

July 22, 2011

**MEMORANDUM TO:** Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

**FROM:** Gary Taverman  
Acting Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**RE:** Full Sunset Review of the Antidumping Duty (AD) Order on Fresh and Chilled Atlantic Salmon (Salmon) from Norway

**SUBJECT:** Preliminary Results Issues and Decision Memorandum

### Summary

We have analyzed the substantive responses and rebuttal comments of interested parties in the full sunset review of the AD order on Salmon from Norway and recommend that you approve the positions we have developed in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the relevant issues upon which we received substantive responses and rebuttal comments from interested parties:

1. Likelihood of the Continuation of Dumping
2. Magnitude of the Margin Likely to Prevail
3. “Good Cause” to Examine “Other Factors”

### History of the Order

In the February 25, 1991, final determination of the AD investigation, covering the period September 1, 1989, through February 28, 1990, the Department determined the following weighted-average dumping margins for respondent companies:<sup>1</sup>

Salmonor A/S - 18.39 percent  
Sea Star International A/S - 24.61 percent  
Skaarfish Mowi A/S - 15.65 percent  
Fremstad Group A/S - 21.51 percent

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<sup>1</sup> See Final Determination of Sales at Less Than Fair Value: Fresh and Chilled Atlantic Salmon from Norway, 56 FR 7661 (February 25, 1991) (Salmon from Norway Final Determination).

Domstein and Co. - 31.81 percent  
Saga A/S - 26.55 percent  
Chr. Bjelland Seafood A/S - 19.96 percent  
Hallvard Leroy A/S - 31.81 percent  
All Others - 23.80 percent

Since the April 12, 1991, issuance of the AD order,<sup>2</sup> the Department has completed four administrative reviews, one new shipper review, and two sunset reviews on imports of Salmon from Norway. A detailed history of the administrative reviews may be found in the final results of the first sunset review, in which the Department found that revocation of the AD order would likely lead to the continuation of dumping. See Final Results of Expedited Sunset Review: Fresh and Chilled Atlantic Salmon From Norway, 65 FR 5584 (February 4, 2000) (First Sunset Review Final Results). On December 30, 2005, the Department issued the final results of the second sunset review, in which the Department again found that revocation of the AD order would likely lead to the continuation of dumping. See Fresh and Chilled Atlantic Salmon From Norway: Final Results of the Full Sunset Review of Antidumping Duty Order, 70 FR 77378 (December 30, 2005) (Second Sunset Review Final Results) and accompanying Issues and Decision Memorandum (Second Sunset Review Final Results I&D Memorandum). Subsequent to the completion of the First Sunset Review Final Results, there have been no administrative reviews with respect to the AD order on Salmon from Norway

## **Background**

On January 3, 2011, the Department initiated the third sunset review of this AD order for the period 2006 through 2010, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). See Initiation of Five-Year (“Sunset”) Review, 76 FR 89 (January 3, 2011). On January 13, 2011, the Government of Norway (GON), Norwegian Seafood Federation (NSF) and Aquaculture Division of the Norwegian Seafood Association (ADNSA) submitted their letters of appearance.<sup>3</sup> On January 18, 2011, Phoenix Salmon U.S., Inc. (Phoenix Salmon),<sup>4</sup> a domestic interested party, filed a notice of intent to participate in the review. On January 21, 2011, the NSF and ADNSA supplemented their letter of appearance by filing a list of their members. On February 2, 2011, Phoenix Salmon submitted a substantive response. The GON, NSF, and ADNSA (collectively, the respondents) also timely filed a joint substantive response on February 2, 2011. We received rebuttal comments from Phoenix Salmon and the GON on February 14, 2011.<sup>5</sup>

In its February 14, 2011, rebuttal, Phoenix Salmon argued that the Department must reject NSF and ADNSA’s response and conduct an expedited review because each association

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<sup>2</sup> See Antidumping Duty Order: Fresh and Chilled Atlantic Salmon from Norway, 56 FR 14920 (April 12, 1991).

