



A-552-801  
NSR: 8/1/2014 - 1/31/2015  
**Public Document**  
E&C OV: KH

June 27, 2016

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

FROM: Christian Marsh   
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of  
Antidumping Duty New Shipper Review: Certain Frozen Fish  
Fillets from the Socialist Republic of Vietnam

---

Summary

The Department of Commerce (“the Department”) analyzed the comments submitted by Petitioners<sup>1</sup> and Hai Huong Seafood Joint Stock Company (“HHFish”) in the new shipper review (“NSR”) of the antidumping duty order on certain frozen fish fillets (“fish fillets”) from the Socialist Republic of Vietnam (“Vietnam”). Following the *Preliminary Results*, and the analysis of the comments received, we have made changes to the margin calculation for the final results.<sup>2</sup> We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

Case Issues

Comment I: Application of Facts Available to HHFISH’s Factors of Production  
Comment II: By-products Sold During the Period of Review  
Comment III: Corrections to the SAS Program

---

<sup>1</sup> Catfish Farmers of America and individual U.S. catfish processors America’s Catch, Alabama Catfish, Inc. d/b/a Harvest Select Catfish, Inc., Heartland Catfish Company, Magnolia Processing, Inc. d/b/a Pride of the Pond, and Simmons Farm Raised Catfish, Inc. (collectively, “Petitioners”).

<sup>2</sup> See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty New Shipper Review; 2014-2015*, 81 FR 5709 (February 3, 2016) (“*Preliminary Results*”) and accompanying Preliminary Decision Memorandum.



## Background

On February 3, 2016, the Department published the *Preliminary Results*.<sup>3</sup> On April 4, 2016, the Department extended the time period for issuing the final results to June 27, 2016.<sup>4</sup> Between April 11 and April 13, 2016, the Department conducted a verification of HHFISH's responses.<sup>5</sup> Between June 2 and June 7, 2016, interested parties submitted case and rebuttal briefs.

## 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) and 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 0304.62.0020 (Frozen Fish Fillets of the species *Pangasius*, including basa and tra), and may enter under tariff article codes 0305.59.0000, 1604.19.2100, 1604.19.3100, 1604.19.4100, 1604.19.5100, 1604.19.6100 and 1604.19.8100 of the Harmonized Tariff Schedule of the United States ("HTSUS").<sup>6</sup>

The order covers all frozen fish fillets meeting the above specifications, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs

---

<sup>3</sup> *Id.*

<sup>4</sup> See Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations from Kenneth Hawkins, International Trade Compliance Analyst, "Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension of Deadline for Final Results of 2014/2015 New Shipper Review," April 4, 2016.

<sup>5</sup> See Memorandum to the File, from Matthew Renkey, Senior Case Analyst, and Kenneth Hawkins, Case Analyst, "Verification of the Sales and Factors of Production Responses of Hai Huong Seafood Joint Stock Company in the 2014-2015 New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam," dated May 24, 2016 ("HHFISH Verification Report").

<sup>6</sup> Until June 30, 2004, these products were classifiable under HTSUS 0304.20.6030, 0304.20.6096, 0304.20.6043 and 0304.20.6057. From July 1, 2004 until December 31, 2006, these products were classifiable under HTSUS 0304.20.6033. From January 1, 2007 until December 31, 2011, these products were classifiable under HTSUS 0304.29.6033. On March 2, 2011, the Department added two HTSUS numbers at the request of U.S. Customs and Border Protection ("CBP") that the subject merchandise may enter under: 1604.19.2000 and 1604.19.3000, which were changed to 1604.19.2100 and 1604.19.3100 on January 1, 2012. On January 1, 2012, the Department added the following HTSUS numbers at the request of CBP: 0304.62.0020, 0305.59.0000, 1604.19.4100, 1604.19.5100, 1604.19.6100 and 1604.19.8100.

purposes, our written description of the scope of the order is dispositive.

