

Final Results of Redetermination Pursuant to *An Giang Fisheries Import and Export Joint Stock Company, et al. v. United States*, Court No. 16-072, Slip Op. 18-10

I. SUMMARY

The U.S. Department of Commerce (Commerce) prepared these final results of redetermination pursuant to the opinion and remand order of the U.S. Court of International Trade (CIT or Court) in *An Giang Fisheries Import and Export Joint Stock Company et al. v. United States*, Ct. No. 16-00072 (CIT February 13, 2018) (*Agifish*). These remand results concern the final results in the 11th administrative review of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam (Vietnam), and the period of review (POR) August 1, 2013, through July 31, 2014.¹

In accordance with the Court's instructions in *Agifish*, Commerce has provided further explanation with regard to the farming factors of production (FOP) calculations used in the *Final Results* pursuant to section 776(a) of the Tariff Act of 1930, as amended (the Act). Commerce finds that the results of the calculations it employed in the *Final Results* need no adjustments. However, as instructed by the Court, we are providing further explanation, as detailed below.

II. BACKGROUND

On September 30, 2014, Commerce initiated the eleventh administrative review of the antidumping duty order on certain frozen fish fillets from the Vietnam.² On November 7, 2014,

¹ 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).

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 79 FR 58729 (September 30, 2014) (*Initiation Notice*).

Commerce selected the Hung Vuong Group (HVG)³ and Vinh Hoan Corporation (Vinh Hoan) as mandatory respondents. On December 1, 2014, Commerce replaced Vinh Hoan with Thuan An Production Trading & Service Co., Ltd. (Tafishco) as a mandatory respondent, after all requests for review for Vinh Hoan were timely withdrawn. In the *Final Results*, Commerce assigned HVG a rate of \$0.41/kg, and Tafishco a rate of \$0.97/kg. Commerce based the rate for HVG and Tafishco on facts otherwise available, in accordance with section 776(a) of the Act, because neither respondent provided its information on a product matching control number (CONNUM)-specific basis. Commerce also applied partial adverse facts available to information reported by Tafishco's tollers, which were uncooperative in the review, in accordance with sections 776(a) and (b) of the Act. Finally, Commerce explained that, in making its facts available adjustment to HVG's data using information provided by tollers, the record demonstrated that the factors of production (FOPs) in the tollers' data are calculated on a "subject merchandise/shank⁴ basis," whereas HVG's farming FOP's were calculated on a whole live fish basis, which results in a mismatch to the denominators for farming FOPs. Commerce, thus, found it necessary to adjust the farming FOPs to account for this issue, using what it termed the "shank equivalent conversion factor," which results in a figure for the amount of whole live fish consumed to produce one kilogram of the subject merchandise.⁵

Those companies which remained subject to review that demonstrated their eligibility for a separate rate received the rate of \$0.69/kg; those that did not, received the Vietnam-wide entity

³ HVG includes An Giang Fisheries Import & Export Joint Stock Company, and also includes Asia Pangasius Company Limited, Europe Joint Stock Company, Hung Vuong Joint Stock Company, Hung Vuong Mascato Company Limited, Hung Vuong – Vinh Long Co., Ltd. and Hung Vuong – Sa Dec Co., Ltd.

⁴ When a whole fish is initially filleted, a regular fillet is generated which has the nugget/belly flap still attached. A shank fillet is a fillet that has this nugget/belly flap removed. Both regular fillets and shank fillets are subject merchandise. In the instant POR, HVG sold only shank fillets to the United States.

⁵ See IDM at 16-17.

rate of \$2.39/kg.⁶

The *Final Results* were challenged by HVG (including Agifish), Tafishco, and the following separate rate companies: Cuu Long Fish Joint Stock Company; C.P. Vietnam Corporation; GODACO Seafood Joint Stock Company; International Development and Investment Corporation; Seafood Joint Stock Company No. 4 – Branch Dong Tam Fisheries Processing Company; and Viet Phu Foods and Fish Corporation (collectively Agifish). HVG and Tafishco challenged Commerce’s request for CONNUM-specific information, and its application of facts otherwise available. Tafishco also challenged Commerce’s application of adverse facts available to its uncooperative tollers. HVG also challenged Commerce’s use of certain surrogate values. Finally, given Commerce’s application of facts available to HVG’s margin calculation, HVG challenged Commerce’s calculation of the farming FOPs, stating that Commerce, in adjusting the denominator for the so called “shank equivalent conversion factor,” did not make a corresponding adjustment to the numerator,”⁷ *i.e.*, that Commerce used an incorrect denominator.