<sup>3</sup> These public documents and all other public documents and public versions of proprietary documents with regard to this third full sunset review are available on the public record located in the Department’s Central Records Unit at room 7046 of the main Department of Commerce building.

<sup>4</sup> Phoenix Salmon claimed to be the successor to the two domestic producers who participated in the prior sunset review – Atlantic Salmon of Maine and Heritage Salmon Company, Inc.

<sup>5</sup> In response to a February 4, 2011, request on behalf of Phoenix Salmon, the Department granted an extension for filing rebuttal comments to no later than February 14, 2011. See Memorandum to the File from Melissa Skinner, Director, AD/CVD Operations, Office 3, regarding “Extension of Deadline for Filing Rebuttal Comments,” (February 7, 2011).

failed to establish that it qualifies as an “interested party” under section 771(9)(A) of the Act, specifically as a “trade or business association a majority of the members of which are producers, exporters, or importers of” subject merchandise.<sup>6</sup> Phoenix Salmon stated that NSF and ADNSA failed to demonstrate that they satisfy the majority-membership requirement, by not identifying which of their members produce or export the subject merchandise.<sup>7</sup> On February 25, 2011, the GON submitted a surrebuttal to Phoenix Salmon’s rebuttal responding to the company’s claims that NSF and ADNSA are not interested parties and that the respondents’ joint response is incomplete.<sup>8</sup>

On March 3, 2011, counsel for Phoenix Salmon met with Department officials about the interested party status of NSF and ADNSA.<sup>9</sup> On March 4, 2011, the Department issued a letter to NSF and ADNSA requesting that each association identify their members that are producers or exporters of the subject merchandise.<sup>10</sup> On March 11, 2011, NSF and ADNSA submitted annotated membership lists, which identify the members of each association that are producers or exporters of subject merchandise.<sup>11</sup> On March 16, 2011, Phoenix Salmon submitted comments on the membership lists submitted by NSF and ADNSA.

On April 6, 2011, the Department issued its adequacy determination memorandum. The Department found that the domestic and respondent parties submitted adequate substantive responses and that NSF and ADNSA have standing as interested parties in this review. The Department, therefore, determined to conduct a full sunset review of the AD order. See Memorandum to Gary Taverman, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Melissa Skinner, Director, Antidumping and Countervailing Duty Operations, Office 3, regarding “Adequacy Determination: Third Sunset Reviews of the Antidumping and Countervailing Duty Orders on Fresh and Chilled Atlantic Salmon from Norway” (April 6, 2011) (Adequacy Determination Memorandum). On April 12, 2011, the Department extended the deadline for the preliminary and final results of this sunset review. See Fresh and Chilled Atlantic Salmon From Norway: Extension of Time Limits for Preliminary and Final Results of Full Third Antidumping and Countervailing Duty Sunset Reviews, 76 FR 20312 (April 12, 2011). The Department did not receive comments on the Adequacy Determination Memorandum from any party to this review.

## **Discussion of the Issues**

In accordance with section 751(c)(1) of the Act, the Department is conducting this sunset review to determine whether revocation of the AD order would likely lead to continuation or recurrence of dumping. In this case, the Department considered the weighted average dumping

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<sup>6</sup> See Phoenix Salmon’s “Rebuttal Comments to Respondents’ Joint Substantive Response” (February 14, 2011) at 2.  
<sup>7</sup> Id. at 6-8.

<sup>8</sup> Though there is no opportunity for parties to respond to rebuttal comments, the GON’s surrebuttal is immaterial to the Department’s analysis because of the request for additional information on March 4, 2011, regarding NSF’s and ADNSA’s members and the Department’s subsequent finding that the trade associations have standing as interested parties under section 771(9)(A) of the Act and that the respondents’ joint response is substantive and complete.

<sup>9</sup> See Memorandum to the File, through Melissa Skinner, Director, AD/CVD Operations, Office 3, from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding “Meeting with Counsel for the Domestic Interested Party” (March 3, 2011).

