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DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-801]

Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results and Partial Rescission of the Seventh Antidumping Duty Administrative Review

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

SUMMARY: On September 9, 2011, the Department of Commerce (“Department”) published the Preliminary Results of the seventh administrative review and sixth new shipper review of the antidumping duty order on certain frozen fish fillets (“frozen fish fillets”) from the Socialist Republic of Vietnam (“Vietnam”).<sup>1</sup> We gave interested parties an opportunity to comment on the Preliminary Results and, based upon our analysis of the comments and information received, we made changes to the margin calculations for the final results of these reviews. The final weighted-average margins are listed below in the “Final Results of the Reviews” section of this notice. The period of review (“POR”) is August 1, 2009, through July 31, 2010.

EFFECTIVE DATE: [Insert date of publication]

FOR FURTHER INFORMATION CONTACT: Alexis Polovina or Javier Barrientos, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3927 or (202) 482-2243, respectively.

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<sup>1</sup> See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results and Partial Rescission of the Seventh Antidumping Duty Administrative Review, 76 FR 55872 (September 9, 2011) (“Preliminary Results”).

## Case History

As noted above, on September 9, 2011, the Department published the Preliminary Results of this administrative review. We extended the deadlines for submission of surrogate value (“SV”) comments and case briefs multiple times based on requests from interested parties. On December 29, 2011, the Department fully extended the time limit for completion of the final results of this administrative review.<sup>2</sup> On November 15, 2011, and January 6, 2012, parties submitted SV comments and SV rebuttal comments, respectively. On January 13, 2012, and January 27, 2012, parties submitted case and rebuttal briefs, respectively.

On December 30, 2011, Petitioners<sup>3</sup> submitted comments on Vinh Hoan Corporation’s (“Vinh Hoan”) factors of production (“FOP”) methodology. On January 9, 2012, the Department placed certain factual information from the sixth administrative review regarding Vinh Hoan on the record, and also issued a supplemental questionnaire to Vinh Hoan. On January 18, 2012, Vinh Hoan responded to the supplemental questionnaire. On February 1 and February 6, 2012, parties submitted case and rebuttal briefs, respectively, pertaining to Vinh Hoan’s FOP methodology. On December 29, 2011, January 24, 2012, and February 21, 2012, Petitioners and/or their counsel met with officials from the Department. On February 16, 2012, counsel for certain Respondents<sup>4</sup> and VASEP,<sup>5</sup> an interested party, met with officials from the Department. As a result of our analysis, we have made changes to the Preliminary Results.

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<sup>2</sup> See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Extension of Time Limit for the Final Results of the Seventh Antidumping Duty Administrative Review, 76 FR 81913 (December 29, 2010).

<sup>3</sup> This includes: Catfish Farmers of America and 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. (“Petitioners”)

<sup>4</sup> These companies include: Vinh Hoan ; Vinh Quang Fisheries Corporation (“Vinh Quang”); QVD Food Company Ltd. (“QVD”) (the Department is treating QVD, QVD Dong Thap Food Co., Ltd., and Thuan Hung Co., Ltd. as a single entity in this review); and certain separate rate companies.

<sup>5</sup> Vietnam Association of Seafood Exports and Producers.

## Scope of the Order

The product covered by the 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 codes 0304.29.6033, 0304.62.0020, 0305.59.0000, 0305.59.4000, 1604.19.2000, 1604.19.2100, 1604.19.3000, 1604.19.3100, 1604.19.4000, 1604.19.4100, 1604.19.5000, 1604.19.5100, 1604.19.6100, 1604.19.8100 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the Harmonized Tariff Schedule of the United States (“HTSUS”).<sup>6</sup> The 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 the order is dispositive.

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<sup>6</sup> 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. Until February 1, 2007, these products were classifiable under tariff article code 0304.20.60.33 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the HTSUS. On March 2, 2011, the Department added two HTSUS numbers at the request of U.S. Customs and Border Protection (“CBP”): 1604.19.2000 and 1604.19.3000. On January 30, 2012, the Department added eight HTSUS numbers at the request of U.S. CBP: 0304.62.0020, 0305.59.0000, 1604.19.2100, 1604.19.3100, 1604.19.4100, 1604.19.5100, 1604.19.6100, 1604.19.8100.

## Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties are addressed in the “Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Issues and Decision Memorandum for the Final Results of the Seventh Antidumping Duty Administrative Review,” dated concurrently with this notice (“Issues & Decision Memo”), and which is hereby adopted by this notice. A list of the issues which parties raised is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendation in this public memorandum which is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Services System (“IA ACCESS”). Access to IA ACCESS is available in the Central Records Unit (“CRU”) of the main Commerce Building, Room 7046. In addition, a complete version of the Issues and Decision Memorandum is accessible on the Web at <http://trade.gov/fm>. The paper copy and electronic versions of the Issues and Decision Memorandum are identical in content.