### Discussion of the Issues

#### **Comment I: Application of Facts Available to HHFISH's Reported Factors of Production (FOPs)**

##### *Petitioners*

- HHFISH failed to report CONNUM-specific FOPs, as required by the Department's questionnaire.<sup>7</sup> The Department has required FOPs to be reported on a CONNUM-specific basis from Vietnamese respondents since the original less-than-fair-value ("LTFV") investigation.<sup>8</sup>
- HHFISH did not report CONNUM-specific FOPs that are reflective of the differences in the physical characteristics, such as Product Form, Product Size and Net Weight, and thus resulting in a distorted single FOP usage ratio for all CONNUMs. Instead, HHFISH improperly reported its FOPs using its production of all products.
- HHFISH by its own admission did not report its FOPs according to physical characteristics, claiming it was "impossible" and in any case it does not maintain the production and inventory records necessary to track such information on a CONNUM-specific basis. However, even if HHFISH did not track FOPs on CONNUM-specific basis in the ordinary course of business, it is nonetheless obligated to provide reliable estimates, pursuant to the Department's instructions. The Court of Appeals for the Federal Circuit ("CAFC") has held that a respondent's reporting obligation requires it to put forth "maximum" effort to comply with the Department's reporting requirements.<sup>9</sup>
- In addition to its failure to report CONNUM-specific FOPs, HHFISH did not properly report the subject merchandise weight that it used in its FOP calculations. The weight gain HHFISH reported results from its soaking its fillets in preservatives. However, the HHFISH Verification Report shows that the actual weight gain is higher than the weight gain HHFISH reported, thereby distorting the calculation. Moreover, it is inconsistent with the allowed industry standard weight gain amount permitted for commercially viable fish fillets under Vietnamese law.<sup>10</sup>
- The Department should apply facts available ("FA") and restate HHFISH's FOPs on a non-soaked basis to account for the distortion caused by HHFISH's refusal to report FOPs on a CONNUM-specific basis.

##### *HHFISH*

- Petitioners are incorrect that HHFISH's reported FOP data should be adjusted in the final results.

---

<sup>7</sup> The Department's normal practice is to compute costs on a control-number- (CONNUM-) specific basis. The Department instructs respondents to report the total model-specific cost of the foreign like product and subject merchandise for purposes of calculating cost of production and constructed value.

<sup>8</sup> 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, 2004) ("*Investigation*") and accompanying Issues and Decision Memorandum at Comment 18.

<sup>9</sup> See *Nippon Steel Corp. v. United States*, 227 F. 3d 1373, 1382 (Fed. Cir. 2003).

<sup>10</sup> See Petitioner's Case Brief at 10 and 12; for further detail, please refer to Petitioner's Case Brief because this contains business proprietary information.

- The Department’s verification report does not indicate any discrepancies between HHFISH’s FOP reporting methodology and the tracking of the physical characteristics of the subject merchandise sold during the POR in HHFISH’s records.
- HHFISH’s FOPs are largely expressed on a CONNUM-specific basis. However, for product form (PRODFORM) and product size (PRODSIZE), HHFISH does not maintain production or inventory records that enable it to track consumption for these physical characteristics on a CONNUM-specific basis.
- Contrary to Petitioners’ argument, all of HHFISH’s production included in the denominator of the FOPs was subject merchandise. Furthermore, this is not an analogous situation to prior reviews where the respondent included FOPs for merchandise outside the scope, such as whole frozen fish, fish steak, or fresh fillets, in the FOP denominator.
- The Department tested the fish fillet weight gained through soaking at verification and found that the weight added was consistent with what was reported in HHFISH’s responses.

