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January 20, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman 
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping
Duty New Shipper Reviews: Certain Frozen Fish Fillets from the
Socialist Republic of Vietnam

SUMMARY

In response to requests from Nam Phuong Seafood Co., Ltd. (“Nam Phuong”) and NTACO Corporation (“NTACO”), the Department of Commerce (“the Department”) is conducting new shipper reviews of the antidumping duty order on certain frozen fish fillets (“fish fillets”) from the Socialist Republic of Vietnam (“Vietnam”) for the period of review August 1, 2013, through January 31, 2014. As discussed below, the Department preliminarily determines that Nam Phuong’s and NTACO’s sales under review are not *bona fide*. As such, the Department is preliminarily rescinding these new shipper reviews for Nam Phuong and NTACO.

If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (“CBP”) to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 90 days from the date of publication of this notice, pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (“the Act”).

Background

On April 3, 2014, the Department published notice of initiation of new shipper reviews of fish fillets from Vietnam for the period August 1, 2013, through January 31, 2014.¹ On August 20, 2014, the Department partially extended the deadline for issuing the preliminary results by 60

¹ See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Reviews; 2013–2014*, 79 FR 18666 (April 3, 2014).



days.² On October 29, 2014, the Department fully extended the deadline for issuing the preliminary results by an additional 60 days.³ The revised deadline for the preliminary results of these new shipper reviews is January 20, 2015.⁴

The Department sent antidumping questionnaires to Nam Phuong and NTACO, to which they responded in a timely manner. Between May and November 2014, the Department issued supplemental questionnaires to Nam Phuong and NTACO, to which they responded in a timely manner. Between September and December 2014, the Department received surrogate country and surrogate value comments, as well as rebuttal comments from interested parties.

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 1604.19.4000, 1604.19.5000, 0305.59.4000, 0304.29.6033 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the Harmonized Tariff Schedule of the United States (“HTSUS”).⁵ 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.

² See Memorandum to Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, through James C. Doyle, Director, Office V, Antidumping and Countervailing Duty Operations, from Steven Hampton, International Trade Compliance Analyst, Office V, Antidumping and Countervailing Duty Operations, regarding Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Deadline for Preliminary Results of Antidumping Duty New Shipper Reviews of Nam Phuong Seafood Co., Ltd. and NTACO Corporation, dated August 20, 2014.

³ See Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through James C. Doyle, Director, Office V, Antidumping and Countervailing Duty Operations, from Steven Hampton, International Trade Compliance Analyst, Office V, Antidumping and Countervailing Duty Operations regarding Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Full Extension of Deadline for Preliminary Results of Antidumping Duty New Shipper Reviews of Nam Phuong Seafood Co., Ltd. and NTACO Corporation, dated October 29, 2014.

⁴ *Id.*

⁵ 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.

DISCUSSION OF THE METHODOLOGY

Bona Fides Analysis

Consistent with the Department's practice, we examined the *bona fides* of the sales by Nam Phuong and NTACO that are under review in these new shipper reviews.⁶ In evaluating whether a sale in a new shipper review is commercially reasonable or typical of normal business practices, and therefore *bona fide*, the Department considers, *inter alia*, such factors as (a) the timing of the sale, (b) the price and quantity, (c) the expenses arising from the transaction, (d) whether the goods were resold at a profit, and (e) whether the transaction was made at an arm's length basis.⁷ Accordingly, the Department considers a number of factors in its *bona fides* analysis, "all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise."⁸ In *TTPC*, the Court of International Trade ("CIT") also affirmed the Department's decision that any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant,⁹ and found that the weight given to each factor investigated will depend on the circumstances surrounding the sale.¹⁰ Finally, in *New Donghua*, the CIT affirmed the Department's practice of evaluating the circumstances surrounding a new shipper review sale, so that a respondent does not unfairly benefit from an atypical sale and obtain a lower dumping margin than the producer's usual commercial practice would dictate.¹¹ Where the Department finds that a sale is not *bona fide*, the Department will exclude the sale from its export price calculations.¹² When the respondent under review makes only one sale and the Department finds that transaction atypical, "exclusion of that sale as non-*bona fide* necessarily must end the review, as no data will remain on the export price side of {the Department's} antidumping duty calculation."¹³

Based on the totality of circumstances, we preliminarily find that the sales made by Nam Phuong and NTACO during the POR were not *bona fide* commercial transactions and should be excluded from the Department's calculations. With respect to Nam Phuong, the Department reached this conclusion based on the totality of circumstances, namely: (a) the atypical nature of Nam Phuong's price; (b) the atypical involvement of other entities in the sale; (c) atypical circumstances surrounding production; and (d) late payment. With respect to NTACO, the Department reached this conclusion based on the totality of circumstances, namely: (a) the atypical nature of NTACO's price; (b) the atypical involvement of another entity in the sale; (c) atypical circumstances surrounding production; and (d) late payment. Because these transactions involve business proprietary information, a full discussion of our preliminary findings that these

⁶ See, e.g., *Honey from the People's Republic of China: Rescission and Final Results of Antidumping Duty New Shipper Reviews*, 71 FR 58579 (October 4, 2006) and accompanying Issues and Decision Memorandum at Comment 1b.

⁷ See *Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1249-1250 (CIT 2005) ("*TTPC*").

⁸ See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) ("*New Donghua*") (citing *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002)).

⁹ See *TTPC*, 366 F. Supp. 2d at 1250.

¹⁰ *Id.*, at 1263.

¹¹ See *New Donghua*, 374 F. Supp. 2d at 1344.

¹² See *TTPC*, 366 F. Supp. 2d at 1249.

¹³ *Id.*

sales are not *bona fide* is set forth in the Nam Phuong *Bona Fides Memo*¹⁴ and NTACO *Bona Fides Memo*.¹⁵ Because we find that Nam Phuong's and NTACO's single POR sales are not *bona fide*, we cannot rely on these sales to calculate dumping margins and, therefore, there are no sales on which we can base these reviews. Consequently, we are preliminarily rescinding these reviews.¹⁶

CONCLUSION

We recommend applying the above methodology for these preliminary results.

✓
Agree

Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

20 JANUARY 2015
(Date)

¹⁴ See Memorandum to James Doyle, Director, Office V, Antidumping and Countervailing Duty Operations, through Scot T. Fullerton, Program Manager, Office V, Antidumping and Countervailing Duty Operations, from Matthew Renkey, Senior Analyst, titled "New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: *Bona Fide* Nature of Nam Phuong Seafood Co., Ltd.'s Sale," dated concurrently with and hereby adopted by this memorandum.

¹⁵ See Memorandum to James Doyle, Director, Office V, Antidumping and Countervailing Duty Operations, through Scot T. Fullerton, Program Manager, Office V, Antidumping and Countervailing Duty Operations, from Steven Hampton, International Trade Compliance Analyst, titled "New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: *Bona Fide* Nature of NTACO Corporation's Sale," dated concurrently with and hereby adopted by this memorandum.

¹⁶ See, e.g., *TTPC*, 366 F. Supp. 2d at 1249.