## Final Partial Rescission

In the Preliminary Results, the Department preliminarily rescinded the review with respect to four companies: 1) IDI; 2) CL-Fish; 3) THIMACO; and 4) NTSF.<sup>7</sup> These companies reported that they had no shipments of subject merchandise to the United States during the POR. As we stated in the Preliminary Results, our examination of shipment data from U.S. Customs and Border Protection (“CBP”) for these companies confirmed that there were no entries of subject merchandise from them during the POR.<sup>8</sup> The Department did not receive any comments regarding the preliminary rescission for any company claiming no shipments. Therefore, we are rescinding the administrative review with respect to these four companies.

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<sup>7</sup> International Development & Investment Corporation (“IDI”); Cuu Long Fish Joint Stock Company (“CL Fish”); Thien Ma Seafood Co., Ltd. (“THIMACO”); and NTSF Seafoods Joint Stock Company (“NTSF”).

<sup>8</sup> See Preliminary Results.

### Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our Preliminary Results, we have made certain revisions to the margin calculation for Vinh Hoan, and QVD. For the reasons explained in the I&D Memo at Comment 1, we have changed our primary surrogate country selection from Indonesia to Bangladesh. For all other changes to the calculations of Vinh Hoan and QVD, see the I&D Memo and company-specific analysis memorandum. For changes to the SVs, see the I&D Memo and “Memorandum to the File, through Matthew Renkey, Acting Program Manager, AC/CVD Operations, Office 9, from Javier Barrientos, Senior Case Analyst, and Alexis Polovina, Case Analyst, AD/CVD Operations, Office 9, Seventh Antidumping Duty Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Surrogate Values for the Final Results,” dated March 7, 2012.

### Non-Market Economy Country Status

In every case conducted by the Department involving Vietnam, Vietnam has been treated as an NME country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority.<sup>9</sup> None of the parties to this proceeding have contested such treatment. Accordingly, we calculated NV in accordance with section 773 (c) of the Act, which applies to NME countries.

### Separate Rates

In proceedings involving NME countries, the Department holds a rebuttable presumption that all companies within the country are subject to government control and, thus, should be

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<sup>9</sup> See Notice of Final Results of Administrative Review: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 73 FR 15479 (March 17, 2008) and accompanying Issues and Decision Memorandum (“3<sup>rd</sup> AR Final Results”).

assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.<sup>10</sup> In the Preliminary Results, we determined that in addition to the mandatory respondents, the Separate-Rate Applicants<sup>11</sup> also met the criteria for separate-rate status. The separate rate is determined based on the estimated weighted-average antidumping margins established for exporters and producers individually investigated, excluding zero and de minimis margins or margins based entirely on AFA.<sup>12</sup>

The statute and the Department's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination when the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally we have looked to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents we did not examine in an administrative review. Section 735(c)(5)(A) of the Act articulates a preference that we are not to calculate an all-others rate using any zero or de minimis margins or any margins based entirely on facts available. Accordingly, the Department's usual practice has been to average the rates for the selected companies, excluding zero, de minimis and rates based entirely on facts available.<sup>13</sup> Section 735(c)(5)(B) of the Act also provides that, where all margins are zero, de minimis, or based entirely on facts available, we may use "any reasonable

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<sup>10</sup> See Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991), as further developed in Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994).

<sup>11</sup> These companies include: 1) Anvifish Co., Ltd.; 2) Anvifish JSC; 3) Acomfish; 4) Bien Dong Seafood 5) Binh An; 6) CASEAMEX 7) ESS LLC; 8) East Sea Seafoods Joint Venture Co., Ltd.; 9) Hiep Thanh; 10) South Vina; and 11) Vinh Quang (collectively, "Separate-Rate Applicants").

<sup>12</sup> See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 73 FR 52273, 52275 (September 9, 2008) and accompanying Issues and Decision Memorandum at Comment 6.

<sup>13</sup> See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Review in Part, 73 FR 52823, 52824 (September 11, 2008) and accompanying Issues and Decision Memorandum at Comment 16.

method” for assigning the rate to non-selected respondents, including “averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated.”

For this administrative review, the Department has calculated positive margins for one mandatory respondent, QVD. Accordingly, consistent with our practice, for these final results, the Department has preliminarily established a margin for the Separate-Rate Applicants based on the rate calculated for the one of the mandatory respondents, QVD. The rate established for the Separate-Rate Applicants is a per-unit rate of \$0.03 dollars per kilogram. Entities receiving this rate are identified by name in the “Preliminary Results of Review” section of this notice.

