

## CIT Sends Fish Fillet Dumping Case Back To Commerce

By **Richard Vanderford**

Law360, New York (November 09, 2010) -- A federal judge has granted Vietnam's Hiep Thanh Seafood Joint Stock Co. a temporary reprieve in its tariff fight with the U.S. Department of Commerce, ruling that the company may have been truthful when it said it did not know Mexican-bound fish fillets would end up in the U.S.

Commerce booked the fillets in question as intended for U.S. sale, a decision that increased Hiep Thanh's anti-dumping duty rate.

In a ruling Friday, Judge Leo M. Gordon of the U.S. Court of International Trade said that Hiep Thanh may have honestly thought fillets that ended up sold in the U.S. were going to be transshipped to Mexico. He ordered Commerce to take another look at its final duty results.

Hiep Thanh began sparring with Commerce and its American rivals in early 2009, when it pushed to overturn duties the department had based on its review of the company's fillet sales in the U.S.

The seafood company had sent data on its shipments to the U.S., showing a single entry, which did not line up with data Commerce obtained from U.S. Customs and Border Protection showing multiple entries.

Hiep Thanh admitted that certain fillets bound for Mexico via U.S. ports ended their trip in U.S. consumers' hands, but claims the goods were shipped with Mexican health permits and that it did not know they would be sold in the U.S.

Commerce said Hiep Thanh knew or should have known that the fillets were destined for the U.S. The department also argued in its brief that if Hiep Thanh wins, companies like it could manipulate duty investigations by altering their shipping databases.

Judge Gordon said that logic should have been included in its final results and ordered the results remanded to Commerce for further consideration.

"Commerce devoted little if any effort on the topic of what Hiep Thanh knew or should have known about the sales, limiting its analysis and conclusion to one sentence," Judge Gordon said.

"The court cannot conduct substantial evidence review of Commerce's finding that Hiep Thanh knew or should [have] known that the subject merchandise was 'destined for the United States' until Commerce clarifies which standard it applied when it affixed liability for sales to Hiep Thanh," Judge Gordon said.

Commerce's position in this case is supported by U.S. seafood companies that have intervened on its side along with the Catfish Farmers of America.

Matthew J. McConkey of Mayer Brown LLP, an attorney for Hiep Thanh, told Law360 that the issue was much simpler than the government and intervenors made it out to be.

"I felt like they were clouding the issue. They had lots of veribage and 'blah blah blah,'" he said.

"My client was selling to Mexico. They weren't selling to the United States," he said. "All the documents, the invoice, bill of lading — every single document associated with the shipment said this product was going to Mexico," he said.

Hiep Thanh chose to ship from Vietnam to Mexico via Long Beach, Calif., to save money, he explained. Of 12 shipping containers bound for Mexico, the buyer inexplicably imported five through U.S. Customs, he said.

McConkey said he believes his side will ultimately prevail.

A representative for the Department of Justice section handling the case declined to comment.

Matthew J. McConkey and Jeffrey C. Lowe of Mayer Brown LLP represent Hiep Thanh.

The intervening American companires are represented by Valerie A. Slater, Jarrod M. Goldfeder, Nicole M. D'Avanzo and Natalya D. Dobrowolsky of Akin Gump Strauss Hauer & Feld LLP.

The case is Hiep Thanh Seafood Joint Stock Co. v. U.S., case number 09-270, in the U.S. Court of International Trade.