<sup>10</sup> See Letter to NSF and ADNSA, regarding “Request for Additional Information” (March 4, 2011).

<sup>11</sup> See NSF and ADNSA’s “Response to Department’s March 4, 2011 Request for Additional Information” (March 11, 2011).

margins determined in the investigation and subsequent reviews and the volume of imports of Salmon from Norway for the period before and the period after the issuance of the AD order. In making these considerations, the Department finds the following indicative of the likely continuation or recurrence of dumping: whether dumping continued at any level above de minimis after the issuance of the order; whether the imports ceased after the issuance of the order; and whether dumping was eliminated and import volumes declined significantly after the issuance of the order. In addition, pursuant to section 751(c)(2) of the Act, the Department considered whether there was “good cause” to consider other price, cost, market or economic factors in reaching its decision.

The Department finds that dumping of the subject merchandise continued at levels above de minimis after the issuance of the order, including throughout the five years preceding this sunset review. The Department also finds that imports of the subject merchandise declined significantly after the issuance of the order, and have remained at depressed levels throughout the pendency of the order, including throughout the five years preceding this sunset review. Finally, the Department finds that “good cause” does not exist to warrant examination of price, cost, market, or other economic factors in this review. We address the comments of the interested parties below.

Comment 1:            Likelihood of Continuation of Dumping

#### Phoenix Salmon

Pursuant to the statute and guidance provided by the Department’s Policies Regarding the Conduct of Five-year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin, 63 FR 18871 (April 16, 1998) (the Policy Bulletin) and the Statement of the Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 316, 103d Cong. (1994) (the SAA) at 890, the domestic interested parties assert that revocation of the AD order on Salmon from Norway is likely to lead to continued dumping by foreign producers/exporters as well as material injury of the U.S. industry. See Phoenix Salmon’s February 2, 2011, substantive response at 17. Phoenix Salmon contends that the imposition of the AD order on Salmon from Norway dramatically reduced the volume of those imports and, in support of its claim, provided import statistics of U.S. imports on Salmon from Norway from 1985 through November 2010. See Phoenix Salmon’s February 2, 2011, substantive response at 19. In particular, Phoenix Salmon notes the decrease in import volumes by comparing the average annual volume in the three years prior to the filing of the petition with the average annual import volume in the three years following the imposition of the order. Commenting on the increasing volume of imports since the Second Sunset Review Final Results, Phoenix Salmon contends that such volumes remain well below those occurring prior to the imposition of the order.

In addition, Phoenix Salmon asserts that the history of dumping margins on Salmon from Norway since the order was published demonstrates that Norwegian producers rely on continued dumping to sustain their access to the U.S. market. See Phoenix Salmon’s February 2, 2011, substantive response at 21.

## The GON, NSF, and ADNSA

The respondents argue that Phoenix Salmon is wrong to imply that the Department is compelled to limit its likelihood analysis to two criteria: (1) the prior dumping margins calculated in the proceeding and (2) the volume of imports of Salmon from Norway since the imposition of the order. The respondents argue that the explanatory language of the SAA requires the Department to consider “other factors” in making its likelihood determination if “good cause” is shown. See SAA at 890.

Regarding this sunset review, the respondents assert that “good cause” exists to warrant examination of “other factors” when determining the likelihood of the recurrence of dumping. For further discussion of “good cause” and the “other factors” purported to exist in this sunset review, see Comment 3. The respondents argue that taking these “other factors” into account will lead the Department to conclude that dumping would not reoccur if the AD order on Salmon from Norway were revoked.

