

DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On August 8, 2017, the Court of International Trade (CIT) issued its final judgment, sustaining the Department of Commerce's (the Department's) remand results pertaining to the eighth administrative review of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam (Vietnam) covering the period of review (POR) of February 1, 2012, through January 31, 2013. The Department is notifying the public that the final judgment in this case is not in harmony with the final results of the administrative review, and that the Department is amending the final results with respect to the labor surrogate value applied in the administrative review.

DATES: Applicable August 18, 2017.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, AD/CVD Operations Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-6905.

SUPPLEMENTARY INFORMATION:**Background**

On September 24, 2014, the Department published the *AR8 Final Results*, and on November 4, 2014, it published the *AR8 Amended Final Results*.¹ In *Tri Union I*, the CIT granted our request for a voluntary remand on the issue of the labor surrogate value.² In *Remand I*, the Department determined that wage rate data from the Bangladeshi Bureau of Statistics (BBS) were not aberrational and constituted

the best available information for valuing labor.³ Subsequently, in the *Remand II Opinion and Order*, the CIT remanded this issue again to the Department.⁴

In light of the Court's *Remand II Opinion and Order*, we evaluated the record evidence and reconsidered our determination that the Bangladeshi data are the best available information. Consequently, we concluded that the BBS data are not the best available information on the record with which to value the respondents' labor. Instead, we determined to use Indian data on the record as a surrogate value for labor.⁵

In the *AR8 Final Results*, we calculated a 9.75 percent weighted-average margin for Soc Trang Seafood Joint Stock Company, unchanged in *AR8 Amended Final Results*.⁶ Based on our change of the labor surrogate value in *Remand II*, we calculated a 10.48 percent weighted-average margin for Soc Trang Seafood Joint Stock Company.⁷ We intend to liquidate Soc Trang Seafood Joint Stock Company's enjoined entries of subject merchandise at the importer-specific assessment rates revised pursuant to *Remand II* and identified within the Draft Remand Recalculations.

Further, we adjusted the Minh Phu Group's final margin from 4.98 percent⁸ to 5.48 percent,⁹ for the sole purpose of recalculating the separate rate for the non-individually examined companies that received a separate rate and are parties to this litigation; however, there is no effect to the Minh Phu Group's final margin of 4.98 percent in the *AR8 Final Results* unchanged in *AR8*

³ See *Final Results of Redetermination Pursuant to Court Remand*, dated September 1, 2016 (*Remand I*) at 5; available at: <http://enforcement.trade.gov/remands/16-33.pdf>.

⁴ See *Tri Union Frozen Products Inc., et al., v. United States*, Court No. 14-00249, Slip Op. 17-71 (June 13, 2017) (*Remand II Opinion and Order*) at 24-25.

⁵ See *Final Results of Redetermination Pursuant to Court Remand*, dated July 25, 2017 (*Remand II*) at 11-12; available at: <http://enforcement.trade.gov/remands/17-71.pdf>. See also the petitioner's submission re: "Comments on Surrogate Country Selection," dated August 30, 2013, and the petitioner's submission re: "Post-Prelim Evidentiary Submission Regarding Surrogate Country and Value Selection," dated April 28, 2014 at Exhibit 8. See also Memorandum to the File, re: "Draft Remand II Redetermination—Draft Remand II Recalculations," dated July 5, 2017 (Draft Remand Recalculations).

⁶ See *AR8 Final Results*, 79 FR at 57049; see also *AR8 Amended Final Results*, 79 FR at 65378.

⁷ See Memorandum to the File, re: "Draft Remand II Redetermination—Draft Remand II Recalculations," dated July 5, 2017 (Draft Remand Recalculations) at Attachment 3 and 4.

⁸ See *AR8 Final Results*, 79 FR at 57049; see also *AR8 Amended Final Results*, 79 FR at 65378.

⁹ See Draft Remand Recalculations at Attachments 1 and 2.

Amended Final Results.¹⁰ The Department recalculated the separate rate resulting in a weighted-average dumping margin of 6.94 percent for the non-individually examined companies that qualified for a separate rate and are subject to this litigation.¹¹ We intend to liquidate these companies' enjoined entries of subject merchandise at this revised rate of 6.94 percent at the completion of this litigation.

Timken Notice

In its decision in *Timken*,¹² as clarified by *Diamond Sawblades*,¹³ the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision.

This notice is published in fulfillment of the publication requirement of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise at issue in the *Remand II* pending expiration of the period to appeal or, if appealed, a final and conclusive court decision.

