

## Commerce Lowers Duties On Vietnam Fish Cos.

By **Abigail Rubenstein**

Law360, New York (March 17, 2011) -- Vietnamese frozen fish exporters convinced the U.S. Department of Commerce to change the surrogate country used in the administrative review of an anti-dumping order, leading to significantly lower proposed duties in preliminary results, according to a decision released Tuesday.

In a decision made Monday but released Tuesday, the agency switched the surrogate country used for its calculations of the Vietnamese exporters' production costs from the Philippines to Bangladesh.

The change led the agency to assess a duty rate of zero percent for Vinh Hoan Corp., Cuu Long Fish Joint Stock Co. and Vinh Quang Fisheries Corp., reversing a preliminary ruling that set the rate at more than 120 percent.

Commerce also reduced the weighted average margin rate for Agifish, ESS LLC and South Vina to two cents per weighted kilogram.

The agency released the preliminary results of its sixth administrative review of the anti-dumping order on Sept. 15, revealing higher rates because the country had changed the surrogate country from Bangladesh to the Philippines.

The Vietnamese producers submitted comments on the preliminary results, arguing that Bangladesh was a better choice for the surrogate country, so the agency should return to using it..

The Vietnamese companies argued that the large difference in gross national income between the Philippines and Vietnam rendered the two countries not economically comparable. They also maintained that the market for the fish in the Philippines was very small, and that some of the numbers used in calculations did not relate to the right kinds of fish.

After considering the information submitted by the petitioners, Commerce concluded that the data from Bangladesh was more suitable for comparison.

Matthew McConkey of Mayer Brown LLP, who represented Vinh Hoan and Cuu Long Fish, told Law360 that while foreign companies are often hesitant to get involved in these types of cases for political reasons, Commerce's decision in this matter shows that it is worthwhile.

"This shows that active and aggressive participation by foreign exporters in these cases can have an impact," McConkey said.

The products covered by the anti-dumping order include regular, shank and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius bocourti*, *Pangasius hypophthalmus* and *Pangasius micronemus*.

Commerce's order covers frozen fish fillets that are lengthwise cuts of whole fish, whether boneless fillets with the belly flap intact or boneless fillets with the belly flap removed. It also covers fillets cut into strips, chunks, blocks, skewers or other shapes.

Commerce first announced duties on frozen fish fillets from Vietnam in 2003, but it allows individual exporters to qualify for rates lower than the Vietnamwide rate if they submit answers to questionnaires.

The most recent administrative review covers the period from August 2008 through July 2009.

"We are reviewing the decision carefully, and we will make a decision as to any further steps," said Valerie Slater of Akin Gump Strauss Hauer & Feld LLP, an attorney for the Catfish Farmers of America, which had advocated for the change of surrogate country to the Philippines.

Vinh Hoan and Cuu Long Fish are represented by Mayer Brown LLP.

Vinh Quang is represented by Trade Pacific PLLC.

The case is Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Sixth Anti-Dumping Duty Administrative Review and Sixth New Shipper Review, case number A-552-801, in the International Trade Administration.

--Editing by John Williams.