Department’s Position: The Department has preliminarily determined that revocation of the order on Salmon from Norway is likely to lead to the continuation of dumping. As part of its determination of whether revocation of an antidumping order is likely to lead to the continuation or recurrence of dumping, the Department will examine whether: a) dumping continued at any level above de minimis after the issuance of the order or the suspension agreement, as applicable; b) imports of the subject merchandise ceased after issuance of the order or the suspension agreement, as applicable; or c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly. Accordingly, the Department first examined the dumping margins determined in the investigation and in subsequent administrative reviews of this order. In the original investigation, the Department found that Norwegian producers were selling at less than fair value in the United States at levels greater than de minimis, specifically between 15.65 and 31.81 percent. In all but one of the subsequent reviews, the Department similarly found dumping margins above de minimis levels and even determined that the margins of dumping increased in the second review when compared to those in the investigation.

Second, with respect to import volumes, the Department examined statistics compiled from its own trade data and found that total import volumes of Salmon from Norway have remained well below their pre-order levels. See Phoenix Salmon’s February 2, 2011, substantive response at 19, which relies upon data from the Department. Third, while import volumes fluctuated over the five years immediately preceding this sunset review, the level of those imports was significantly below those in the years prior to the issuance of the order. Id.

Based on the record evidence that dumping was not eliminated after the issuance of the order, and the lack of “good cause” to consider “other factors” in this case, as discussed in the “‘Good Cause’ to Consider ‘Other Factors’” section below, the Department has preliminarily determined that revocation of the order on Salmon from Norway is likely to lead to the continuation of dumping. We note that our approach in this regard is consistent with the Department’s approach in the Second Sunset Review Final Results. See Second Sunset Review Final Results I&D Memorandum at Comment 2.

## Comment 2: Magnitude of the Margin Likely to Prevail

### Phoenix Salmon

Domestic interested parties state that pursuant to the principles set forth in the SAA and the Policy Bulletin, the Department should rely upon the margins of dumping found in the Salmon from Norway Final Determination as the dumping margins that are likely to prevail if the order is revoked, because those margins best reflect the behavior of the respondents absent the constraints of an antidumping order.

### The GON, NSF, and ADNSA

The GON, NSF, and ADNSA argue that “other factors” demonstrate that the post-revocation dumping margin likely to prevail is zero. For further discussion, see Comment 3.

Department’s Position: We agree with Phoenix Salmon. In a sunset review, the Department will normally provide to the International Trade Commission (the ITC) the margin that was determined in the final determination of the original investigation. For companies not specifically investigated, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the “all others” rate from the investigation because these rates are the only calculated rates that reflect the behavior of exporters without the discipline of the order in place. See, e.g., Second Sunset Review Final Results I&D Memorandum at Comment 3.

The Department calculated, as part of a new shipper review, a zero percent dumping margin for a single Norwegian producer. However, a zero dumping margin calculated for a “new” exporter of Salmon to the United States from Norway in no way represents the anticipated experience of all other Salmon exporters. With the exception of the new shipper, all other margins have remained above de minimis throughout the history of the order. Accordingly, the Department has preliminarily determined that the zero margin found for a single producer in a new shipper review does not reflect the likely behavior of all other exporters without the discipline of the order in place. Therefore, we will report to the ITC the company-specific and “all others” rates determined in the Salmon from Norway Final Determination because these rates best reflect the behavior of producers/exporters without the discipline of the order. Our approach in this regard is consistent with the Department’s practice. See, e.g., Second Sunset Review Final Results I&D Memorandum at Comment 3.

For discussion of the “other factors,” as argued by the respondents, see Comment 3 below.

### 3. “Good Cause” to Examine “Other Factors”

### The GON, NSF, and ADNSA

The respondents argue that there are five reasons why “good cause” exists which should compel the Department to consider “other factors” when determining the likelihood of the reoccurrence of dumping. First, they argue that the obsolescence of the order constitutes a basis for finding “good cause.” The respondents explain that the underlying investigation examined

pricing more than two decades ago while the most recent administrative review examined pricing more than fifteen years ago. The respondents explain that the most recently calculated dumping margin was a de minimis margin calculated in the Salmon from Norway NSR.<sup>12</sup> The respondents argue that because the order is so outdated and that above-de minimis margins were calculated so long ago, the margins calculated as part of the investigation do not provide a credible basis for the Department to conclude that dumping would be likely to recur if the order were revoked. The respondents add the fact that the exporters examined in the investigation have ceased to exist further demonstrates the obsolescence of the order.