Amended Final Results

Because there is now a final court decision, the Department is amending the *AR8 Amended Final Results*. Based on *Remand II*, as affirmed by the Court on August 8, 2017, the revised weighted-average dumping margin for Soc Trang Seafood Joint Stock Company for the period February 1, 2012, through January 31, 2013, is 10.48 percent. The margin for the non-individually examined respondents that received a separate rate in the *AR8 Final Results* and are subject to this litigation is 6.94 percent.

In the event that the CIT's ruling is not appealed or, if appealed, is upheld

¹⁰ Since the issuance of the *AR8 Final Results*, the Department has revoked the antidumping duty order with respect to the Minh Phu Group. Moreover, the Minh Phu Group is not subject to this litigation, the original injunction enjoining the lifting of suspension has been lifted, and the suspended entries have been liquidated. See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order*, 81 FR 47756, 47757-47758 (July 22, 2016).

¹¹ *Id.*, at 3-7, where we provided the separate rate methodology and recalculation and the list of the separate rate companies that are subject to this litigation.

¹² See *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

¹³ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

¹ See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2012-2013*, 79 FR 57047 (September 24, 2014) (*AR8 Final Results*), and *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Amended Final Results of Antidumping Duty Administrative Review, 2012-2013*, 79 FR 65377 (November 4, 2014) (*AR8 Amended Final Results*).

² See *Tri Union Frozen Prods. Inc. v. United States*, 163 F. Supp. 3d 1255, 1312-13 (CIT 2016) (*Tri Union I*).

by a final and conclusive court decision, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on unliquidated entries of subject merchandise based on the importer-specific assessment rates re-calculated in *Remand II* for Soc Trang Seafood Joint Stock Company and the above-noted 6.94 percent recalculated separate rate for the non-individually examined respondents that received a separate rate in the *AR8 Final Results* and are subject to this litigation.

Cash Deposit Requirements

Mandatory Respondent

Because there have been subsequent administrative reviews for Soc Trang Seafood Joint Stock Company, the cash deposit rate for Soc Trang Seafood Joint Stock Company will remain the rate established in the most recently-completed administrative review in which it received a cash deposit rate of 4.78 percent.¹⁴

Separate-Rate Companies

There have been subsequent administrative reviews completed for the below-listed non-individually examined companies that qualified for a separate rate and are subject to this litigation; thus, the cash deposit rate for these exporters will remain the rate established in the most recently-completed administrative review in which they received a cash deposit rate:

