Amanda Foods (Vietnam) Ltd., et. al v. United States
Court No. 08-00301 Slip Op. 10-69 (CIT June 17, 2010)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

A. SUMMARY

The Department of Commerce ("Department") has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade ("CIT" or the "Court") in Amanda Foods (Vietnam) Ltd., et al., v. United States, Consol. Court No. 08-00301 (June 17, 2010) ("Amanda II"). These final remand results concern Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 73 FR 52273 (September 9, 2008) ("Vietnam Shrimp AR2"). As set forth in detail below, in these final results, pursuant to the Court's remand opinion and order in Amanda II, we opted to reopen the evidentiary record for the purpose of gathering additional data from the plaintiff separate rate companies to determine a reasonable rate to assign to these exporters that is based on substantial record evidence.

B. BACKGROUND

Separate Rate Calculation Methodology

The Department reviewed 63 companies in Vietnam Shrimp AR2. See Vietnam Shrimp AR 2, 73 FR at 52275. Of those 63 companies, two companies were selected for individual examination, 26 cooperative, non-individually examined respondents demonstrated eligibility for, and received, a separate rate, and 35 non-cooperative companies were properly considered part of the Vietnam-Wide entity because they did not demonstrate eligibility for a separate rate. The Vietnam-Wide entity was assigned a total adverse facts available rate of 25.76 percent because parts of that entity were deemed uncooperative. Id., at 52274.

In Vietnam Shrimp AR2 Prelim, the Department explained that the statute and the Department's regulations do not directly address the establishment of a rate to be applied to cooperative companies not selected for individual examination where the Department has limited

its examination in an administrative review pursuant to section 777A(c)(2) of the Tariff Act of 1930, as amended ("the Act"). We further stated that the Department's practice in this regard, in cases involving limited selection based on exporters accounting for the largest volumes of trade, has been to weight-average the rates for the selected companies excluding zero and de minimis rates and rates based entirely on facts available ("FA"). In this case, however, the Department calculated de minimis rates for both of the individually examined respondents and preliminarily assigned to the cooperative non-individually examined respondents a separate rate equal to the weighted-average margin of the two calculated de minimis rates, pursuant to section 735(c)(5)(B) of the Act.

After having invited interested parties to comment on the preliminary separate-rate calculation methodology, the Department determined that the circumstances regarding the separate rate calculation methodology were comparable to those of the preceding administrative review. As a result, for Vietnam Shrimp AR2, the Department assigned a separate rate of 4.57 percent, which is the margin calculated for cooperative separate rate respondents in the underlying investigation, to the non-individually examined respondents in this administrative review with no history of a calculated margin, as a reasonable method which is reflective of the range of commercial behavior demonstrated by exporters of the subject merchandise during a very recent period in time. See Vietnam Shrimp AR2, 73 FR at 52275 and accompanying Issues and Decision Memorandum at Comment 6. Additionally, for those non-individually examined respondents for whom we calculated a rate in a more recent or contemporaneous segment, we assigned that calculated rate as the company's separate rate in this review. Specifically, for Viet Hai Seafoods Company Ltd. and Grobest & I-Mei Industrial (Vietnam) Co., Ltd., we assigned the rates most recently calculated for both companies (zero) as their separate rate in the instant review because these rates were more recent than the separate rate calculated in the underlying investigation and were based on the companies' own data. Additionally, for Minh Hai Joint-

Stock Seafoods Processing Company, we assigned as a separate rate the most recent rate of 4.30 percent, which we calculated for it in the underlying investigation based on the company's own data. For all other cooperative non-individually examined respondents receiving a separate rate, we assigned 4.57 percent. See Vietnam Shrimp AR2 and accompanying Issues and Decision Memorandum at Comment 6.