Second, the respondents argue that recent developments regarding the Department's practice of zeroing constitutes a basis for finding "good cause." The respondents state that the World Trade Organization (WTO) has ruled on several occasions that sunset review determinations are inconsistent with the obligations established by the WTO agreements insofar as they rely on dumping margins calculated using the zeroing procedures. See, e.g., U.S. – Corrosion Resistant Steel Sunset Review, DS244/AB/R (December 15, 2003), paragraphs 127-128, 130. According to the respondents, the Department issued a notice acknowledging that the WTO's rulings may impact sunset reviews. See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings, 75 FR 81533, 81534 (December 28, 2010) (Margin Notice). The respondents further argue that in the Margin Notice the Department stated that it is not required by statute to rely on weighted average dumping margins calculated in the underlying investigation if those margins ". . . would render the determination inconsistent with the United States' international obligations." Id. On this basis, the respondents argue the Department should not rely on margins calculated in the underlying investigation to determine whether dumping would recur but instead, based on "good cause," the Department should examine "other factors" when making its likelihood determination.

Third, the respondents argue that price trends for exports of Salmon from Norway constitute a basis for finding "good cause." They argue that the annual average unit prices of Salmon from Norway exported to the United States during the past five years indicates a steady and sustained increase. See Table 2 of the respondents' February 2, 2011, substantive response. They add that the average unit price of Salmon from Norway in 2010 was 45 percent higher than in 2007. The respondents argue that this upward price trend suggests that dumping is unlikely to recur if the order is revoked and, thus, the price trend constitutes "good cause" for the Department to consider "other factors" when making its likelihood determination.

Fourth, the respondents argue that from 2007 through 2010 export prices of Salmon from Norway have increased far more rapidly than average unit costs, which suggests that, when measured in terms of a cost-based normal value, dumping is very unlikely to have occurred in the past five years. See Table 5 of the respondents' February 2, 2011, substantive response. They further argue that the trends in average unit pricing and costs were sustained over the previous five years, which suggests that these trends will continue if the order is revoked. The respondents argue that the data on the Norwegian industry's unit costs may serve as a basis for the Department to find that "good cause" exists.

Fifth, the respondents argue that data from the Norwegian industry, as well as from the financial statements of three largest Norwegian producers, indicates that Norwegian producers of Salmon have been extremely profitable during the last five years. The respondents argue that the

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<sup>12</sup> Fresh and Chilled Atlantic Salmon From Norway; Final Results of New Shipper Antidumping Duty Administrative Review, 62 FR 1430 (January 10, 1997) (Salmon from Norway NSR).

industry's profitability is a further basis for concluding that dumping would not recur in the absence of the order. As such, argue the respondents, the profitability of the Norwegian Salmon industry may serve as a basis for finding "good cause."

Claiming that they have established that "good cause" exists for the Department to examine "other factors" in rendering its likelihood determination, the respondents present the "other factors" the Department should consider. Among these factors, argue the respondents, is the fact that publicly-available information indicates that the Norwegian Salmon industry has not engaged in dumping during the last three years. The respondents calculated the export price for Salmon from Norway by subtracting estimated movement expenses from official export statistics of Norway. The respondents calculated normal value based on prices from the Norwegian Directorate of Fisheries and from NOS Clearing, a clearinghouse that collects Salmon prices. The respondents calculated normal value based on prices of Salmon in Norway as well as in the European Union. The respondents contend that their dumping calculations demonstrate that the Norwegian industry had negative dumping margins on sales of Salmon to the United States during the last three years.