**Department’s Position:** For these final results, pursuant to sections 776(a)(2)(B), and (C) of the Tariff Act of 1930, as amended (“the Act”), the Department finds that the use of facts otherwise available is warranted with respect to HHFISH. Specifically, HHFISH included in its FOP denominator for each FOP the total production of fish fillets it sold to domestic, third-country, and the U.S. markets, regardless of the physical differences reflected in the CONNUMs. The inclusion of the production of these sales in the FOP denominator results in understated FOP usage ratios.<sup>11</sup> Moreover, the Department finds that the reported FOPs are distorted due to HHFISH’s reporting of weight gain.

Section 776(a)(1) and (2) of the Act provides that, if necessary information is missing from the record, or if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the AD statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

In order to calculate normal value (“NV”) in antidumping proceedings involving non-market economies (“NMEs”), the Act states:

the administering authority shall determine the normal value of the subject merchandise on the basis of the value of the factors of production utilized in producing the

---

<sup>11</sup> See HHFISH’s August 6, 2015, Supplemental Sections C&D Questionnaire Response at 16 (stating that HHIFHSH tracks inventory for only “fillet”); HHFISH’s October 28, 2015, Supplemental Questionnaire Response at Exhibit 4.

merchandise and to which shall be added an amount for general expenses and profit plus the cost of containers, coverings, and other expenses.<sup>12</sup>

To construct the value of the product sold by HHFISH in the United States, the Department determines the NV of the subject merchandise based on the FOPs utilized in producing such merchandise. The Department's instructions in the antidumping questionnaire specifically requests:

If you are not reporting factors of production (FOPs) using actual quantities consumed to produce the merchandise under review on a CONNUM-specific basis, please provide a detailed explanation of all efforts undertaken to report the actual quantity of each FOP consumed to produce the merchandise under review on a CONNUM-specific basis. Additionally, please provide a detailed explanation of how you derived your estimated FOP consumption for merchandise under review on a CONNUM-specific basis and explain why the methodology you selected is the best way to accurately demonstrate an accurate consumption amount.

In order to compare NVs to U.S. prices on an apples-to-apples basis, the Act instructs the Department to determine the NV of the subject merchandise based on the FOPs utilized in producing the merchandise.<sup>13</sup> To achieve this end, the Department utilizes a CONNUM which defines the key physical characteristics of the subject merchandise as those that are commercially meaningful in the U.S. marketplace, and affect costs of production.<sup>14</sup> In NME proceedings in particular, the Department requires respondents to report FOPs that are specific to each CONNUM sold to the United States "to construct the value of the product sold by {the respondent} company in the United States."<sup>15</sup>

Although the respondents participating in the original investigation were excused from reporting CONNUM-specific FOPs, the Department recognized the inaccuracies that could result in inaccurate margins in future administrative reviews if respondents did not report CONNUM-specific FOPs.<sup>16</sup> As a result, in the investigation, the Department placed respondents on notice that in future segments it would require CONNUM-specific FOPs.<sup>17</sup> In the 8<sup>th</sup> AR Final, the Department reminded respondents of their obligation to report CONNUM-specific FOPs, noting that the Department "may require Vinh Hoan and other respondents to report {their} FOPs on a

---

<sup>12</sup> See 19 USC 1677 b(c) of the Act.

<sup>13</sup> See 19 USC 1677b(a) and b(c) of the Act.

<sup>14</sup> See, e.g., *Large Residential Washers from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation*, 81 FR 1398, 1399 (January 12, 2016) ("*Washers Initiation*") and *Stainless Steel Wire Rod from Sweden: Final Results of Antidumping Duty Administrative Review*, 73 FR 12950 (March 11, 2008) and accompanying Issues and Decision Memorandum at Comment 1 (where the Department stated that, consistent with Department practice, model-matching criteria were developed to account for the salient characteristics of the subject merchandise and not the specific experience of any one respondent).

<sup>15</sup> See the Department's original antidumping duty questionnaire to HHFISH at D-1.

<sup>16</sup> 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) ("*Investigation*") and accompanying Issues and Decision Memorandum at Comment 18.