In Amanda Foods (Vietnam) Ltd., et. al v. United States Court No. 08-00301 Slip Op. 09-106 (CIT September 29, 2009) ("Amanda I"), the Court remanded the separate rate assignment methodology to either assign to Plaintiffs the weighted-average rate of the mandatory respondents, or else provide justification, based on substantial evidence on the record, for using another rate. See Amanda I at 30. Consequently, in the Department's remand redetermination for Amanda I, we stated that "the Department employed the correct analytical framework in its draft remand redetermination, in determining a reasonable method with which to assign a rate to non-individually examined respondents in Vietnam Shrimp AR2." See Amanda I at 21. Specifically, we stated that, based on record evidence, selecting rates from prior segments to apply to the non-selected companies in this review implements the statute's preference to avoid zero/de minimis and FA margins and reasonably reflects the existence of dumping under the order, specifically accounting for: 1) the positive transaction-specific margins that exist on the record of this review; 2) the evidence of dumping in this review that may be inferred based on the lack of cooperation of the Vietnam-wide entity, which includes the companies that did not allow the Department to determine whether or not they should be selected for examination; 3) the evidence of dumping by certain mandatory respondents in the first review; and 4) ongoing entries made under the Vietnam-wide rate for which either reviews were not requested, or responses to Department questions not received.

In Amanda II, the Court disagreed with the Department's justification for applying the selected separate rate assignment methodology in Amanda I and remanded the issue back to the

Department. The Court stated that certain record evidence "offered as evidence in support of the dumping margins assigned to Plaintiffs in this review, are all based on evidence of the existence of uncooperative respondents in the first and/or second reviews." See Amanda II remand opinion and order at 21. Further, the Court also stated that "with regard to transaction-specific, above-de minimis margins found in the course of investigating the mandatory respondents, suffice it to say that, if the presence of these transaction-specific margins failed to justify assigning an overall above-de minimis rate for the companies whose data they embody, then they certainly cannot serve to do so for the remaining cooperative companies." Id., at 25-26.

On remand, the Court ordered the Department to employ a reasonable method {to assign a separate rate}, which may "'includ[e] averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated,' 19 U.S.C. § 1673d(c)(5)(B) and…assign to Plaintiffs dumping margins for the second POR which are reasonable considering the evidence on the record as a whole; to do so, Commerce may reopen the evidentiary record if need be." See Amanda II remand opinion and order at 26.

C. ANALYSIS

Separate Rate Determination

The Department respectfully disagrees with the Court's holdings in Amanda I and Amanda II. However, under respectful protest, the Department determined that, in this instance, it was necessary to reopen the evidentiary record to gather additional information, specific to each of the 23 Plaintiffs, in order to comply with the Court's order. As detailed within footnote 22 of Amanda II, we reopened the record to gather the quantity and value ("Q&V") of Plaintiffs' sales to the United States during the period of review ("POR") on a count-size specific basis to analyze the data to determine whether a reasonable separate rate assignment methodology is supported by the supplemented evidentiary record. See Amanda II at footnote 22.

On August 11, 2010, the Department sent questionnaires to Plaintiffs requesting the Q&V data of POR sales on a shrimp count-size specific basis. On August 25, 2010, Plaintiffs provided the count-size Q&V responses. On August 26, 2010, and August 27, 2010, the Department sent supplemental questionnaires to Plaintiffs regarding discrepancies within the count-size Q&V data responses. On August 30, 2010, and August 31, 2010, Plaintiffs provided responses to the supplemental questionnaires.

In analyzing Plaintiffs' count-size specific Q&V data, the Department determined to compare the count-size specific data for each company to the count-size specific weighted-average normal value of the mandatory respondents in the second administrative review, Minh Phu Group and Camimex. The methods employed in making these comparisons included estimated adjustments such as: 1) calculating an average unit value ("AUV") of each count size from the Q&V data; 2) unit of measure conversions; 3) a matching of count sizes between the Q&V data and the weighted-average normal values ("NVs"), and; 4) gross price to net price conversions for each count-size specific AUV to approximate the gross to net price deductions made in a typical dumping margin analysis. This estimated gross price to net price adjustment was calculated using the average gross price to net price ratio of the mandatory respondents' sales data and then applying that ratio to the AUVs of the 23 Plaintiffs.