The respondents argue that the absence of dumping during the last three years, combined with the obsolescence of the order, the Department's obligation to abandon the practice of zeroing in sunset reviews thereby negating reliance on margins calculated in underlying investigations, and the average prices and costs of the Norwegian industry in the last five years constitute "other factors" that should compel the Department to find that dumping will not recur if the order is revoked.

### Phoenix Salmon

Phoenix Salmon argues that "good cause" does not exist for the Department to consider any of the "other factors" cited by the respondents in this sunset review because none are relevant to the Department's likelihood analysis. Phoenix Salmon notes that the Department explicitly determined not to consider most of the "other factors" submitted by the respondents in the previous sunset review of this proceeding. See Second Sunset Review Final Results I&D Memorandum at Comment 3. Phoenix Salmon argues that the respondents' dumping calculations purportedly indicating negative margins during the last three years are based entirely on respondents' own calculations and, thus, are inappropriate for consideration by the Department. Phoenix Salmon further argues that the plain language of the statute directs the Department to consider "weighed-average dumping margins determined in the original investigation and subsequent reviews" in determining likelihood of recurrence of dumping. See section 752(c)(1) of the Act. Phoenix Salmon further asserts that the statute's plain language does not authorize the Department to consider estimated margins calculated by the respondents themselves. Phoenix Salmon also contends that the calculations submitted by the respondents are at a level of generality that renders them meaningless, as opposed to the company- and transaction-specific data the Department relies on in AD investigations and reviews. Phoenix Salmon adds that if Norwegian producers of Salmon were not dumping during the last three years, it is unclear why none of them requested an administrative review of their shipments.

Phoenix Salmon also challenges the respondents' claims that the margins from the investigation and reviews are obsolete. Phoenix Salmon argues that in the Second Sunset Final Results the Department found that the passage of time since the original investigation and the last administrative review is not relevant to its analysis. See Second Sunset Final Results I&D

Memorandum at Comment 3. Thus, argues Phoenix Salmon, the Department should reject the respondents' arguments on this point.

Phoenix Salmon also disputes the respondents' claims that recent rulings by the WTO prohibit the Department from relying on previously calculated, affirmative margin calculations that utilized the zeroing methodology. Phoenix Salmon argues that the Department's established practice does not support such an approach. See, e.g., Stainless Steel Sheet and Strip in Coils From Italy: Preliminary Results of the Full Second Five-Year ("Sunset") Review of the Antidumping Duty Order, 75 FR 81214, 81216 (December 27, 2010) and accompanying Issues and Decision Memorandum (Coils from Italy Decision Memorandum) at 9 ("with respect to TKAST's claims, the Department agrees with the domestic interested parties that such argument is speculative in nature"). See also Brake Rotors from the People's Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order, 73 FR 1319 (January 8, 2008) and accompanying Issues and Decision Memorandum (Brake Rotors from the PRC Decision Memorandum) at Comment 4, and Stainless Steel Bar from Germany; Final Results of the Sunset Review of the Antidumping Duty Order, 72 FR 56985 (October 5, 2007) and accompanying Issues and Decision Memorandum at 4 – 5. Phoenix Salmon further argues that the Department's proposal to alter its zeroing methodology in administrative reviews is subject to an ongoing comment period and, thus, has not been finally adopted or implemented.

Phoenix Salmon also contests the pricing and cost data cited by the respondents. Phoenix Salmon argues that the data submitted by the respondents is on an aggregate basis and, thus, the respondents base their argument on the notion that the resulting trends in prices and cost, as well as profitability, of all the Norwegian producers of Salmon are the same. Phoenix Salmon argues that such an assumption is unfounded and that the data are not relevant to the Department's likelihood analysis. Phoenix Salmon argues that such general economic factors are more appropriate for the purview of the sunset analysis performed by the ITC.

Department's Position: Section 752(c)(2) of the Act provides that after considering the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the periods before and after the issuance of the antidumping order, the Department "shall also consider other such price, cost, market or economic factors as it deems relevant" "if good cause is shown." In the SAA, Congress provided a list of factors and stated that the Department would analyze information "on a case-by-case basis." SAA at 890.