<sup>17</sup> *Id.*

CONNUM-specific basis...”<sup>18</sup> The Department noted that although the respondent in the 8<sup>th</sup> AR *Final* argued that it was unable to report FOP data on a CONNUM-specific basis, the Department nevertheless concluded that the respondent should now fully understand the Department’s documentation and data collection requirements for reporting CONNUM-specific FOPs.<sup>19</sup> Moreover, the Department has consistently requested CONNUM-specific FOP information in each questionnaire issued in every segment of this case since the investigation. In fact, the agency’s requirement for CONNUM-specific FOPs is explicitly set forth in the Department’s standard NME questionnaire, which has been publicly available on the Department’s website for years.<sup>20</sup> In the last administrative review, the Department found that respondents misreported certain physical characteristics, *i.e.*, Product Form, Product Size, and Net Weight, which resulted in inaccurate and unreliable databases, and applied FA to those respondents in order to reduce distortions found in their FOP usage rates, and to provide more CONNUM-specific FOPs.<sup>21</sup>

HHFISH soaks its fillets in preservative solutions, and as a result, its fillets retained various amounts of water, *i.e.*, its fillets gained weight. During the course of this review, the Department learned that HHFISH applied very different soaking formulae based on the requirements of different markets.<sup>22</sup> Therefore, because HHFISH comingled U.S. frozen products that have lower soaking percentage with frozen products for other markets with a higher soaking percentage in its denominator of its FOPs, the Department cannot make an apples-to-apples comparison between FOPs and U.S. sales. More specifically, by expanding the FOP denominator to include products that were soaked to a greater degree, HHFISH underreported all of its FOPs for subject merchandise sold to the United States.

In response to the Department’s initial and supplemental questionnaires, HHFISH did not report FOPs on a CONNUM-specific basis that only included in the denominator its production of fish fillets subject to the scope that were sold to the United States during the POR.<sup>23</sup> Specifically, because HHFISH states that it only tracks production by fillet, regardless of weight gain attributed from soaking, therefore, HHFISH also failed to report FOPs that accurately accounted for the weight gain of the subject merchandise sold to the United States. Moreover, by reporting an inaccurate weight gain, the FOPs, which include production of sales outside the United States in the denominator, are further distorted.<sup>24</sup> Thus, the Department cannot use HHFISH’s FOPs without adjustment.<sup>25</sup>

---

<sup>18</sup> 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) (“8<sup>th</sup> AR *Final*”) and accompanying Issues and Decision Memorandum at Comment XXII.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 17435 (March 29, 2016) and accompanying Issues and Decision Memorandum at Comment I.

<sup>22</sup> See Petitioners’ August 7, 2015, submission at 21-27.

<sup>23</sup> See HHFISH’s August 6, 2015, Supplemental Questionnaire Response at Exhibit 2.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*; see also HHFISH’s October 28, 2015 submission at 5.

We note that the Net Weight physical characteristic of the CONNUM requests that HHFISH report “the percentage of weight as sold accounted for by ice, water, glazing, *etc.*”<sup>26</sup> In its questionnaire responses, HHFISH reported weight gained by soaking which affects the Net Weight physical characteristic.<sup>27</sup> However, at verification, the Department conducted yield tests to determine the weight of HHFISH’s unsoaked fillets. We note that the yield test indicates that HHFISH’s reported Net Weight inaccurately accounts for weight gained due to soaking.<sup>28</sup> Therefore, as in the most recently completed administrative review, the Department is applying FA in order to reduce distortions found in HHFISH’s FOP usage rates, and to provide more CONNUM-specific FOPs. In applying FA, for these final results, the Department is applying the yield factor calculated at verification in the above-discussed yield tests to the FOPs consumed by HHFISH during the POR.<sup>29</sup> Moreover, the Department reiterates that it will require future respondents to report accurate CONNUM-specific FOPs.