After having conducted these analyses, the Department determined that the record, with the additional count-size specific Q&V data, does not show evidence of dumping by the 23 Plaintiffs during this POR. However, the Department notes that these analyses were not full dumping margin calculations as conducted per the statute for the individually examined respondents, Minh Phu Group and Camimex.[1] Thus, because the record does not contain

[1] Minh Phu Seafood Export Import Corporation (and affiliated Minh Qui Seafood Co., Ltd. and Minh Phat Seafood Co., Ltd.), Minh Phu Seafood Corporation; Minh Phu Seafood Corp., Minh Qui Seafood Co., Ltd., Minh Qui Seafood, Minh Phat Seafood Co., Ltd., Minh Phat Seafood, (collectively, "Minh Phu"') and Camau Frozen Seafood Processing Import Export Corporation ("Camimex"').

Plaintiffs' NV data, the results of our analysis pursuant to the remand do not reflect the entire scope of Plaintiffs' production experience and costs. Nevertheless, the Department has not found any evidence of dumping by Plaintiffs during this POR based on the information currently on the record. Consequently, we determine to assign, under protest, a separate rate to these 23 Plaintiffs equal to the simple average of the dumping margins calculated for the individually-examined companies, Minh Phu Group and Camimex. Consequently, the separate rate margins for the 23 Plaintiffs are as follows, inclusive of the companies' names and trade names as they appeared in Vietnam Shrimp AR2:

Exporter Name	Simple Average Separate Rate Margin
Amanda Foods (Vietnam) Ltd.	0.01 (de minimis)
C.P. Vietnam Livestock Co. Ltd., aka C P Vietnam Livestock Co. Ltd., aka C P Livestock	0.01 (de minimis)
Cadovimex Seafood Import-Export and Processing Joint Stock Company ("CADOVIMEX") aka Cai Doi Vam Seafood Import-Export Company (Cadovimex)	0.01 (de minimis)
Cafatex Fishery Joint Stock Corporation ("Cafatex Corp.") aka Cantho Animal Fisheries Product Processing Export Enterprise (Cafatex), aka Cafatex, aka Cafatex Vietnam, aka Xi Nghiep Che Bien Thuy Suc San Xuat Khau Can Tho, aka Cas, aka Cas Branch, aka Cafatex Saigon, aka Cafatex Fishery Joint Stock Corporation, aka Cafatex Corporation, aka Taydo Seafood Enterprise	0.01 (de minimis)
Can Tho Agricultural and Animal Product Import Export Company ("CATACO") aka Can Tho Agricultural Products aka CATACO	0.01 (de minimis)
Coastal Fishery Development aka Coastal Fisheries Development Corporation (Cofidec) aka Coastal Fisheries Development Corporation (Cofidec)	0.01 (de minimis)
Cuulong Seaproducts Company ("Cuu Long Seapro") aka Cuu Long Seaproducts Limited (Cuulong Seapro)	0.01 (de minimis)
Danang Seaproducts Import Export Corporation ("Seaprodex Danang") aka Tho Quang Seafood Processing & Export Company, aka Seaprodex Danang, aka Tho Quang Seafood Processing And Export Company, aka Tho Quang	0.01 (de minimis)

Frozen Seafoods Factory No. 32, aka Frozen Seafoods Fty, aka Thuan Phuoc, aka Thuan Phuoc Seafoods and Trading Corporation, aka Frozen Seafoods Factory 32, aka Seafoods and Foodstuff Factory	0.00 (de minimis)
Investment Commerce Fisheries Corporation ("Incomfish")	0.01 (de minimis)
Kim Anh Co., Ltd.	0.01 (de minimis)
Minh Hai Export Frozen Seafood Processing Joint Stock Company, aka Minh Hai Jostoco, aka Minh Hai Export Frozen Seafood Processing Joint-Stock Company ("Minh Hai Jostoco"), aka Minh Hai Export Frozen Seafood Processing Joint-Stock Company, aka Minh Hai Joint Stock Seafood Processing Joint-Stock Company, aka Minh Hai Export Frozen Seafood Processing Joint-Stock Co.	0.01 (de minimis)
Minh Hai Joint-Stock Seafoods Processing Company ("Seaprodex Minh Hai")	0.01 (de minimis)
Minh Hai Sea Products Import Export Company (Seaprimex Co) , aka Ca Mau Seafood Joint Stock Company ("SEAPRIMEXCO")	0.01 (de minimis)
Ngoc Sinh Private Enterprise, aka Ngoc Sinh Seafoods	0.01 (de minimis)
Nha Trang Fisheries Joint Stock Company ("Nha Trang Fisco")	0.01 (de minimis)
Nha Trang Seaproduct Company ("Nha Trang Seafoods")	0.01 (de minimis)
Phu Cuong Seafood Processing and Import-Export Co., Ltd.	0.01 (de minimis)
Phuong Nam Co. Ltd., aka Phuong Nam Seafood Co. Ltd.	0.01 (de minimis)
Sao Ta Foods Joint Stock Company ("Fimex VN"), aka Sao Ta Seafood Factory	0.01 (de minimis)
Soc Trang Aquatic Products and General Import Export Company ("Stapimex")	0.01 (de minimis)
UTXI Aquatic Products Processing Company, aka UT XI Aquatic Products Processing Company, aka UT-XI Aquatic Products Processing Company, aka UTXI, aka UTXI Co. Ltd., aka Khanh Loi Seafood Factory, aka Hoang Phuong Seafood Factory	0.01 (de minimis)
Viet Foods Co., Ltd. ("Viet Foods")	0.01 (de minimis)

