

**FINAL RESULTS OF REDETERMINATION PURSUANT TO REMAND ORDER**

*Can Tho Import-Export Joint Stock Company v. United States*

Slip Op. 19-129 (Oct 17, 2019), CIT Court No. 16-00071

**I. Summary**

The Department of Commerce (Commerce) prepared these final results of redetermination pursuant to the U.S. Court of International Trade’s (the Court) remand order in *Can Tho Import-Export Joint Stock Company v. United States*, Slip Op. 19-129 (October 17, 2019), CIT Court No. 16-00071 (*Second Remand Order*) concerning the *Final Results* of certain frozen fish filets from the Socialist Republic of Vietnam (Vietnam).<sup>1</sup> Specifically, this remand addresses Commerce’s decision regarding Can Tho Import-Export Joint Stock Company’s (Caseamex’s) separate rate status.

Commerce released the draft remand results on November 20, 2019, and interested parties were given notice to submit comments by November 27, 2019.<sup>2</sup> We received comments from Caseamex<sup>3</sup> and the 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

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<sup>1</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) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

<sup>2</sup> See *Draft Result of Redetermination Pursuant to Remand Order: Can Tho Import-Export Joint Stock Company v. United States*, CIT Court No. 16-00071 (November 20, 2019) (Draft Remand).

<sup>3</sup> See Caseamex’s Letter, “Caseamex’s Comments on the Department’s Draft Remand Redetermination-Remand Redetermination Pursuant Can Tho Import-Export Joint Stock Company v. United States,” dated November 27, 2019 (Caseamex’s Comments).

Catfish, Inc. (CFA).<sup>4</sup> As set forth in further detail below, pursuant to the *Second Remand Order*, we have reconsidered the *Final Results* and the related record evidence and have assigned Caseamex a separate rate.

## II. Background

During the 10<sup>th</sup> administrative review, Commerce denied Caseamex a separate rate status. On appeal, the Court affirmed this determination in *An Giang Fisheries*.<sup>5</sup> In the 11<sup>th</sup> administrative review, Caseamex submitted a separate rate application which stated it had no material changes in company structure, shareholdings, or operations.<sup>6</sup> As a result, we continued to deny Caseamex separate rate status.<sup>7</sup>

On October 15, 2018, the Court remanded the *Final Results*. The Court considered Caseamex's challenge that it should be given a separate rate status because Commerce's determination to deny it a separate rate relied on a memorandum from the prior administrative review. The Court ordered Commerce to reconsider the separate rate issue.<sup>8</sup>

On April 1, 2019, Commerce issued the *First Remand Results*.<sup>9</sup> Commerce explained that it considers Vietnam to be a non-market economy (NME) country under 19 U.S.C § 1677(18). In antidumping proceedings involving NME countries, such as Vietnam, the rebuttable presumption is that the export activities of all firms within the country are subject to

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<sup>4</sup> See CFA's Letter, "Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: CFA's Comments on Commerce's Draft 2<sup>nd</sup> Remand Results," dated November 27, 2019 (CFA's Comments).

<sup>5</sup> See *An Giang Fisheries Import and Export Joint Stock Company et al. v. United States*, Consol. CIT Court no. 15-00044, Slip Op. 18-4 (January 26, 2018) (*An Giang Fisheries*).

<sup>6</sup> See Caseamex's Letter, "Can Tho Import-Export Seafood Joint Stock Company (CASEAMEX) Separate Rate Application: Antidumping Administrative Review of Certain Frozen Fish Fillets from The Socialist Republic of Vietnam: Review Period--8/1/2013-7/31/2014," dated December 1, 2014.

<sup>7</sup> See *Final Results* IDM at Comment VI.

<sup>8</sup> See *Can Tho Import-Export Joint Stock Company v. United States*, Slip Op. 16-71 (October 15, 2018), CIT Court No. 16-00071 (*First Remand Order*).

<sup>9</sup> See Final Results of Redetermination Pursuant to *Can Tho Import-Export Joint Stock Company, v. United States*, Consol. Court No. 16-00071 (October 15, 2018) (*First Remand Results*).

government control and influence.<sup>10</sup> On remand, Commerce considered all of the record evidence, including the 2012 Articles of Association, but found the totality of the evidence continued to demonstrate the government had the potential to take an active role as the second largest shareholder of the company.<sup>11</sup>

On October 17, 2019, the Court issued the *Second Remand Order*, which considered Caseamex's continued challenge that it should be given separate rate status.<sup>12</sup> The Court held that Commerce's remand redetermination was not supported by substantial evidence. The Court found, in part, that Caseamex's 2012 Articles of Association rebut the presumption of government control.<sup>13</sup> The Court ordered that Commerce's determination not to grant Caseamex a separate rate status be remanded for further consideration consistent with its opinion.<sup>14</sup>

### III. Analysis

Commerce considers Vietnam to be an NME country under 19 U.S.C § 1677(18). In antidumping proceedings involving NME countries, such as Vietnam, the rebuttable presumption is that the export activities of all firms within the country are subject to government control and influence.<sup>15</sup> Commerce analyzes whether each entity exporting the subject merchandise is sufficiently independent under a test established in *Sparklers*<sup>16</sup> and further developed in *Silicon Carbide*.<sup>17</sup> In accordance with this separate rate test, Commerce will assign a separate rate in

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<sup>10</sup> See *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 20197 (April 15, 2015) (*OTR Tires*), and accompanying IDM.

<sup>11</sup> See *First Remand Results*.