In *Agifish*, the Court upheld Commerce’s *Final Results*, but remanded for further explanation Commerce’s decision to adjust HVG’s farming FOP denominator without making a parallel adjustment to the numerator.⁸ Specifically, the Court upheld Commerce’s application of facts otherwise available to HVG’s farming factors of production, but held that Commerce, in adjusting the denominator to the farming FOP calculation, did not explain why a similar adjustment to the numerator was unnecessary.⁹

As described below, Commerce explains that it is unnecessary to separately adjust the

⁶ See *Final Results*, 81 FR at 17435, 17437.

⁷ See *Agifish* at 16.

⁸ *Id.* at 15

⁹ *Id.* at 16.

numerator because: 1) Commerce did, in fact, use total harvested whole live fish in the denominator; and 2) Commerce properly adjusted this whole live fish-based FOP to a “shank equivalent” basis in total, and not just the denominator.

III. ANALYSIS

In accordance with the Court’s opinion and remand order in *Agifish*, we hereby further explain the *Final Results* calculation wherein Commerce adjusted HVG’s farming FOP denominator without making a parallel adjustment to the numerator.¹⁰ As described in detail below, Commerce’s further explanation addresses two issues raised in *Agifish*: 1) Agifish’s claim that Commerce used the wrong denominator;¹¹ and 2) the Court’s instruction to provide further explanation regarding why the adjustment of the FOP denominators to represent the “shank equivalent” does not require the adjustment of the numerator to reflect the “shank equivalent” farming FOP.¹²

In proceedings involving non-market economy (NME) countries, section 773(c)(1) of the Act directs Commerce to base normal value on FOPs valued in a surrogate market economy country. In applying this process, Commerce issued HVG and Tafishco its antidumping duty questionnaire.¹³ In the questionnaire, Commerce asked HVG and Tafishco to “report each raw material used **to produce a unit of the merchandise under consideration**. The consumption amount must be reported on a per-unit basis (*e.g.*, per kilogram, pound, *etc.*)”¹⁴ However, Commerce rejected HVG’s reported farming FOPs because of distortions in the reported

¹⁰ *Id.* at 15.

¹¹ *Id.* at 16.

¹² *Id.*

¹³ See Letters to HVG and Tafishco, dated November 7, 2014, and December 1, 2014, respectively (Initial Questionnaires).

¹⁴ *Id.* at D-7 (emphasis added).

denominator, *i.e.*, not on a “unit to produce the merchandise under consideration.”¹⁵

As such, Commerce calculated HVG’s farming FOPs using facts otherwise available.¹⁶ As part of their responses, HVG and Tafishco reported farming consumption numerators (feed, fingerlings, *etc.*) and a denominator (whole live harvested fish).¹⁷ However, this farming FOP denominator is not “a unit of the merchandise under consideration” (*i.e.*, CONNUM-specific frozen shank fillet) but, rather, was the harvested whole live fish. So, in this analysis, to apply facts available, pursuant to section 776(a) of the Act, Commerce needed to get the farming FOPs from point A (a whole live fish basis, *i.e.*, reported farming FOPs with a whole live fish denominator) to point B (a unit of the merchandise under consideration, *i.e.*, reported farming FOPs with subject merchandise as the denominator). To do this we needed: 1) farming FOP numerators; 2) harvested whole live fish from farming; and, 3) a conversion ratio to ensure that the farming FOPs were on the same reporting basis as that of the merchandise under consideration. As such, Commerce stated in the *Final Results* that:

With regard to HVG’s argument that the denominator should be the quantity of harvested fish, we note that it is {Commerce}’s standard practice to require that all FOPs be allocated over the total quantity of finished product rather than inputs. Thus, HVG is correct, in part, that the farming FOPs have to be divided by the amount of harvested fish. However, this is just the first step because the processing FOPs, and U.S. price, are on a subject merchandise/shank basis, while the farming FOPs are on a whole live harvested fish basis at this stage, *i.e.*, there is a mismatch in the denominators. Thus, to have the farming FOPs on the proper basis, we converted the “harvest basis” farming FOPs to a “shank fillet basis” by the shank equivalent conversion factor. This conversion factor is simply the whole live fish to subject merchandise (shank fillets) FOP that is used for the processing factors as FA. After this conversion the FOPs and the U.S. prices are on an apples-to-apples basis.¹⁸

¹⁵ See *Final Results* at Comment II.