Exporter ¹⁵	Cash deposit rate in effect (%)	Federal Register notice
Camau Frozen Seafood Processing Import Export Corporation, aka Camimex, aka Camau Seafood Factory No. 4, aka Camau Seafood Factory No. 5, aka Camau Frozen Seafood Processing Import Export Corp. (CAMIMEX-FAC 25), aka Frozen Factory No. 4.	4.78	<i>AR10 Final Results.</i>
Cafatex Fishery Joint Stock Corporation, aka Cafatex Corporation, aka Cafatex Corp., aka Cafatex, aka Taydo Seafood Enterprise, aka Xi Nghiep Che Bien Thuy Suc San Xuat Kau Cantho.	4.78	<i>AR11 Final Results.</i> ¹⁶
C.P. Vietnam Corporation, aka C.P. Vietnam Livestock Corporation, aka C.P. Vietnam Livestock Company Limited, aka C.P. Vietnam.	25.76	<i>AR11 Final Results.</i>
Camau Seafood Processing and Service Joint-Stock Corporation	4.78	<i>AR10 Final Results.</i>
Cadovimex Seafood Import-Export and Processing Joint Stock Company, aka Cai Doi Vam Seafood Import-Export Company, aka Caidovim Seafood Company, aka Cadovimex-Vietnam, aka Cadovimex.	4.78	<i>AR11 Final Results.</i>
Can Tho Import Export Fishery Limited Company, aka CAFISH	4.78	<i>AR10 Final Results.</i>
Coastal Fisheries Development Corporation, aka COFIDEC, aka Coastal Fisheries Development Corp., aka Coastal Fisheries Development Co., aka Coastal Fisheries Development.	25.76	<i>AR11 Final Results.</i>
Cuu Long Seaproducts Company, aka Cuu Long Seaproducts Limited, aka Cuulong Seapro, aka Cuu Long Seapro.	4.78	<i>AR10 Final Results.</i>
Danang Seaproducts Import Export Corporation, aka Danang Sea Products Import Export Corporation, aka Tho Quang Seafood Processing & Export Company, aka Tho Quang Seafood Processing and Export Company, aka Tho Quang, aka Tho Quang Co., aka Seaprodex Danang.	25.76	<i>AR11 Final Results.</i>
Gallant Ocean (Vietnam) Co., Ltd	4.78	<i>AR11 Final Results.</i>
Hai Viet Corporation	4.78	<i>AR10 Final Results.</i>
Investment Commerce Fisheries Corporation, aka Investment Commerce Fisheries Corp., aka Investment Commerce Fisheries, aka Incomfish, aka Incomfish Corp., aka Incomfish Corporation.	4.78	<i>AR11 Final Results.</i>
Kim Anh Company Limited, aka Kim Anh Co, Ltd	4.78	<i>AR11 Final Results.</i>
Minh Hai Export Frozen Seafood Processing Joint-Stock Company, aka Minh Hai Jostoco	4.78	<i>AR10 Final Results.</i>
Minh Hai Joint-Stock Seafoods Processing Company, aka Seaprodex Minh Hai, aka Sea Minh Hai, aka Seaprodex Min Hai, aka Seaprodex Minh Hai-Factory No. 78, aka Seaprodex Minh Hai (Minh Hai Joint Stock Seafoods Processing Co.), aka Seaprodex Minh Hai Workshop 1, aka Seaprodex Minh Hai Factory No. 69.	4.78	<i>AR10 Final Results.</i>
Minh Hai Sea Products Import Export Company, aka Ca Mau Seafood Joint Stock Company, aka Seaprimexco Vietnam, aka Seaprimexco, aka Minh Hai Seaproducts Co Ltd.	4.78	<i>AR10 Final Results.</i>
Nha Trang Fisheries Joint Stock Company, aka Nha Trang Fisco aka Nhatrang Fisheries Joint Stock Company, aka Nhatrang Fisco, aka Nha Trang Fisheries, Joint Stock.	4.78	<i>AR11 Final Results.</i>
Nha Trang Seafoods: Nha Trang Seaproducts Company, aka Nha Trang Seafoods, aka NT Seafoods Corporation, aka NT Seafoods, aka Nha Trang Seafoods-F.89 Joint Stock Company, aka Nha Trang Seafoods-F.89, aka NTSF Seafoods Joint Stock Company, aka NTSF Seafoods.	4.78	<i>AR10 Final Results.</i>
Phu Cuong Jostoco Seafood Corporation, aka Phu Cuong Seafood Processing and Import-Export Co., Ltd., aka Phu Cuong Seafood Processing and Import Export Company Limited, aka Phu Cuong Jostoco Seafood Corp.	25.76	<i>AR11 Final Results.</i>
Phuong Nam Foodstuff Corp., aka Phuong Nam Co., Ltd	4.78	<i>AR11 Final Results.</i>
Quoc Viet Seaproducts Processing Trading and Import-Export Co., Ltd	4.78	<i>AR10 Final Results.</i>

¹⁴ See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2014–2015*, 81 FR 62717, 62718–62719 (September 12, 2016) (*AR10 Final Results*). Soc Trang Seafood Joint Stock Company was granted the following “also-known-as” (aka) or “doing-business-as” (dba) names in *AR8 Final Results* (which were included in the injunction enjoining liquidation of suspended entries): Soc Trang Seafood Joint Stock Company, aka Stapimex, aka Soc Trang Aquatic Products and General Import Export Company, aka Soc Trang Aquatic Products and General Import

Export Company (“Stapimex”), aka Stapmex. However, many of these names were not granted separate rate status in *AR10 Final Results*. Thus, for liquidation purposes, we will continue to use Soc Trang Seafood Joint Stock Company’s aforementioned aka/dba names; but for cash deposit purposes, only the aka and/or dba names granted in *AR10 Final Results* are valid.

¹⁵ Many of the aka or dba names subject to the litigation were not included in subsequent reviews. Therefore, the aka and/or dba names granted separate rate status in subsequent reviews supersede those listed above. The names listed

above are included here as they appear in the injunctions enjoining liquidation pending completion of this litigation. Therefore, for liquidation purposes, we will continue to use the names above; however, only the aka and/or dba names granted in subsequent reviews are valid for cash deposit purposes.

¹⁶ See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2015–2016*, 82 FR 11431, 11433 (February 23, 2017) (*AR11 Final Results*).