Consistent with the language of the Act and SAA, the Department will only review additional data if it concludes "good cause is shown" to look beyond the standard criteria listed in section 752(c)(1) of the Act (previous dumping margins and import volumes). When an interested party advocates consideration of additional factors, it must therefore first show the Department that "good cause" exists to do so through record evidence. It is then the Department's responsibility to analyze the information provided, request more information if necessary, and determine if the information and/or evidence affects the Department's likelihood determination. See Second Sunset Review Final Results I&D Memorandum at Comment 1.

With respect to the respondents' claim that recent developments regarding the Department's practice of zeroing constitutes a basis for finding "good cause" to examine "other factors" as part of the Department's the likelihood determination, we disagree. As noted by Phoenix Salmon, the Department has rejected this line of argument in the context of past sunset

reviews. See, e.g., Coils from Italy Decision Memorandum at 9; see also Brake Rotors from the PRC Decision Memorandum at Comment 4:

The zeroing methodology that CWD refers to has to do with the modification the Department has made to the calculation of the weighted-average dumping margin in an antidumping investigation in response to a ruling of the WTO Dispute Settlement Body, and is applicable to all of the Department's investigations conducted after January 16, 2007. Considering the fact that the Department is conducting a sunset review and not an investigation, the Department's margin calculation modification, noted above, does not apply to this sunset review. Thus, it is inappropriate for the Department to consider what the margins would have been in the brake rotors investigation and in subsequent administrative reviews had the Department not applied its zeroing methodology.

In fact, the Department has never offset AD margins calculated for individual sales transactions by non-dumped sales in determining the margin likely to prevail in a sunset review, and the respondents do not cite to a single example in which we have done so. Further, none of the Section 129 determinations in which the Department has modified its calculations for less than fair value investigations has also applied the same modification to sunset reviews. See, e.g., Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act Regarding the Antidumping Duty Order on Certain Cut-to-Length Carbon-Quality Steel Plate Products from Japan, 73 FR 29109 (May 20, 2008); see also Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation: Final Modification, 71 FR 77722 (December 27, 2006).

Accordingly, we preliminarily determine that there is no basis to implement such an offset in the instant sunset review. Therefore, for purposes of these preliminary results, we find that the respondents' zeroing argument does not constitute a "good cause" that warrants consideration of "other factors" for purposes of our likelihood determination.

The respondents also argue that the period of time that has elapsed since the imposition of the order has been excessive, and that increases in average unit prices for Norwegian Salmon that outpace the corresponding average unit costs as well as the profitability of the Norwegian Salmon industry over the last five years constitute "good cause" to warrant examination of "other factors" for purposes of the likelihood determination. They even argue that the price, cost, and profitability trends, alone, constitute "other factors" demonstrating that the recurrence of dumping is not likely.

An argument for the consideration of "other factors," however "cannot be analyzed without a demonstration of its relevance to the Department's statutorily mandated consideration of: 1) the weighted average dumping margins determined in the investigation and subsequent reviews; 2) the volume of imports of the subject merchandise for the period before and the period after the issuance of the AD order; or 3) the magnitude of the margin of dumping likely to prevail if the order is revoked." See Second Sunset Review Final Results I&D Memorandum at Comment 1. Thus, the respondents must demonstrate how the Department's normal, statutorily mandated criteria are not, by themselves, appropriate factors for purposes of making the likelihood determination. As indicated in Comments 1 and 2 above, the respondents attempt to make such an argument. Specifically, they contend that the "other factors" listed in their case briefs should be used not in conjunction with, but rather in lieu of the Department's normal

criteria on the grounds that the normal criteria are unsuitable for purposes of the likelihood determination.