¹⁶ *Id.*

¹⁷ See HVG August 14, 2015, submission at - Exhibit 10 - Revised Exhibit 12a.

¹⁸ See *Final Results* at Comment II; see also “11th Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results Analysis Memorandum for An Giang Fisheries Import and Export Joint Stock Company and the Hung Vuong Group,” dated March 18, 2016, at Attachment 5 (Final Analysis Memo).

As an initial step, as noted above, Commerce articulated that the farming FOPs were to be divided by the amount of harvested fish. Commerce must then convert the farming FOPs calculated in the initial step into a “shank fillet basis.” However, although this is what we intended to do, further review upon remand makes clear that this is actually not what was done in the calculations.

In the *Final Results*, Commerce first converted the production quantity of harvested fish to a “shank equivalent” basis, and then, Commerce divided the farming FOP numerators by this shank equivalent denominator.¹⁹ Thus, Commerce, in fact, reversed the math (*i.e.*, applied a conversion factor first, and then divided), making it appear as if Commerce adjusted only the denominator and not the numerators.

To address the Court’s concerns, and to allow parties to comment on the proper calculation, Commerce is now applying the math sequence such that it is in accordance with that articulated in the *Final Results*.²⁰ As such, Commerce is now first dividing the reported farming FOP numerators by the reported production quantity of harvested whole live fish.²¹ Having established these farming factors on a whole live fish basis, we then need to convert these interim farming FOPs to be on the same basis as U.S. price (USP). This is because the interim (*i.e.*, whole live harvested fish basis) farming FOPs are mismatched with the USP (which is reported on a subject merchandise basis). Thus, to convert the interim farming FOPs to reflect the same basis as the USP, we multiply the farming FOPs calculated in the first step by the whole live fish to subject merchandise (shank fillet) ratio.²² This conversion factor is simply the whole live fish to subject merchandise (shank fillets) FOP which Commerce applied as facts

¹⁹ See Final Analysis Memo, at Attachment 5 (Excel version).

²⁰ See *Final Results* at Comment II (Excerpt at footnote 16 above).

²¹ See Draft Remand Analysis Memorandum at Attachment 1 (Step 1).

²² *Id.* at Attachment 1 (Step 2).

available, pursuant to section 776(a) of the Act, to companies which used HVG as a toller for the processing of whole life fish into subject merchandise.

After this step, the farming FOPs are now calculated on a “unit to produce the merchandise under consideration” basis, as requested in the original antidumping duty questionnaire.²³ Once that unit basis is established, we can now properly add the farming FOPs and processing FOPs to the calculated normal value, thus allowing a proper comparison to USP. However, we note that, when applying the math sequence as intended in the *Final Results*, *i.e.*, dividing the farming FOPs by production of harvested whole fish first, and then applying a conversion factor, the resultant farming FOPs are the same as that calculated in the *Final Results*.²⁴

IV. COMMENTS FROM INTERESTED PARTIES

Commerce released the draft remand results on May 10, 2018. Interested parties submitted comments on May 15, 2018.²⁵

The Petitioners’ Comments

- In the Final Results, Commerce adjusted HVG’s farming FOPs using the facts available to ensure that they were on the same basis as HVG’s processing FOPs and U.S. prices, *i.e.*, on a “subject merchandise/shank basis.”²⁶ The Court ordered Commerce to explain “why adjusting the denominator to represent the ‘shank-equivalent’ does not require adjusting the numerator to reflect the ‘shank-equivalent’ farming FOP.”²⁷ Commerce complied with the Court’s order in the draft remand.

²³ See Initial Questionnaires at D-7.

²⁴ See Draft Remand Analysis Memorandum at Attachment 1. See also, Final Analysis Memo at Attachment 5.

²⁵ See the petitioners’ May 15, 2018 submission.

²⁶ See *Final Results* at Comment II.

²⁷ See *Agifish* at 16.

Agifish's Comments

Agifish did not submit any comments.

Commerce's Position: We agree with the petitioners. In accordance with the Court's order, we have detailed the reasons for each step of the calculation methodology used to adjust HVG's farming FOPs.

5/31/2018

X



Signed by: GARY TAVERMAN

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