Exporter ¹⁵	Cash deposit rate in effect (%)	Federal Register notice
Sao Ta Foods Joint Stock Company, aka Fimex VN, aka Sao Ta Seafood Factory, aka Saota Seafood Factory.	4.78	AR10 Final Results.
Thong Thuan Company Limited, aka Cong Ty TNHH Thong Thuan	4.78	AR10 Final Results.
Thuan Phuoc Seafoods and Trading Corporation, aka Thuan Phuoc Corp., aka Frozen Seafoods Factory No. 32, aka Seafoods and Foodstuff Factory, aka Seafoods and Foodstuff Factory Vietnam, aka My Son Seafoods Factory.	4.78	AR10 Final Results.
UTXI Aquatic Products Processing Corporation, aka UT XI Aquatic Products Processing Corporation, aka UTXI Aquatic Products Processing Company, aka UT XI Aquatic Products Processing Company, aka UTXI Co. Ltd., aka UTXI, aka UTXICO, aka Hoang Phuong Seafood Factory, aka Hoang Phong Seafood Factory.	4.78	AR11 Final Results.
Viet Foods Co., Ltd., aka Nam Hai Foodstuff and Export Company Ltd	4.78	AR10 Final Results.
Vietnam Clean Seafood Corporation, aka Vina Cleanfood	4.78	AR10 Final Results.
Viet Hai Seafood Co., Ltd., aka Vietnam Fish One Co., Ltd., aka Fish One	4.78	AR11 Final Results.
Viet I-Mei Frozen Foods Co., Ltd	4.78	AR10 Final Results.

There have been no subsequent administrative reviews completed for the below-listed non-individually examined company that qualified for a separate rate and is subject to this litigation; thus, the cash deposit rate of 6.94 percent, as recalculated in *Remand II*, applies for this exporter.

Exporter	Cash deposit rate in effect (%)
BIM Seafood Joint Stock Company	6.94

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: August 15, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, Performing the Non-exclusive Functions and Duties of the Assistant Secretary for Enforcement and Compliance.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 170706630-7630-01]

RIN 0648-XF538

Fish and Fish Product Import Provisions of the Marine Mammal Protection Act List of Foreign Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS is publishing its draft List of Foreign Fisheries (LOFF) for 2017, as required by the regulations implementing the Fish and Fish Product Import Provisions of the Marine Mammal Protection Act (MMPA). The draft LOFF reflects available information on marine mammal interactions in commercial fisheries exporting fish and fish products to the United States. NMFS has classified each commercial fishery included in the draft LOFF into one of two categories based upon frequency and likelihood of incidental mortality and serious injury of marine mammals that is likely to occur incidental to each fishery. Fisheries are classified as either exempt or export. The classification of a fishery on the draft and final LOFF will determine which regulatory requirements will be applicable to that fishery to enable the nation to receive a comparability finding necessary to export fish and fish products to the United States from that particular fishery. The draft LOFF can be found at www.nmfs.noaa.gov/ia/species/marine_mammals/mmpaloff.html.

DATES: Written comments must be received by 5 p.m. Eastern Time on October 23, 2017.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2017-0084, by either of the following methods:

1. *Electronic Submissions:* Submit all electronic comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/ #!docketDetail;D=NOAA-NMFS-2017-0084, click the "Comment Now!" icon, complete the required fields and enter or attach your comments.

2. *Mail:* Submit written comments to: Director, Office of International Affairs and Seafood Inspection, Attn: MMPA List of Foreign Fisheries, NMFS, F/IASI, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe portable document file (PDF) formats only.

NMFS will consider all comments and information received during the comment period in preparing a final LOFF. NMFS will also seek input from nations on the draft LOFF at bilateral and multilateral meetings, as appropriate.

FOR FURTHER INFORMATION CONTACT:

Nina Young, NMFS F/IASI at Nina.Young@noaa.gov or 301-427-8383.

SUPPLEMENTARY INFORMATION: In August 2016, NMFS published a final rule (81 FR 54390; August 15, 2016) implementing the fish and fish product import provisions (section 101(a)(2)) of the Marine Mammal Protection Act (MMPA). This rule established conditions for evaluating a harvesting nation's regulatory programs to address incidental and intentional mortality and serious injury of marine mammals in fisheries operated by nations that export fish and fish products to the United States.

Under this rule, fish or fish products cannot be imported into the United States from commercial fishing operations, which result in the