#### Vietnam-Wide Rate and Vietnam-Wide Entity

As noted in the Preliminary Results, because some parties for which a review was requested did not apply for separate rate status, the Vietnam-Wide entity is considered to be under review in this segment of the proceeding. In NME proceedings, “‘rates’ may consist of a single dumping margin applicable to all exporters and producers.” See 19 CFR 351.107(d). As explained above in the “Separate Rates” section, all companies within Vietnam are considered to be subject to government control unless they are able to demonstrate an absence of government control with respect to their export activities. Such companies are thus assigned a single antidumping duty rate distinct from the separate rate(s) determined for companies that are found to be independent of government control with respect to their export activities. We consider the influence that the government has been found to have over the economy to warrant determining a rate for the entity that is distinct from the rates found for companies that have provided sufficient evidence to establish that they operate freely with respect to their export activities. See Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative

Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 37116 (June 23, 2003). In this regard, we note that no party has submitted evidence of the proceeding to demonstrate that such government influence is no longer present or that our treatment of the NME entity is otherwise incorrect. Therefore, we are assigning the entity's current rate of \$2.11 per kilogram, the rate determined for the Vietnam-wide entity in this proceeding. See, e.g., Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews, 75 FR 12726 (March 17, 2010).

Final Results of the Review

The weighted-average dumping margins for the POR are as follows:

<b>Manufacturer/Exporter</b>	<b>Weighted-Average Margin (Dollars Per Kilogram)</b>
1) Vinh Hoan <sup>14</sup>	0.00
2) QVD	0.03
3) Anvifish Co., Ltd.	0.03
4) Anvifish JSC	0.03
5) Acomfish	0.03
6) Bien Dong Seafood	0.03
7) Binh An	0.03
8) CASEAMEX	0.03
9) ESS LLC	0.03
10) East Sea Seafoods Joint Venture Co., Ltd.	0.03
11) Hiep Thanh	0.03
12) South Vina	0.03
13) Vinh Quang	0.03

<sup>14</sup> This rate is applicable to the Vinh Hoan Group which includes Vinh Hoan, Van Duc, and VD TG.

Vietnam-Wide Rate	2.11
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### Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department will determine, and U.S. Customs and Border Protection (“CBP”) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For assessment purposes, we calculated importer (or customer)-specific assessment rates for merchandise subject to this review. Where appropriate, we calculated an ad valorem rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total entered values associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting ad valorem rate against the entered customs values for the subject merchandise. Where appropriate, we calculated a per-unit rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. Where an importer (or customer)-specific assessment rate is de minimis (i.e., less than 0.50 percent), the Department will instruct CBP to assess that importer (or customer's) entries of subject merchandise without regard to antidumping duties, in accordance with 19 CFR 351.106(c)(2). The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from Vietnam entered, or withdrawn from warehouse, for consumption on or after the publication date, as

provided by section 751(a)(2)(C) of the Act: (1) For Vinh Hoan, QVD, and the Separate-Rate Applicants, the cash deposit rate will be their respective rates established in the final results of this review, except if the rate is zero or de minimis no cash deposit will be required; (2) for previously investigated or reviewed Vietnamese and non-Vietnamese exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all Vietnamese exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the Vietnam-Wide rate of \$2.11 per kilogram; and (4) for all non-Vietnamese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Vietnamese exporters that supplied that non-Vietnamese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

#### Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

#### Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby

requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

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Paul Piquado  
Assistant Secretary  
for Import Administration

March 7, 2012\_  
Date

Appendix I – Issues & Decision Memorandum

- COMMENT I: SELECTION OF SURROGATE COUNTRY
- A. Economic Comparability
  - B. Significant Producer of the Comparable Merchandise
  - C. Data Considerations

- COMMENT II: SURROGATE VALUES
- A. Financial Ratios
    - 1. Selection of Surrogate Companies
  - B. By-Products Offsets
    - 1. Fish Waste
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    - 5. Fish Meal
  - C. Farming Factors
    - 1. Fingerlings, Fish Feed, Nutrients, Lime
  - D. Other Surrogate Values
    - 1. Labor
    - 2. Salt
    - 3. STPP, CO Gas, PE Bags, Cartons, Tape, Label, Plastic Sheet, Banding, Diesel, Coal
    - 4. Brokerage & Handling

- COMMENT III: ZEROING

Company-Specific Issues

- COMMENT IV: VINH HOAN
- A. Fish Consumption
  - B. Revocation
  - C. Farming Water

- COMMENT V: CONSIDERATION OF VINH QUANG AS A VOLUNTARY RESPONDENT

- COMMENT VI: SOUTH VINA SEPARATE RATE CERTIFICATION

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