## **Comment II: By-products Sold During the Period of Review (POR)**

### *Petitioners*

- HHFISH overstated production of by-products by reporting the total amount sold during the POR, not the amount produced.
- Petitioners note in *Solar Cells from the PRC*, that the Department denied Wuxi Suntech’s claim of a by-product offset for broken wafers because: (1) record evidence indicates that an offset is not warranted, and (2) Wuxi Suntech failed to provide sufficient information to establish that it is entitled to the offset.<sup>30</sup>
- For the final results, the Department should restate HHFISH’s reported by-products based on the amount produced during the POR, not sold during the POR.

### *HHFISH*

- HHFISH did not comment on this issue.

**Department’s Position:** We agree with Petitioners. The Department’s current practice is that “the by-product offset is limited to the total production quantity of the by-product ... produced during the POR, so long as it is shown that the by-product has commercial value.”<sup>31</sup>

---

<sup>26</sup> See the Department’s original antidumping duty questionnaire, dated April 8, 2015.

<sup>27</sup> See HHFISH’s May 22, 2015 Section C Questionnaire Response at C10.

<sup>28</sup> See Memorandum to the File, from Matthew Renkey and Kenneth Hawkins, Case Analysts, “Verification of the Sales and Factors of Production Responses of Hai Huang Seafood Joint Stock Company in the 2014-2015 New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,” dated May 24, 2016, at 2 and 7-8.

<sup>29</sup> See Memo to the File, through Paul Walker, Program Manager, Office V, Enforcement & Compliance, from Kenneth Hawkins, Case Analyst, regarding New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results Analysis Memorandum for Hai Huang Seafood Joint Stock Company, dated concurrently with this memorandum.

<sup>30</sup> See *Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Final Results of the 2012-2013 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 80 FR 40,998 (July 11, 2015).

<sup>31</sup> See *Frontseating Service Valves from the People’s Republic of China: Final Results of the 2008-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 76 FR 70706 (November 15, 2011) (“*Frontseating Service Valves*”) and accompanying Issues and Decision Memorandum at Comment 18.

For a by-product offset to have commercial value, the respondent must demonstrate that the product was sold for revenue or reintroduced into production.<sup>32</sup>

Here, HHFISH reported “frozen fish skin, frozen broken meat, and frozen fish stomachs as by-products of the filleting process that were sold during the POR.”<sup>33</sup> Thus, the record indicates that HHFISH’s by-products had commercial value during the POR because they were sold for revenue.<sup>34</sup> During the *Preliminary Results*, the Department accounted for HHFISH’s three by-products for frozen fish skin, frozen broken meat, and frozen fish stomachs that were sold during the POR. For these final results, consistent with the Department’s by-product offset practice, and as articulated in *Frontseating Service Valves*, *Silicon Metal*, and *Solar Cells*, the Department has adjusted the by-product offset to the volume of those by-products produced by HHFISH during the POR.<sup>35</sup>

### **Comment III: Corrections to the SAS Program**

#### *Petitioners*

- The Department used an incorrect conversion ratio to convert pounds to kilograms in the SAS program.
- The Department applied an incorrect freight calculation for certain FOPs in the SAS program.

#### *HHFISH*

- HHFISH did not comment on this issue.

**Department’s Position:** We agree with Petitioners and have corrected these errors for the final results.

---

<sup>32</sup> See *Silicon Metal from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 54563 (September 5, 2012) (“*Silicon Metal*”) and accompanying Issues and Decision Memorandum at Comment 3.

<sup>33</sup> See HHFISH’s June 5, 2015, submission at 19.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*; see also *Frontseating Service Valves from the People’s Republic of China: Final Results of the 2008-2010*; see also, *Silicon Metal from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting the margin calculation program accordingly. If accepted, we will publish the final results of review and the final dumping margins in the *Federal Register*.

AGREE ✓      DISAGREE \_\_\_\_\_

Paul Piquado  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

27 JUNE 2016  
Date