With respect to the respondents' contemporaneity argument, the Department rejected this argument five years ago in the previous sunset review of this order:

The Department finds, in light of the relationship between dumping margins and import volumes that the arguments and claims respondents assert to establish that there is good cause to consider other factors in this case are not relevant to the likelihood of continued dumping. For example, respondents' observations concerning the period of time since the investigation, and the period of time since the last administrative review was requested are not relevant to the issue of whether continued dumping is likely. Thus, we have not considered these factors.

See Second Sunset Review Final Results I&D Memorandum at Comment 1 (emphasis added). Although five years have passed since that analysis, the facts from the instant sunset review are otherwise indistinguishable from those of the Second Sunset Review Final Results. Furthermore, there has been no subsequent AD proceeding in which the Department calculated an antidumping margin that would call into question the relevance of the Department's prior calculations. See Polyvinyl Alcohol from Japan, the Republic of Korea, and the People's Republic of China: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders, 73 FR 57596 (October 3, 2008) and accompanying Issues and Decision Memorandum at Comment 1 (noting that the Department determines there is the likelihood of dumping on the bases of previously calculated margins when there have been no subsequent reviews); see also Stainless Steel Wire Rod From Italy, Japan, the Republic of Korea, Spain, and Taiwan: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders, 74 FR 56179 (October 30, 2009) and accompanying Issues and Decision Memorandum at Comment 1.

Understanding this to be the case, the respondents argue that the Department should nonetheless consider the information they placed on the record concerning purported average unit prices and costs, as well as the purported profitability of the Norwegian industry. In effect they argue that this information should supersede previously calculated antidumping margins for purposes of this sunset review.

We do not agree with the respondents that this information "better" reflects the likelihood of future dumping behavior than the previously calculated dumping margins in this case. The respondents have not demonstrated how purported, aggregate trends in unit prices, costs, and profitability in the Norwegian Salmon industry, alone or in conjunction with the Department's normal criteria, demonstrate that the recurrence of dumping is not likely. As the Department has explained in the past, "the Department does not calculate new antidumping margins in the context of a sunset review," and therefore "cost data" (alone) "is not pertinent to a sunset review determination. See Solid Agricultural Grade Ammonium Nitrate from Ukraine: Final Results of the Expedited Sunset Review of the Antidumping Duty Order, 71 FR 70508 (December 5, 2006) and accompanying Issues and Decision Memorandum at Comment 2. The same is true of price and profitability data as well.

Furthermore, we agree with Phoenix Salmon that even considered as a whole, the pricing, cost, and profitability data supplied by the respondents are also not suitable for use in this sunset review because the data are reported on an aggregate basis and, therefore, lack the necessary

level of specificity. The Department's practice in sunset reviews is to review company-specific data:

In sunset reviews, although we make likelihood determinations on an order-wide basis, we report company-specific margins to the Commission. Therefore, it is appropriate that our determinations regarding the magnitude of the margin likely to prevail be based on company-specific information. Generic arguments that margins decreased over the life of the order while, at the same time, exporters' share of the U.S. market remained constant do not address the question of whether any particular company decreased its margin of dumping while at the same time maintaining or increasing market share. In fact, such generic argument may disguise company-specific behavior demonstrating increased dumping coupled with increased market share.

See Final Results of Expedited Sunset Reviews: Certain Welded Stainless Steel Pipes From the Republic of Korea and Taiwan, 65 FR 5607, 5611 (February 4, 2000). Thus, the Department does not believe there is benefit in considering the respondents' calculations of alleged "aggregate" dumping margins in this proceeding, because: 1) the Department does not calculate antidumping margins for the first time in sunset reviews and 2) that data is aggregate in nature, and therefore does not reflect the dumping experience of individual companies.

Accordingly, for the reasons stated above, we cannot agree that the information supplied by the respondents gives the Department "good cause" to consider further information in its analysis, pursuant to section 752(c)(2) of the Act. Accordingly, the Department will not consider further the "other factors" advocated by the respondents in this sunset review.

### **Recommendation**

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the preliminary results of review in the Federal Register.

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Agree

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Disagree

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Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

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Date