COMMENTS FROM INTERESTED PARTIES[2]

Petitioner argues that the Department's separate rate determination in Vietnam Shrimp AR2 was appropriate, reasonable, and supported by the statute, unlike the methodology applied in Amanda II Draft Remand. Petitioner further argues that the separate rate assignment

[2] The Department released its Draft Remand Redetermination ("Amanda II Draft Remand") to parties on October 18, 2010, and Petitioner filed comments on October 25, 2010. No other interested parties filed comments.

methodology applied in Amanda II Draft Remand, which is described above, is not appropriate because it is inconsistent with the section 735(c)(5)(B) of the Act. Petitioner contends that this comparison methodology employed in Amanda II Draft Remand is unreasonable and has no bearing on whether the 23 Plaintiffs sold subject merchandise at less than fair value during the POR as the basis of record evidence of dumping.

DEPARTMENT'S POSITION

As we explained above, and throughout this proceeding, the statute and the Department's regulations do not directly address the establishment of a rate to be applied to cooperative companies not selected for individual examination where the Department has limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. The Department's practice in this situation has been to look to section 735(c)(5)(B) of the Act for guidance and weight-average the rates for the selected companies excluding zero and de minimis rates and rates based entirely on FA. In this case, however, the Department calculated de minimis rates for both of the individually examined respondents. Because the statute is silent regarding this situation, the Department determined that a reasonable method would be to apply the average of the rates calculated, excluding zero and de minimis rates and rates based entirely on FA, in the most recent proceeding in which such rates were available. Additionally, for those non-individually examined respondents for which we calculated a rate in a more recent or contemporaneous segment, we assigned that calculated rate as the company's separate rate in this review. Although the Department believes that this methodology is reasonable, the Court disagreed, and we have complied with the Court's remand order. The Court held that a reasonable method of assigning separate rates, may "include{e} averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated." See Amanda II remand opinion and order at 26.

To comply with the Court's holding regarding a reasonable method, the Department reopened the evidentiary record, to collect supplementary Q&V data from the 23 Plaintiffs. This data was collected to determine whether evidence of dumping existed on the record. To make such a determination, we employed an analytical framework that reasonably incorporated a comparison of the supplementary Q&V data to other data on the record. Consequently, we compared the supplementary Q&V data of the 23 Plaintiffs to a weighted-average NV for the mandatory respondents. Our abbreviated comparative analysis in the Amanda II Draft Remand yielded information that provided no evidence that the 23 Plaintiffs were dumping during the POR. Thus, we determined, under protest, to adhere to the Court's proffered separate rate assignment methodology, which is to assign a separate rate margin equal to the simple average of the weighted-average dumping margins calculated for the mandatory respondents. As such, we have followed the Court's instruction and assigned a separate rate to the 23 Plaintiffs based on the simple average of the weighted-average margins calculated for the individually-examined respondents.

CONCLUSION

In accordance with the Court's instructions, and under respectful protest, we have assigned to the separate rate respondents the simple average of the weighted-average dumping margins determined for the individually examined companies.

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Paul Piquado
Acting Deputy Assistant Secretary
for Import Administration

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Date