<sup>12</sup> See *Can Tho Import-Export Joint Stock Company v. United States*, Slip Op. 19-129 (October 17, 2019), Court No. 16-00071 (*Second Remand Order*).

<sup>13</sup> *Id.* at 8-12.

<sup>14</sup> *Id.* at 12.

<sup>15</sup> See, e.g., *OTR Tires* IDM at Comment 1.

<sup>16</sup> See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991) (*Sparklers*).

<sup>17</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

NME proceedings if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over its export activities. Companies which do not demonstrate an absence of both *de jure* and *de facto* government control are assigned a rate established for the NME-wide entity, which is applied to all imports from any exporter that has not established its eligibility for a separate rate.<sup>18</sup>

If Commerce decides that a company is majority owned by a government, it is generally Commerce's practice to find that government "exercises, or has the potential to exercise, control over the company's operations generally."<sup>19</sup> It is also Commerce's practice to examine whether the government might also be able to exercise, or have the potential to exercise, control of a company's general operations through *minority* government ownership under certain factual scenarios.<sup>20</sup> Under certain facts, whether government ownership is minor or major, those facts might still support a claim that the government has the potential to exercise control.

After reviewing the record, no further evidence exists beyond what was already relied upon in the *Final Results* and the *First Remand Results* to show how the minority government shareholder was in a position to control, or potentially control, Caseamex's operations.

#### **IV. Comments from Interested Parties**

##### CFA's Comments

- Commerce should revise its draft results of redetermination because additional record evidence, beyond what was previously relied upon by Commerce and considered by the Court, also demonstrates the significant potential for government control of Caseamex.

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<sup>18</sup> See 19 CFR 351.107(d).

<sup>19</sup> See, e.g., *Antidumping Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 82 FR 9716 (February 8, 2017), and accompanying IDM at Comment 1.

<sup>20</sup> See *OTR Tires* IDM at Comment 1.

Specifically, [ ] during the POR, regardless of whether Caseamex’s 2012 Articles of Association restricted the government’s shareholder rights.<sup>21</sup> The record demonstrates that [ ]<sup>22</sup>

- Additionally, the government exerted control over Caseamex’s day-to-day operations. For instance, the Management Board was involved in [ ] during the period of review. Accordingly, [ ]<sup>23</sup>

- Commerce has found respondents not to be entitled to separate rates under similar circumstances. The record here compels a similar finding. Therefore, Caseamex has failed to rebut Commerce’s presumption of government control in this review and is not entitled to a separate rate.<sup>24</sup>

Caseamex

- For the reasons outlined in the Court’s order, we agree with Commerce’s Draft Results of redetermination that a separate rate is warranted for Caseamex.<sup>25</sup>

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<sup>21</sup> See CFA’s Comments at 3.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 4-5.

<sup>24</sup> *Id.* at 6.

<sup>25</sup> See Caseamex’s Letter, “Caseamex’s Comments on the Department’s Draft Remand Redetermination-Remand Redetermination Pursuant Can Tho Import-Export Joint Stock Company v. United States,” dated November 27, 2019.

Commerce's Position

We disagree with CFA's assertion that there is additional evidence, beyond what was previously relied upon by Commerce and considered by the Court, that warrants a departure from our Draft Results of redetermination.

First, CFA highlights that [

].<sup>26</sup> This fact is critical, CFA asserts, because

the Management Board [

].<sup>27</sup> However, the Court emphasized that the 2012 Articles of Association "requires 65% approval by vote for any appointment to either the Board of Managers or the Board of Directors."<sup>28</sup> Therefore, just as the Articles of Association mitigate the government's potential influence in selecting board members through its status as a minority shareholder, they similarly constrain such decisions by the Management Board. We find that the presence of [

] does not undermine this conclusion.

Second, CFA asserts that, through [

], the government was involved in the day-to-day operations of Caseamex.<sup>29</sup>

CFA cites to an instance in which [

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However, the Court has discussed extensively the day-to-day operations of Caseamex, and the integral role played by [ ]; specifically, the Court determined that [

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<sup>26</sup> See CFA's Comments at 3.

<sup>27</sup> *Id.*

<sup>28</sup> See *Second Remand Order* at 9.

<sup>29</sup> See CFA's Comments at 4-5.

<sup>30</sup> *Id.*

<sup>31</sup> See *Second Remand Order* at 9 (noting that he "was the General Director, Chairman of the Board, and controller of Caseamex's daily operations"); see also *First Remand Order* at 20 (same).

instance where the Management Board was involved in a decision does not warrant a new conclusion regarding the role of [ ] or the day-to-day operations of Caseamex more broadly. For these reasons, we do not agree that the presence of [

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Although Commerce generally agrees with CFA's assessment that Caseamex was not entitled to a separate rate, the Court concluded that the evidence did not support such a finding. No new evidence exists beyond what was already discussed in the *First Remand Results* and/or the *Second Remand Results* to demonstrate that the Government of Vietnam was in a position to control Caseamex's operations.

#### **IV. Conclusion**

Pursuant to the *Second Remand Order*, and under respectful protest,<sup>32</sup> Commerce will grant Caseamex a rate of \$0.69 per kilogram, which is the separate rate calculated for the non-mandatory respondents in the underlying administrative review. We will issue a *Federal Register* notice of the court decision being not in harmony with the final results in the 11<sup>th</sup> administrative review, as well as liquidation instructions directing U.S. Customs and Border Protection to assess any applicable entries by Caseamex at the newly calculated rate.

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Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

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<sup>32</sup> See *Viraj Group, Ltd. v. United States*, 343 F. 3d 1371 (Fed. Cir. 2003).