

**DEPARTMENT OF COMMERCE****International Trade Administration****[A-552-801]****Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam**

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

**ACTION:** Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value.

**EFFECTIVE DATE:** July 24, 2003.

**FOR FURTHER INFORMATION CONTACT:** Alex Villanueva or James C. Doyle, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-3208, or (202) 482-0159, respectively.

**SUPPLEMENTARY INFORMATION:****Scope Of The Investigation**

For purposes of this investigation, the product covered 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 0304.20.60.30 (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 Harmonized Tariff Schedule of the

United States ("HTSUS"). This investigation covers all frozen fish fillets meeting the above specification, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

**Background**

On June 23, 2003, An Giang Fisheries Import and Export Joint Stock Company ("Agifish"), Can Tho Agricultural and Animal Products Import Export Company ("CATACO"), Nam Viet Company Limited ("Nam Viet"), and Vinh Hoan Company Limited ("Vinh Hoan"), hereinafter collectively referred to as "Mandatory Respondents," timely filed allegations that the Department made ministerial errors in the final determination.

Similarly, on June 23, 2003, Catfish Farmers of America ("CFA") and the individual U.S. catfish processors America's Catch Inc.; Consolidated Catfish Co., L.L.C.; Delta Pride Catfish, Inc.; Harvest Select Catfish, Inc.; Heartland Catfish Company; Pride of the Pond; Simmons Farm Raised Catfish, Inc.; and Southern Pride Catfish Co., Inc., hereinafter referred to collectively as "Petitioners," timely filed allegations that the Department made ministerial errors in the final determination.

**Amendment Of Final Determination**

On June 16, 2003, the Department of Commerce ("the Department") determined that certain frozen fish fillets from the Socialist Republic of Vietnam ("Vietnam") are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735(a) of the Tariff Act. See *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam* ("Final Determination") 68 FR 37116 (June 23, 2003).

The Department is amending the *Final Determination* in the antidumping investigation of certain frozen fish fillets from the Socialist Republic of Vietnam.

**Ministerial Error**

A ministerial error is defined as an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial. See 19 C.F.R. 351.224(f).

**Ministerial Error Allegations From The Mandatory Respondents****Comment 1: By-Product Offset**

The Mandatory Respondents argue that the Department has repeated the ministerial error regarding the by-product credit offset that was contained in the *Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam* ("Preliminary Determination") 68 FR 4986 (January 31, 2003). According to the Mandatory Respondents, in the *Final Determination*, as in the *Preliminary Determination*, the Department deducted the by-product credit from normal value after applying surrogate financial ratios, rather than deducting it from the cost of manufacturing before applying the surrogate financial ratios. The Mandatory Respondents assert that it is the Department's normal practice to deduct the by-product credit from the cost of manufacturing because the costs associated with the production of by-products are reflected in the costs for producing the primary finished products.

The Mandatory Respondents note that the Department previously corrected this error, explaining that the correction represented the Department's "normal practice," and that the method used in the *Preliminary Determination* "represents an error." See *Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam* ("Amended Preliminary Determination"), 68 FR 10440 (March 5, 2003). Finally, the Mandatory Respondents argue that the *Memorandum to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, Group III, Issues and Decision Memorandum for the Antidumping Duty Investigation of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, (June 16, 2003), ("Issues and Decision Memorandum") accompanying the *Final Determination* does not clearly explain why the Department reversed the correction in the *Amended Preliminary Determination* for purposes of the *Final Determination*. As a result, the Mandatory Respondents argue that the Department should again correct itself by deducting the by-product credit from the cost of manufacturing, as in the *Amended Preliminary Determination*.