Results and listed above.

Cash Deposit Requirements

Unless the applicable cash deposit rates have been superseded by cash deposit rates calculated in an intervening administrative review of the AD order on frozen fish fillets from Vietnam, Commerce will instruct U. S. Customs and Border Protection to require a cash deposit for estimated AD duties at the rate noted above for each specified exporter and producer combination, for entries of subject merchandise, entered or withdrawn from warehouse, for consumption, on or after June 3, 2018.

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.

Dated: July 20, 2018.

Gary Taverman,

Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations

performing the non-exclusive functions and duties of the

Assistant Secretary for Enforcement and Compliance.

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